TESTIMONY SUBMITTED TO THE NEW YORK STATE SENATE FINANCE AND ASSEMBLY WAYS AND MEANS COMMITTEES ON THE FY2023-24 EXECUTIVE BUDGET – TOPIC: HOUSING

CITIZENS HOUSING AND PLANNING COUNCIL
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Thank you for the opportunity to submit testimony regarding the housing proposals in the FY2023-24 Executive Budget. My name is Howard Slatkin, and I am Executive Director of the Citizens' Housing and Planning Council (CHPC). CHPC is a non-profit civic organization dedicated to addressing the City's housing and planning needs. While this testimony is submitted on behalf of CHPC, I also note that I am an adjunct associate professor at Columbia University's Graduate School for Architecture, Planning, and Preservation, where I teach a class focused on the coordinated exercise of state and local government authority to address key planning issues – a topic that is at the heart of the Governor's proposed Housing Compact.

The Urgency of State Action

The need for State action to address our housing crisis is beyond dispute. While the most acute challenges arise in the superheated conditions of NYC and the downstate region, no corner of the state is untouched by this crisis. When there's not enough housing to go around, all New Yorkers pay more, leaving less to spend on all else in our lives. This hurts the middle class, this hurts businesses, this hurts young people starting out – this hurts everyone. But it hurts most those who can afford it least, and is a root cause of our unconscionably high rates of homelessness.

To treat these issues as intractable or inevitable is to admit a lack of imagination and courage. Systems and processes that delay and deter individual projects must be reimagined to align with our priorities and scale to our needs. Even the well housed among us owe the next generation of New Yorkers a functioning system that provides the housing needed to sustain their livelihoods.

The Governor's Housing Compact represents the first effort in modern memory to take action at the scale necessary to reverse the long, slow strangulation of our housing supply. Evidence from other coastal states suggests that implementing these kinds of reforms will require sustained effort, with adjustments as experience is accumulated in administering them. But this must not be misunderstood as a reason to hem, haw, and delay further. The longer it takes to start implementing reforms, the longer it will take to make them work. **Now is the time to act.**

A Formula for Productive State-Local Cooperation

There is no inherent conflict between robust State housing policy and the principle of home rule. As someone who served in New York City government for over two decades, I can personally attest that on a wide range of issues, local government is simply in a better position to get the details right. But in the absence of a State-level structure, localized decision making also enables localities to take actions that are at odds with broader interests or pass the buck to neighboring communities to shoulder burdens. This creates a perverse incentive for communities to make the broader problem worse. When combined with differences in economic and political power among communities, this also reproduces inequality and environmental injustice.

State intervention in land use and housing policy can continue to empower local government to get the details right, without encouraging them to get the big picture terribly wrong.

In order to accomplish this, there are three things the State must do:

1) **Establish clear and achievable goals** that advance the legitimate interest of the State and align the actions of local governments, and hold local governments responsible for meeting them;
2) **Empower local governments** to identify the manner in which these goals can be best achieved in their communities; and
3) **Eliminate obstacles** to achieving these goals, including conflicting State requirements, procedural impediments, or feasibility issues.

The Housing Compact broadly follows this model – in particular, with the establishment of new homes targets and a fast-track approval process (Part F), transit-oriented development (Part G), elimination of the State's unique density cap in New York City (Part L), and giving New York City authority to legalize below-grade apartments (Part K).

There are still elements of the proposals that require adjustment to adhere to this formula, or that require further consideration. These are described in further detail below. Overall, the adoption of the housing proposals in the Executive Budget would represent an enormous leap forward for sound housing policy in New York City and State.

Part K, Legalization of below-grade units: CHPC has extensive experience in this arena as a member of the BASE Coalition and as the program evaluator for the East New York pilot basement legalization program. The proposed budget language aptly provides the City broad authority to modify State and local law for the narrow purposes of enacting a regime for the upgrade and legalization of below-grade apartments. The experience of the City and community partners shows that a sharp knife is the necessary tool to cut through the thicket of regulations that prevent thousands of apartments from being made safe and legal in a cost-effective manner. Alternative approaches that would narrow local authority, attach strings, or otherwise increase legislative complexity offer only a route to higher costs and further inaction.

While the overall approach of the proposal is sound, there is a flaw that would render it mostly ineffective to its purpose. The City would be provided authority only to legalize only spaces that are more than half above street level (defined as "basements"), and not apartments further below grade, which are classified as "cellars," even if they are above grade at the rear end of the building. This

leaves the majority of below-grade apartments without a pathway to safety and legalization. Seventy percent of buildings examined in the East New York legalization pilot would be ineligible because spaces are further below street level. Notably, all of the fatalities during Hurricane Ida occurred in units that could not be upgraded under the proposed language.

The City's central purpose in legalizing below-grade units is to promote resident safety. The expertise for how to do so in these unique circumstances resides locally. Changes would need to be enacted through the local legislative process. There is no reason for State legislation to stand in the way. The proposal should be amended to allow the City to define the universe of apartments that can safely be legalized, without categorical restrictions on cellar units.

Part J, Office conversion: The proposed legislation aims to eliminate regulatory obstacles to the residential conversion of unviable office space. There is broad agreement among stakeholders that such a measure makes sense in the current environment. However, several changes to the proposed language are warranted:

The State preemption of local zoning in this legislation is excessive and would impair the City's authority to regulate a large and important wedge of its building stock. Wholesale preemption of local regulations is unnecessary, because New York City's Zoning Resolution already has regulations (Article I, Chapter 5) that provide broad flexibility for conversion of buildings built before 1961. The proposed language would effectively eliminate these proven regulations, when the desired outcome is to simply expand their applicability to a larger universe of buildings.

The legislation should provide for targeted preemption that would make the regulations of Article I, Chapter 5 applicable to buildings constructed before December 31, 1990. The City should retain the authority to modify these regulations in the future, as conditions warrant. There is no reason to believe that the City, which recently convened a task force that generated this exact recommendation (full disclosure: in my former role at the Department of City Planning, I oversaw the activities of this task force), has an interest in undermining the purpose of this legislation.

In addition, the drafting of this bill is inadequate to overcome the constraints of the byzantine Multiple Dwelling Law. The proposal aims to authorize conversion of buildings built through 1990, but because of limitations on the applicability of Article 7-B imposed by paragraph 11 of Section 3 of the MDL, these changes would not be effective for post-1968 buildings. Amendments should address this and other technical issues with the bill.

Part P, Tax incentive for office conversion: This proposal is an important counterpart to Part J. In the absence of such a tax incentive, office conversions would not incorporate lower-income housing. The absence of current affordable housing options and limited avenues to build affordable housing in the Manhattan core, together with the unparalleled abundance of employment opportunities at all skill levels in close proximity, makes it important to include provisions that support mixed-income rental housing in conversions.

Notably, tax incentives should not have the effect of inducing conversions of anchor office buildings in the secondary Central Business Districts of Downtown Brooklyn and Long Island City. While the conversion of unviable office buildings in the Manhattan CBD can cull often-vacant space without detracting from the area's vitality as a business district (and in fact enhancing it), the same

cannot be said for these other emerging business districts, where decades of planning and public subsidy have been devoted to establishing a critical mass of downtown employment. This not only brings jobs closer to residents of the boroughs outside Manhattan; it also supports shorter commutes and reverse commutes that increase the amount of housing and employment that can be supported by the transit network. Excluding the largest commercial buildings – those over 300,000-400,000 square feet in size – from this program would prevent this adverse outcome, while preserving the option of conversion for the large majority of smaller buildings.

Part M, Tax incentive for preservation and rehabilitation: This proposal speaks to the undeniable need for additional resources to support the upgrading and improvement of the existing building stock, particularly for those units where it is impermissible or impractical to increase building revenues to cover the costs of such improvements. However, the limited extent of the benefit offered and universe of eligible buildings constrains the beneficial impact this proposal can have. Further attention will be necessary in the future to the needs of other buildings not assisted by this program.

Parts F and G, New homes targets and fast track approval, and transit-oriented development: These proposals adhere closely to the formula for productive City-State cooperation outlined above. Within this sound framework, there are details that warrant additional consideration. The following recommendations are offered with the aim of reducing the need for future adjustment to the provisions of these programs:

- Housing counted toward the targets should not be limited to dwelling units. There should be a way to count supportive housing or other permanent housing that is not configured as a dwelling unit toward meeting local obligations.
- Only new units that increase housing supply should be counted toward the housing target. As proposed, all new construction units would count, even if such units are a one-for-one replacement of housing that previously occupied the site. A community replacing a lower-cost home with a higher-cost one is not making the same contribution toward regional housing needs as a community that builds housing for more households. Failing to account properly for this difference would introduce a perverse incentive that undermines the purpose of the proposal. Data collected under Part H should be used to distinguish net additions to housing supply from other housing investment, and to count only the former toward targets.
- Once beyond the initial 3-year period, consideration should be given to increasing the time period for determining compliance to 5 years. This would prevent periodic fluctuations in market and financial conditions, rather than durable trends in housing production, from determining whether a geography is compliant; and it would support predictability for builders and communities.
- Floodplain properties should not be subject to TOD requirements solely because they are "previously disturbed land" with an existing building. While many locations in the 100-year flood plain are appropriate for improvement with flood-resistant, higher-density housing, there are also built-out neighborhoods in New York City and elsewhere where frequent tidal flooding risk or other acute flood hazards exist, and where climate resilience dictates that

further densification would be hazardous and bad planning. Measures should be incorporated to allow exception of such areas from TOD requirements.

- With respect to the minimum permitted densities within TOD geographies, consideration should be given to accommodating alternative standards or modes of calculation that reflect a broader range of regulations and built conditions. For instance, the proposed standard is reliant on local caps on unit density, which may not be desirable. A zoning reform that CHPC has proposed, and that New York City is considering, would eliminate unit density limitations in multifamily districts, allowing the permitted amount of floor area to be provided as either a larger number of small units, or a lesser number of larger units, as warranted by residential demand. Offering a floor area-based alternative to the units-per-acre standard in the proposed legislation would support a wider range of housing reforms in localities across the state.
- The limited local review of TOD and fast-track projects should be allowed to include not only assessment of local water, sewer, and utility capacity, but also a screening for core health and safety concerns such as resident exposure to hazardous materials or industrial emissions, to the extent that these are not reviewed under other provisions of law. A straightforward analysis of these factors would address important environmental justice concerns without impeding much-needed housing development.
- Because transit-oriented development involves not only permitting higher densities but also a degree of place-based planning to support walkability and connectivity (as acknowledged in the proposed planning and infrastructure funds), local review of TOD projects should be allowed to consider the need for modifications to a proposed development for the specific purpose of ensuring that such development does not impede further anticipated transit-oriented development of the area, or conflict with State-funded transit improvements in the area. This would afford local governments reasonable latitude to ensure that projects advance rather than impede connections to public transit, do not place busy vehicular entrances on key pedestrian corridors, or are not otherwise at odds with the realization of the objectives of the program.

Part L, Elimination of State FAR cap: This proposal provides a clear illustration of the formula for productive City-State cooperation. Imposing a limitation on the amount of floor area local government can allow, only for residential buildings and only in New York City, advances no legitimate State interest. All it does is limit the options available for City government to meet housing needs and to apply more widely programs that produce mixed-income housing – both clearly legitimate State interests! – at locations it deems appropriate. Effectuating any density increase would still require zoning changes, and the full local land use review process.

Part R, Extension to complete 421-a buildings: This provision is important to enable the completion of the roughly 60,000 residential units for which construction permits were filed prior to the expiration of this tax incentive program. These sites have been cleared for construction, and it is clearly in the public interest to see them developed rather than to continue to lie fallow.

This importance of this proposal highlights the importance of a long-term replacement for the 421-a program. Without such a replacement, there is no program to support significant multifamily rental housing construction in New York City. Nor is there a program to support privately financed

construction of low-income housing, which is additive to the affordable housing that can be built with the available pool of City and State subsidies for affordable housing.

The Mandatory Inclusionary Housing program, applied in rezonings that increase housing capacity, relies on the 421-a program to make development feasible. Mixed-income projects that exceed MIH levels of affordability also rely on the 421-a exemption for feasibility. The absence of this tax incentive program would prevent the City from using rezoning and MIH to increase housing production, and hamper its ability to promote neighborhood planning objectives.

The 421-a program in its various incarnations has been the engine of privately financed rental housing production in New York City for half a century. **Without a replacement for this program, New York City is left without the tools necessary to meet the important housing targets established in Part F.**

There are other consequences to the absence of this program. The Housing Access Voucher Program proposal recently voted in the Senate would increase the availability of rental vouchers for low-income New Yorkers. But without sustained additions to the supply of rental housing, voucher recipients would be competing with other residents for existing housing, and would thereby effectively displace non-voucher recipients seeking housing. The result would be new winners and losers at the lower end of the housing market but a failure to help lower-income residents overall.

We strongly encourage the Legislature and Governor to work together to enact a replacement for the 421-a program that supports the feasibility of privately financed, mixed-income, multifamily rental housing across New York City's neighborhoods.

Part H, Housing production reporting: As a research and education organization, CHPC appreciates the fundamental importance of high-quality, publicly available data. The availability of consistent and comparable data on housing and land use for communities throughout the state is of vital importance to the success of the Housing Compact, and would have broad benefits for decision making generally.

Thank you.