

NEW YORK'S HOUSING UNDERGROUND: A REFUGE AND RESOURCE

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A REPORT BY



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FOR COMMUNITY DEVELOPMENT



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EXECUTIVE SUMMARY

Between 1990 and 2000, New York City gained 114,000 apartments that are not reflected in the official number of certificates of occupancy the City granted for new construction or renovation. Many more have almost certainly been created since. These phantom apartments are the city's housing underground: units that have been created in spaces that are not approved for living. They include private homes that have been cut into rooming houses, two-family homes with unauthorized basement apartments that house an illegal third family, unapproved residential conversions of commercial lofts, and other types of unlawful construction.

Research by the Pratt Center for Community Development (Pratt Center) and Chhaya Community Development Corporation (Chhaya) shows that these units predominate in neighborhoods on the outskirts of the city, in Queens, Brooklyn, and the Bronx. In these communities, populated by large numbers of recent immigrants, the existence of unauthorized apartments is controversial. Many neighbors view these units as drains on neighborhood services, as indications of an uncounted population using schools, hospitals, streets, and services. The people who live in these units, understandably, see things differently. For them, these units are necessary, a crucial resource in a city sorely lacking in affordable alternatives.

In this report, the Pratt Center and Chhaya outline how this fact provides the city government with an opportunity. It is possible to legalize these basement units while ensuring public safety, restricting additional density under the zoning code, and ensuring that no neighborhoods will be unduly burdened with overcrowded schools and services. This would allow many of these units, which are currently outside city rules and potentially dangerous to tenants, landlords, and the communities around them, to be made safer and to become part of the city's formal housing stock.

Such "accessory dwelling" units have been legalized in many cities and communities, from Santa Cruz, California, to Long Island, New York. Allowing them to become part of the legal housing stock in New York City will benefit landlords, tenants, the neighborhoods they live in, and the city as a whole.

The Pratt Center and Chhaya offer the following recommendations to begin to bring these unauthorized units into the city's regulatory system:

- 1) The City should create an "accessory dwelling unit" category within the building and zoning codes, which would allow many of these currently illegal units to be legalized.
- 2) The City should offer landlords who agree to legalize their basement apartments as accessory dwelling units a reasonable (e.g., 12–18 month) grace period during which they will not be subject to penalties for illegal occupancy under the Building Code.
- 3) The City should offer landlords who offer to legalize their basement apartments for existing tenants at existing reasonable rents technical assistance and financial incentives to make the necessary repairs.
- 4) The City and state should enable violations of accessory dwelling unit provisions to be heard in Housing Court, rather than at the Environmental Control Board, thus guaranteeing that landlord and tenant needs are taken into account. The City should also consider community mediation and enforcement, so as not to burden the legal system.
- 5) The City should establish community-based task forces in the neighborhoods that have the most unauthorized housing units to follow the impact of the accessory dwelling unit measure and the role that the housing underground plays in other neighborhood issues such as traffic, parking, schools, and hospital usage.
- 6) The City should push for passage of legislation requiring all sellers of buildings in the five boroughs to certify that their homes meet all applicable housing, zoning, and building codes before the sale is consummated.

OVERVIEW AND ANALYSIS

In almost all of New York's neighborhoods, people of modest means are on housing life support. Simply put, there is a housing gap in New York. Over the past 25 years, the growth in population has dramatically outpaced the number of units that have been built, even with the building boom of the last 10 years. The result is a shockingly low vacancy rate, around 3 percent in 2005 (anything under 5 percent constitutes a housing emergency, according to state law). And the median rent in the city is rapidly approaching \$1,000 a month. The city's population (currently approximately 8.2 million) is projected to rise to 9.1 million by 2030, and it is unlikely that the number of available affordable units will expand to meet that need without some innovative approaches to housing.

The housing crisis falls especially hard on immigrants, who come to the city seeking a better life, only to find that getting by here is incredibly expensive. Dismal housing conditions for many immigrants is a story as old as New York itself, and the subject of a landmark wave of reform in the early 20th century. But New York in the 1990s saw immigration on scale it hadn't seen since the 1910s. More than one million immigrants arrived in New York City from 1990 to 2000. Another 593,000 settled between 2000 and 2007. Many have ended up living in overcrowded, illegal, and sometimes unsafe conditions. Nonetheless, they have brought new energy and investment to many neighborhoods that have long been stagnating.

The City, under Mayor Michael Bloomberg, has made a laudable commitment to building affordable housing. But the supply of affordable units is expected to remain extremely tight despite this plan.

The combination of an increasing population and a decreasing number of affordable apartments available has led to the creation of a large number of illegal units. Essential, these apartments were created without proper construction permits and without regard for some of the rules of the city's Building, Housing, and Zoning Codes. These units might be too much below grade (see "Case Study: A Breezy Getaway" on page 4), or their ceilings might be too low, or the windows might be too small to function as legal fire exits. But, despite these conditions, the continuing tight housing market has made these units desirable residences.

It's hard to track how many of these illegal apartments exist in New York City. With owners unwilling to reveal that they have these units for fear of being cited with a violation

and tenants not daring to report possible unsafe conditions for fear of eviction, it's not easy to quantify just how many of these underground units exist and what they look like.

The best way to count these illegal units is to look for changes in the housing stock that are not reflected in federal Census data or in the City's records on renovations and certificates of occupancy. Our analysis builds on a methodology developed by Frank Braconi and the Citizens Housing and Planning Council. The difference between the number of apartments reported to be available for occupancy in the 1990 Census and the number reported to be available in the 2000 Census should yield the number of units constructed over the decade. Instead, the Census data shows a surplus. An analysis by the Pratt Center for Community Development shows 114,000 apartments that are unaccounted for, having simply appeared in 2000 without any evidence that they were built during the decade. These units represent the city's housing underground—and, as many residents may have avoided contact with Census enumerators, the true housing underground is likely larger. Even so, using the Census figure as a bare minimum, the housing underground accounted for more than half of the housing produced in the city in the 1990s.

More recent housing data from 2005, though not directly comparable to the Census counts in 1990 and 2000, suggests a persistence of unaccounted-for new housing units, despite a boom in housing production that unleashed nearly 100,000 new certificates of occupancy citywide. From 1990 to 2005, the four boroughs outside Manhattan had roughly 103,000 unrecorded new units, or nearly 40 percent of all the new housing created during that period. This Census data provides one of the most clear and accurate snapshots of the city's stock of illegal apartments.

Close to 95 percent of the housing underground created in the 1990s is in three boroughs: Queens, Brooklyn, and the Bronx. Queens claims 48,000 of these illegal units, representing 73 percent of all housing built in the borough during that decade. Brooklyn was second, with 38,000 apartments, and the housing underground in Kings County represented 61 percent of the new housing constructed there during the decade. The Bronx weighed in with 22,000 apartments in the housing underground.

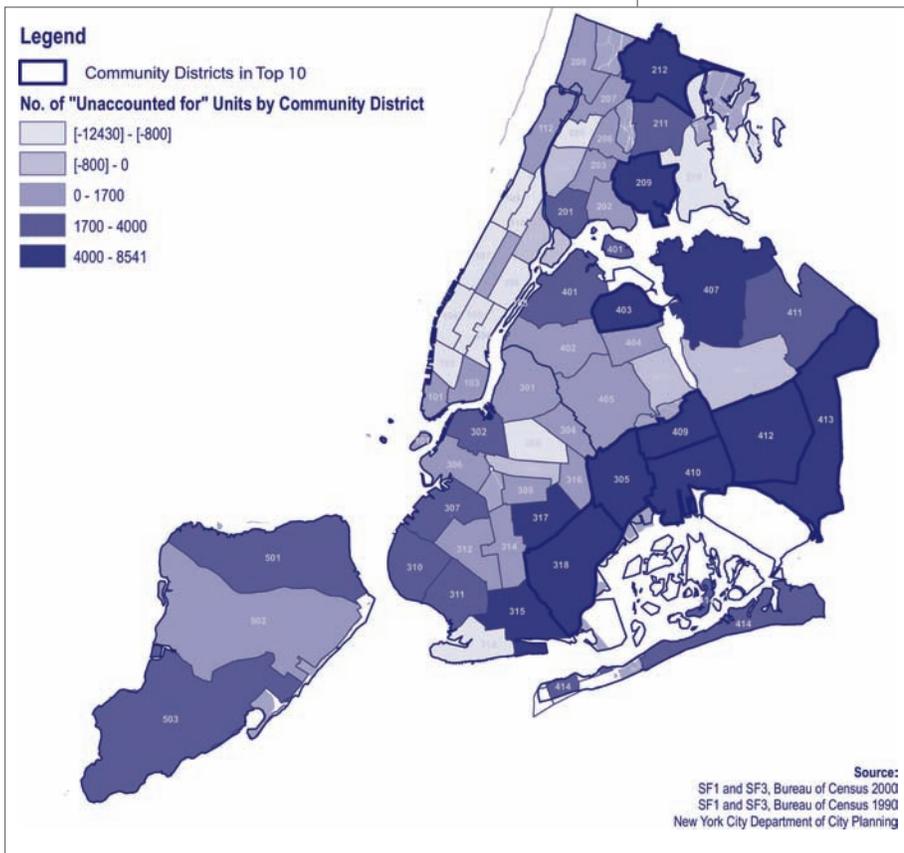
This furtive development accounts for approximately 4 percent of the city's housing stock. It is likely that between 300,000 and 500,000 New Yorkers

Table 1: Top 10 Neighborhoods with “Unaccounted for” Units, 1990–2000

CITY NEIGHBORHOODS	COMMUNITY DISTRICT	RANK	NO. OF UNITS
Castle Hill/Soundview	BX9	1	8,541
Eastchester/Woodlawn	BX12	2	8,214
South Jamaica/Hollis	QN12	3	7,786
Canarsie/Bergen Beach	BK18	4	7,011
Queens Village/Bellerose	QN13	5	7,010
Kew Gardens/Richmond Hill/Woodhaven	QN9	6	6,450
South Ozone Park/Howard Beach	QN10	7	5,776
Sheepshead Bay	BK15	8	5,430
Cypress Hills/East NY/Starrett City	BK5	9	5,363
East Flatbush/Remsen Village	BK17	10	5,048

Total units in these 10 districts: 66,629, or 58.4 percent of the citywide total.

Map 1: “Unaccounted for” Units, 1990–2000



“UNACCOUNTED FOR” UNITS

While it is impossible to directly count the number of occupied housing units in New York City that are not certified by the Department of Buildings, it is possible to infer how many of those units have been created in recent years by comparing Census counts of occupied housing units with the number of units that received Certificates of Occupancy during the same interval.

The 2000 Census found New York City had 210,358 more housing units than it did in 1990. Yet during the 1990s, the Department of Buildings recognized only 139,628 new units constructed or rehabilitated during that period—a difference of more than 114,000.

This map shows the neighborhoods that had the widest gap between the number of occupied housing units recorded by the Census during the 1990s and the number officially documented by the City.

(or approximately one of every 25 city residents) call the housing underground home.

The growth of the housing underground has been most heavily concentrated in communities in southern and eastern Brooklyn, the north and east Bronx, and eastern Queens. Within those boroughs, the Pratt Center has determined that the housing underground is concentrated in middle class immigrant neighborhoods that are close to the city’s borders. Table 1 (above) shows the top 10 community districts with units in the housing underground.

By and large, these areas are near the borders of the city, as far as you can get from Manhattan without leaving the city. They are not the most impoverished areas but instead are stable working- and middle-class neighborhoods that are home to numerous immigrant groups. One thing that these communities do have in common, however, is that they have, on average, larger family sizes than in the rest of the city (see Map 2 on page 5). Because these apartments are largely hidden and furtive, there are no accurate statistics on who lives in them. But the supposition in these highly immigrant neighborhoods

Case Study: A Breezy Getaway

It hardly seems possible that anything about Winneth Chand's house is illegal. Her block is too nice: a tidy line of modest two-family houses near Greenwood Cemetery in Brooklyn. These homes seem so snug and well-maintained that it is hard to believe any violations could exist.

And it's not that her home is squalid or substandard, far from it. Inside and out, her house, which was constructed 81 years ago, is immaculate, airy, comfortable, and solid. But the City claims that the finished basement, which was already there when she and her husband, both immigrants from Guyana, bought the building 13 years ago, violates the law. Chand, a nurse's assistant, doesn't even rent out the basement. Instead, she uses it as a personal respite: She has asthma, and when she opens the front and back doors to the basement, the rush of fresh air is cooling and restorative.

"I feel very good down here," she says as she sits on the couch in the carpeted living area of her below-grade getaway. "I have seven windows and two doors in this basement—and they all open."

Nonetheless, someone complained to the Buildings Department, which inspected and declared that Chand's basement retreat falls afoul of one of the City's seemingly arbitrary rules. Her basement, it turns out, is not a basement according to law, because it is slightly more than 50 percent below grade level. That means that it is a cellar—and residential occupancy is not allowed. The kitchen, bathroom, and two bedrooms that exist below grade, are all illegal.

Chand's basement getaway is not high-priority code violation. There's nothing dangerous about her lower floor. Indeed, if it were a rental unit, many tenants would consider it more habitable and healthy than many legal apartments in the city's older tenements. But Chand's breezy cellar fails to meet the regulations by only an inch or two—and this makes it part of the housing underground.

is that recent immigrants dominate the tenancy of the housing underground. There are many reasons to suppose that this is true. Immigrants often fear providing documentation to qualify for public housing or meet the vetting process required by many larger landlords. Further, it is likely that vacancy decontrol and the extremely high cost of new housing has meant that fewer rent-regulated tenants are leaving their apartments, thus making it less likely that new immigrants will find affordable homes in legal units.

Many of the illegal apartments that constitute the housing underground were carved out of little-used spaces (basements, garages, storefronts, attics) and served many purposes over the years, often as homes for older relatives. Now they have become one of the city's safety valves: a source of affordable rental housing. Our anecdotal evidence suggests that these illegal apartments rent for as much as one third below the market rate. Not surprisingly,

many of these New Yorkers are happy with their homes, and some don't even know that their apartments are considered illegal. But their status is precarious, because a single complaint to the City can cause misery for both landlords and tenants.

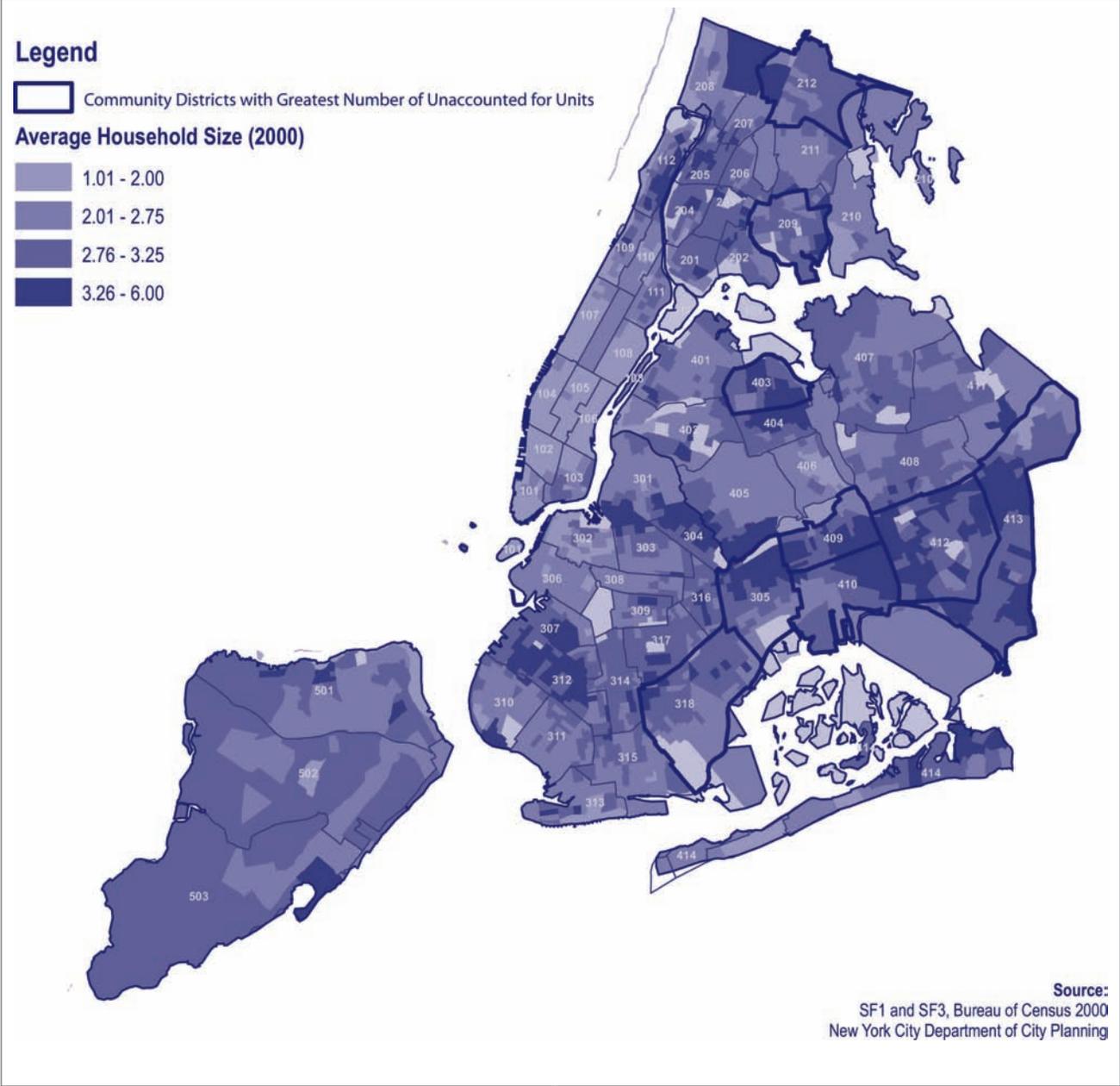
This massive amount of illegal housing has gotten a bad name, in part because it is not well understood. Private homes carved into dozens of single rooms, individual apartments subdivided into cell-like living spaces—these kinds of underground dwellings are unsafe, and, at times, they can be downright dangerous. These overstuffed homes can put undue stress on a home's wiring and infrastructure, as was seen in the 1990s when a series of tragic fires in Queens exposed the problem. But these are not typical portraits of the city's illegal housing stock. In fact, much of the housing underground provides a safe and reasonable choice for decent housing in a city where it is hard to find.

Another challenge is that the housing underground adds to the burden on neighborhood infrastructure. Schools, hospitals, sanitation, fire protection, parking, traffic congestion, and open space can all be stressed by the large number of residents in illegal housing. This is a broader problem of population growth in neighborhoods throughout New York City, and especially those with growing immigrant populations. The physical and social infrastructure needed to support livable neighborhoods has not kept up with population growth.

For these and other reasons, residents of the neighborhoods most affected by the housing underground have become increasingly vocal in their attempts to shut down these units. The number of complaints the City has received about these illegal units has tripled. A decade ago, in 1997, there were only 8,000 complaints about the housing underground received by the Buildings Department. In 2005, the City received 24,800 complaints. It should be noted that this data reflects complaints, not proven violations, and it is possible that the number of complaints has increased due to the advent of the 311 system that makes it easier to file anonymous complaints.

As the discrepancies between Table 2 (page 6) and Table 1 (page 3) suggest, the neighborhoods with the most unaccounted for units are not necessarily the source of the greatest number of complaints or vice versa. By far the greatest number of complaints arise from two-family homes that have been converted to "illegal threes"—nearly 10,000 in 2005 alone. While two-family homes represent only 27 percent of the residential structures in New York City, they represent 40 percent of all conversion complaints.

Map 2: Average Household Size in 2000



Penalizing owners has had little impact on the housing underground. In 1997, the City increased penalties for illegal conversions, but there was no reduction in complaints. Currently the fine is set at \$1,000 a day for each unit in a building, with a maximum accrued fine of \$25,000. On second offense, the maximum fine can rise to \$45,000. Cases regarding the housing underground are heard by the City's Environmental Control Board, an administrative tribunal that adjudicates the City's quality of life laws involving everything from sanitation and food safety to asbestos, air quality, and graffiti.

The growth of the housing underground is a market response to the shortage of affordable housing and the

increase in the city's population, as well as homeowners' need to pay often high mortgages. Finding ways to deal with the growth of illegal units needs to be a city priority, yet it is clear that criminalizing the housing underground has not reduced its scope. The City should look for mechanisms to identify illegal apartments, determine which ones are safe, and make efforts to incorporate them into the framework of traditional building and housing codes so they can be accepted and legally evaluated without fear of undue penalty to homeowners or summary eviction of tenants. What follows is a six-point action plan that would bring a large chunk of the housing underground out into the open air and provide a method for formalizing these currently illegal units.

Table 2: Top 10 Neighborhoods with Illegal Conversion Complaints in 2005

CITY NEIGHBORHOODS	COMMUNITY DISTRICT	RANK	COMPLAINTS 2005
South Ozone Park/Howard Beach	QN10	1	2,685
Jackson Heights/N. Corona/E. Elmhurst	QN3	2	1,990
Kew Gardens/Richmond Hill/Woodhaven	QN9	3	1,981
Elmhurst/Corona	QN4	4	1,613
South Jamaica/Hollis	QN12	5	1,474
Ridgewood/Maspeth	QN5	6	1,382
Downtown Flushing/Bay Terrace/College Point	QN7	7	1,248
Queens Village/Bellerose	QN13	8	1,219
Astoria/Ravenswood	QN1	9	791
Cypress Hill/East New York/Starrett City	BK5	10	729

Table 3: Building Class and Illegal Conversions Complaints in 2005

COMPLAINTS 2005	MANHATTAN	STATEN ISLAND	BRONX	BROOKLYN	QUEENS	NYC
One Family	11	445	253	455	4,826	5,990
Two Family	6	421	624	1,823	7,008	9,882
Walk-up Apartments	397	73	617	1,494	3,125	5,706
Elevator Apartments	173	-	151	120	252	696
Other Types	194	65	96	464	1,232	2,051
Total	781	1,004	1,741	4,356	16,443	24,325

Source: New York City Department of Buildings

RECOMMENDATIONS

In order to address the challenges posed by New York City's housing underground in a manner that does the most possible to ensure a supply of safe, decent, affordable housing, and to address issues of safety, health, and neighborhood infrastructure, the Pratt Center for Community Development and Chhaya Community Development Corporation offer the following recommendations:

- 1) The City should add a new category of residence to the building, housing, and zoning codes, an **accessory dwelling unit (ADU)**. It would apply in all neighborhoods of the city and all zoning districts, even R1 and R2 districts, areas that currently limit housing to stand-alone single-family residences. Essentially, this new category of the code would allow units that receive sufficient light and air to exist legally, even if they are less than 50 percent above grade level, as long as they do not add to the built square footage of the structure. To maximize public safety, the ADU framework would be created by a panel of expert architects, engineers and planners, who would specify what size windows in ground-level apartments would constitute an appropriate and safe secondary means of egress in case of a fire. The State and City may also contemplate changing the Multiple Dwelling Law, which currently prohibits frame buildings from becoming legal multiple dwellings, if a panel of architects and engineers deems this a wise choice. Undoubtedly, there are many frame two-family structures that are currently housing three families. Rather than allowing these units to remain underground, the City should determine what kinds of improvements would be needed to make it safe to allow greater density in existing frame buildings. The City could also choose to launch the ADU program in phases, by creating pilot legalization projects in neighborhoods that have high numbers of illegal units. This would allow officials the opportunity to study the impact of legalization before applying it citywide.
- 2) In combination with establishing new ADU code provisions, the City should **allow landlords a reasonable (e.g., 12–18 month) grace period** after coming forward during which time they can make the alterations to convert their non-conforming apartments into legal accessory dwelling units while facing no penalties or inspections.

ADUs in the USA

New York City would not be inventing the idea of accessory dwelling units. Many municipalities in the U.S. have adopted the concept to allow ancillary apartments, often called “granny flats,” in single-family districts.

California, Connecticut, Illinois, Massachusetts, Oregon, Vermont, Florida, Washington, D.C., and Washington State have all adopted strategies allowing accessory dwelling units in many fast-growing areas. Santa Cruz, California, provides an example of a proactive approach for allowing ADUs. Faced with high housing costs and a growing population, the city adopted an ADU ordinance in 2001 to allow units in garages and basements and within homes. The city provided loans to homeowners and incentives for keeping the units affordable, and it developed manuals, design guides, and workshops for homeowners. This program won several awards from the American Planning Association.

It will not be possible simply to copy legislation from elsewhere and apply it to New York. With greater density, stronger fire codes, and differing construction standards, New York's use of an accessory dwelling unit measure will undoubtedly require a different design than is used in other municipalities. Also, New York City could choose to create a process that would allow for legalization of already existing ADUs, while choosing to forbid the addition of new square footage of residential space.

- 3) One key element of the program must involve the **retention of current tenants at current affordable rents**. To this end, the City should offer a program of **technical and financial assistance for landlords** who agree to retain their existing tenants at affordable rents. This is necessary because it has been estimated that, including professional fees for architecture, engineering, permits, and legal services, it may cost \$10,000 to \$15,000 to legalize some accessory dwelling units. Given the relatively high cost that may be attached to legalizing unauthorized apartments under ADU provisions, the City should also consider providing tax abatements and other subsidies to encourage landlords to participate and to prevent rent increases to tenants. If a landlord receives a tax deal or a subsidy for legalizing an accessory unit, he/she should be required to recognize the existing tenants and keep the unit affordable. The mechanism to ensure affordability could be through a signed agreement recorded in the land records, or a legally binding agreement to make the accessory units subject to the rent stabilization laws.

- 4) Once a unit has been legalized as an ADU, all **complaints about conditions should be heard in housing court**, as is true of all other landlord/tenant actions, rather than by the Environmental Control Board. This will put such housing actions before judges who have the relevant experience and will reduce the burden on the administrative tribunal that handles quality of life complaints. But, to save court time and money, the parties should be encouraged to submit to community mediation. Many of the disputes and violations in the housing underground do not involve structural problems or violations that put occupants in immediate danger. Thus, mediation is an appropriate approach. This mediation effort could be organized by the City or could be done in the community, in concert with community groups. As the law stands now, tenants are often afraid to ask for housing code inspections or to engage their landlords in discussions about repairs for fear that they will ultimately be evicted due to their apartment's illegal status. A mediation program would provide more protections for tenants who come out from the underground and insist that their apartments be appropriately repaired and maintained.
- 5) The communities that have the bulk of these illegal units also need to be involved. There needs to be a process for helping neighborhoods address the issue of increased population in the housing underground as it affects schools, traffic, parking, infrastructure, health care, and other issues. The City should **form a task force or roundtable of stakeholders** to promote awareness of City codes and rules, to evaluate and study the issue, to monitor the implementation of the accessory dwelling unit program, and to address issues of neighborhood crowding and infrastructure. By creating a community-based roundtable the City can hold education sessions for landlords and tenants and introduce them to the opportunities inherent in the accessory dwelling unit program. Furthermore, the roundtable could end the unfairness of the complaint system. As the system currently stands, the only homeowners who face penalties are the ones who have been reported to the Buildings Department. Yet many other buildings that have apartments in the housing underground will never be prosecuted because no one ever complains. Empowering the roundtable to do a house-by-house census on certain blocks would

be a way of making the process more fair to all owners and tenants. Finally, the roundtable could also take on the task of studying some of the other types of units in the housing underground, such as illegal rooming houses and small dwellings cut up into a larger number of illegal units. While they are not as easy to incorporate into the legal framework as "illegal threes," the community roundtables could consider other approaches that would ensure public safety while protecting vulnerable tenants from eviction.

- 6) The City should support legislation, which has already been proposed in the City Council, that would mandate that sellers in real estate transactions certify the residential status of the properties they are selling at the real estate closing and sign an affidavit affirming that the building meets the requirements of the zoning code. This would go a long way to ensuring that all buyers are clear, at least at the time they purchase their buildings, how many legal units are inside the homes they are purchasing.

By creating a new provision for accessory dwelling units, by providing incentives for landlords to keep their accessory dwelling units affordable, by allowing a clear path to court for disputes that may arise with ADUs, and by empowering stakeholders to control the program, New York will gain an urgently needed resource to help solve its affordable housing crisis. Reliable information on housing occupancy can also help community boards and public officials in planning for schools, roads, hospitals, infrastructure, traffic improvements, and other vital services.

Accessory apartments could become one of the key coping strategies for tenants who are priced out of the housing market. And they are coping strategies for landlords, particularly new buyers who are buffeted by increasing taxes, increasing mortgage interest rates, and skyrocketing home prices, and are looking for a way to defray these high costs.

It is time for the City to incorporate these technically illegal city dwellings into the legal framework. An accessory dwelling unit framework will bring a substantial portion of the city's large housing underground up above ground and make it an official part of the city. This will be a boon to public health and safety, residential security, and orderly community growth.

ABOUT THE PRATT CENTER FOR COMMUNITY DEVELOPMENT

The Pratt Center works for a more just, equitable, and sustainable city for all New Yorkers, by empowering communities to plan for and realize their futures.

As part of Pratt Institute, we leverage professional skills—especially planning, architecture, and public policy—to support community-based organizations in their efforts to improve neighborhood quality of life, attack the causes of poverty and inequality, and advance sustainable development.

The Center was founded at the birth of the community development movement, as the first university-based advocacy planning and design center in the U.S. For over 40 years, we have helped community groups to revitalize their neighborhoods, create and preserve affordable housing, build childcare and community centers, and improve their environment. We have trained hundreds of community leaders and organizations to implement effective community development strategies, and supported a wide array of successful public policy and community planning efforts.

For more information, call 718.636.3486 or visit www.prattcenter.net.

ABOUT CHHAYA COMMUNITY DEVELOPMENT CORPORATION

Chhaya's mission is to address and advocate for the housing and community development needs of South Asian American communities in New York City regardless of class, caste, country of origin, or religious affiliation. Further, Chhaya seeks to leverage existing resources by learning and working with other organizations to establish equal access to systems of support and to promote civic participation. Broadly, Chhaya also seeks to collaborate with other ethnic and minority populations to further better understanding among these communities.

Our objectives are to develop innovative ways to meet the urgent need for housing assistance and social services in the New York Metropolitan area by means of strategic partnerships, legal assistance, tenant advocacy, education, and outreach on housing rights and opportunities; to promote active participation of South Asian Americans in neighborhood, citywide, and regional planning of their communities; to bring together existing and emerging leaders on an ongoing basis in order to form a clearer picture of the community development and social service needs; and to foster understanding within South Asian American and other immigrant communities of how civic institutions function and can be used to further socioeconomic development.

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