STATE OF NEW YORK

4854

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Local Governments

AN ACT to amend the real property law, in relation to accessory dwelling units; and to amend the executive law, in relation to including an accessory dwelling unit in the term housing accommodations in human rights law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new article 16 to read as follows:

ARTICLE 16
ACCESSORY DWELLING UNITS

Section 480. Definitions.
481. Accessory dwelling unit regulations and ordinances.
482. State review and enforcement.
483. Low and moderate income homeowners program.
484. Good cause eviction of a tenant.
485. Severability.

§ 480. Definitions. As used in this article, unless the context otherwise requires, the following terms shall have the following meanings:

1. "Accessory dwelling unit" shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons which is located on a lot with a proposed or existing primary residence and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same lot as the single-family or multifamily dwelling is or will be situated.

2. "Accessory structure" shall mean a structure that is accessory and incidental to a dwelling located on the same lot.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. "Living area" shall mean the interior habitable area of a dwelling unit, including basements, cellars, and attics but does not include a garage or any accessory structure.

4. "Local agency" shall mean a city, county, township, or borough.

5. "Low-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding eighty percent of the area median income.

6. "Moderate-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding one hundred and twenty percent of the area median income.

7. "Nonconforming zoning condition" shall mean a physical improvement on a property that does not conform with current zoning standards.

8. "Passageway" shall mean a pathway that is unobstructed and extends from a street to one entrance of the accessory dwelling unit.

9. "Proposed dwelling" shall mean a dwelling that is the subject of a permit application and that meets the requirements for permitting.

10. "Impact fee" shall mean any payment imposed by a local agency for the purpose of providing new or expanded public capital facilities or infrastructure required to serve a new development.

11. "Division" shall mean the New York state division of homes and community renewal.

§ 481. Accessory dwelling unit regulations and ordinances. 1. Notwithstanding any law, rule, policy, regulation or ordinance to the contrary, a local agency shall, by ordinance, provide for the creation of accessory dwelling units. Such ordinance shall:

(a) Designate areas within the jurisdiction of the local agency where accessory dwelling units shall be permitted. Designated areas shall include all areas zoned for single-family or multifamily residential use, and all lots with an existing residential use.

(b) Authorize the creation of at least one accessory dwelling unit per lot in designated areas.

(c) Provide reasonable standards for accessory dwelling units that include, but are not limited to height, landscape, architectural review and maximum size of a unit. In no case shall such standards unnecessarily impair the creation of accessory dwelling units.

(d) Require accessory dwelling units to comply with the following:

(i) Such unit may be rented separate from the primary residence, but shall not be sold or otherwise conveyed separate from the primary residence;

(ii) Such unit shall be located on a lot that includes a proposed or existing residential dwelling;

(iii) Such unit shall not be rented for a term less than thirty days; and

(iv) Such unit shall be attached to or located within the proposed or existing primary dwelling, including but not limited to attached garages, storage areas, basements, cellars, similar spaces, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(v) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed fifty percent of the existing primary dwelling, unless such limit would prevent the creation of an accessory dwelling unit that is no greater than six hundred squared feet.

2. A local agency shall not establish by ordinance any of the following:

(a) A minimum square footage requirement for either an attached or detached accessory dwelling unit greater than two hundred square feet;

(b) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than fifteen hundred square feet;

(c) Any other minimum or maximum size for an accessory dwelling unit, based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either an attached or detached dwelling that does not permit at least an eight hundred square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with other local development standards;

(d) A ceiling height requirement greater than seven feet;

(e) If an accessory dwelling unit or a portion thereof is below curb level, a requirement that more than two feet of such unit's height be above curb level;

(f) Any requirement that a passageway exist or be constructed in conjunction with the creation of an accessory dwelling unit; and

(g) Any setback for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, or any setback of more than four feet from the side and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

3. No ordinance for the creation of accessory dwelling units pursuant to subdivision one of this section shall be considered in the application of any local ordinance, policy, or program to limit residential growth.

4. No parking requirement shall be imposed on an accessory dwelling unit.

5. The local agency shall not require that off-street parking spaces be replaced if a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit.

6. Notwithstanding any local ordinance regulating the issuance of variances or special use permits, a permit application to create an accessory dwelling unit in conformance with the local ordinance shall be considered ministerially without discretionary review or a hearing. If there is an existing single-family or multifamily dwelling on the lot, the permitting agency shall act on the application to create an accessory dwelling unit within sixty days from the date the local agency receives a completed application. If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new residential dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit until the permitting agency acts on the permit application to create the new dwelling, but the application to create the accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the sixty day time period shall be tolled for the period of the delay. A local agency may charge a fee not to exceed one thousand dollars for the reimbursement of the actual costs such local agency incurs pursuant to this subdivision, including the costs related to adopting or amending any ordinance that provide for the creation of an accessory dwelling unit.

7. Municipalities shall establish an administrative appeal process for the denial of a permit for accessory dwelling units. When a permit to create an accessory dwelling unit pursuant to an ordinance adopted pursuant to this section is denied, the agency shall issue a notice of denial which shall contain the reason such permit application was denied and instructions on how the applicant may appeal such denial. All appeals shall be submitted to the issuing agency, or any decisional body granting such permits, or any other appellate board or body, in writing within thirty days of such denial.

8. No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this section.

9. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this section, that ordinance shall be null and void. Such local agency shall thereafter apply the standards established in this section for the approval of accessory dwelling unit until such local agency adopts an ordinance that complies with this section.

10. A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, and provisions applicable to the creation of an accessory dwelling unit if such provisions are consistent with this section.

11. The local agency shall ensure that accessory dwelling units are not counted toward the allowable residential density, or any requirement respecting lot coverage or open space, for the lot upon which the accessory dwelling unit is located under the existing zoning designation for such lot. The local agency shall also ensure that accessory dwelling units are for a residential use that is consistent with the existing zoning designation for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

12. No provision of the multiple dwelling law shall apply to an accessory dwelling unit, irrespective to whether such provisions of such law apply to the primary dwelling, and a dwelling otherwise exempt from the provisions of the multiple dwelling law shall not fall under the provisions of such law as a result of the addition of an accessory dwelling unit.

13. A local agency may require no more than one point of exterior access by door from the proposed or existing residential dwelling.

14. A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit, the correction of nonconforming zoning conditions.

15. Where an accessory dwelling unit requires a new or separate utility connection directly between the accessory dwelling unit and the utility, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures upon the water or sewer system. Such fee or charge shall not exceed the reasonable cost of providing such utility connection. A local agency shall not impose any other impact fee in connection with an accessory dwelling unit.

16. The first lawful occupancy of an accessory dwelling unit shall occur at a time when a unit in the primary dwelling is owner-occupied, and such owner-occupation must continue for at least one year following the first legal occupancy of the accessory dwelling unit. A local agency shall not impose any other owner occupancy requirement for either the primary dwelling or the accessory dwelling unit.

17. A local agency shall not impose any health or safety requirement on accessory dwelling units that is not necessary to protect the health and safety of the occupants of such a dwelling.

18. A local agency shall not issue a certificate of occupancy or its equivalent for an accessory dwelling unit before the local agency issues a certificate of occupancy or its equivalent for the primary dwelling.

19. A local agency shall adopt an ordinance pursuant to this section within one hundred eighty days of the effective date of this article.

§ 482. State review and enforcement. 1. A local agency shall submit a copy of the ordinance adopted pursuant to section four hundred eighty-one of this article to the division within thirty days after such adoption.

2. (a) Within sixty days of receipt of a local agency's ordinance, or sixty days after expiration of the time to submit said ordinance, the division shall submit written findings to the local agency as to whether the local agency's ordinance complies with this article. Such findings shall include a determination as to whether the local agency's ordinance contains rules that are not reasonable within the meaning of paragraph (c) of subdivision one of section four hundred eighty-one of this article. If the division finds that the local agency's ordinance does not comply with this article, such division shall notify such local agency and shall provide such local agency with a reasonable time, no longer than thirty days, to respond to the findings before taking any other action authorized under this section.

(b) The local agency shall consider the findings made by the division pursuant to this subdivision and shall do one of the following:

(i) Amend the ordinance to comply with the findings of the division; or

(ii) Adopt the ordinance without amendments to comply with the findings of the division. The local agency shall include findings in its resolution adopting such ordinance that explain the reasons the local agency believes that the ordinance complies with this article despite the findings of the division.

3. (a) If, within thirty days of the local agency's response to the division's findings, or thirty days after the expiration of the local agency's time to respond, the division determines that the ordinance does not comply with this article, the division shall:

(i) notify the local agency and the attorney general that the local agency is in violation of state law; and

(ii) revise the ordinance to comply with this article and direct the local agency to adopt it.

(b) Where a local agency is in violation of state law, the attorney general may bring a civil action to enforce the requirements of this article.

4. The division may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this article.

5. Within one hundred days of the effective date of this article, the division shall promulgate a model local ordinance that conforms to the requirements of this article.

6. The division shall issue an annual report, on or before July first of each year, that summarizes:

(a) the activities the division has taken pursuant to this section;

(b) local agencies' compliance with the terms of this article; and

(c) the development of accessory dwelling units in the state.

§ 483. Low and moderate income homeowners program. 1. Within one hundred eighty days of the effective date of this article, the division shall establish a lending program to assist low-income homeowners and moderate-income homeowners in securing financing for the creation of accessory dwelling units.

2. An accessory dwelling unit financed with the assistance of such program shall be offered for rent at a below-market rate for a period of fifteen years.

3. The division shall promulgate program criteria and guidelines necessary to carry out such program.

4. Such program shall be funded through capital projects appropriations and reappropriations set forth in the state fiscal year housing program.

5. The division shall issue an annual report, on or before July first of each year, that includes an itemized list of each project financed through the program, including a brief description of the project, street address, and county. Such report shall also summarize the demographic characteristics of participating homeowners, including income, race, ethnicity, and sex.

6. Within one hundred eighty days of the effective date of this article, the division shall establish a program to provide technical assistance to all homeowners seeking to create an accessory dwelling unit.

§ 484. Good cause eviction of a tenant. 1. As used in this section, the following terms shall have the following meanings:

(a) "Landlord" shall mean any owner, lessor, sublessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any accessory dwelling unit or an agent of any of the foregoing.

(b) "Tenant" shall mean a tenant, sub-tenant, lessee, sublessee, assignee of an accessory dwelling unit.

(c) "Rent" shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of an accessory dwelling unit or the execution or transfer of a lease for such a unit.

(d) "Disabled person" shall mean a person who has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person's major life activities.

2. This section shall apply to all accessory dwelling units except:

(a) premises sublet pursuant to section two hundred twenty-six-b of this chapter, or otherwise, where the sublessor seeks in good faith to recover possession of such housing accommodation for their own personal use and occupancy;

(b) premises the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated; and

(c) premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires good cause for termination or non-renewal of such tenancies.

3. No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from an accessory dwelling unit except for good cause pursuant to subdivision four of this section.

4. (a) No landlord shall remove a tenant from any accessory dwelling unit, or attempt such removal or exclusion from possession, notwith-

standing that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:

(i) The tenant has failed to pay rent due and owing, provided however that the rent due and owing, or any part thereof, did not result from a rent increase which is unreasonable or imposed for the purpose of circumventing the intent of this section. In determining whether all or part of the rent due and owing is the result of an unreasonable rent increase, it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unreasonable if said rent has been increased in any calendar year by a percentage exceeding either three percent or one and one-half times the annual percentage change in the consumer price index for the region in which the housing accommodation is located, as established the August preceding the calendar year in question, whichever is greater;

(ii) The tenant is violating a substantial obligation of his or her tenancy, other than the obligation to surrender possession, and after receiving written notice from the landlord requiring that the substantial violation be cured, the tenant has failed to cure such violation within ten days of receipt of such notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this section;

(iii) The tenant is committing or permitting a nuisance in such accessory dwelling unit, or is damaging the unit, whether maliciously, intentionally, recklessly, or negligently; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures;

(iv) Occupancy of accessory dwelling unit by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefore; provided however that an agency of the state or municipality having jurisdiction has issued an order requiring the tenant to vacate the unit. No tenant shall be removed from possession of a unit on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not through neglect or deliberate action or failure to act create the condition necessitating the vacate order. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to his or her health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable state or municipal laws or housing codes;

(v) The tenant is using or permitting the accessory dwelling unit to be used for an illegal purpose;

(vi) The tenant has unreasonably refused the landlord access to the accessory dwelling unit for the purpose of making necessary repairs or

improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee or other person having a legitimate interest therein; or

(vii) The landlord seeks in good faith to recover possession of an accessory dwelling unit because of immediate and compelling necessity for his or her own personal use and occupancy as his or her principal residence, or the personal use and occupancy as principal residence of his or her spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable accommodation in such dwelling is available. This paragraph shall permit recovery of only one accessory dwelling unit and shall not apply to an accessory dwelling unit occupied by a tenant who is sixty-two years of age or older or who is a disabled person.

(b) A tenant required to surrender a housing accommodation by virtue of the operation of subparagraph (vii) of paragraph (a) of this subdivision shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the accessory dwelling unit. In any action or proceeding brought pursuant to this paragraph, a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.

(c) Nothing in this section shall abrogate or limit the tenant's right pursuant to section seven hundred fifty-one of the real property actions and proceedings law to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the real property actions and proceedings law.

5. No action shall be maintainable and no judgment of possession shall be entered for accessory dwelling units pursuant to this section unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants, including without limitation the manner and the time of service of such notice and the contents of such notice.

6. Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this section shall be void as contrary to public policy.

§ 485. Severability. In the event it is determined by a court of competent jurisdiction that any phrase, clause, part, subdivision, paragraph or section, or any of the provisions of this article, is unconstitutional or otherwise invalid or inoperative, such determination shall not affect the validity or effect of the remaining provisions of this article.

§ 2. Section 292 of the executive law is amended by adding a new subdivision 39 to read as follows:

39. The term "housing accommodation" as used in this article shall include an accessory dwelling unit as defined in subdivision one of section four hundred eighty of the real property law.

§ 3. Paragraph (a) of subdivision 1 of section 296 of the executive law, as separately amended by chapters 8 and 176 of the laws of 2019, is amended to read as follows:

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing

genetic characteristics, familial status, marital status, or status as a victim of domestic violence, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. **In the case of an accessory dwelling unit as defined in subdivision one of section four hundred eighty of the real property law, the exemption from the provisions of this paragraph for the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such accommodations, shall not apply.**

§ 4. This act shall take effect immediately.