STATE OF NEW YORK

4854--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

Introduced by M. of A. EPSTEIN, CARROLL, ANDERSON, SIMON, STECK, GALLAGHER, SEAWRIGHT, MAMDANI, COLTON, JACKSON, GONZALEZ-ROJAS, FRONTUS, BARRON, McDONALD, SILLITTI, L. ROSENTHAL, MITAYNES, LUPARDO -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 local laws.
482. State review and enforcement.
483. Low and moderate income homeowners program.
484. Tenant protections.

§ 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.

2. "Local government" shall mean a city, town or village.

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

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

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4. "Moderate-income homeowners" shall mean homeowners with an income, adjusted for family size, not exceeding one hundred twenty percent of the area median income as defined by the division.

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

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

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

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

(a) Designate areas within the jurisdiction of the local government 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.

(c) Provide reasonable standards for accessory dwelling units that may 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) If there is an existing primary dwelling, the total floor area of an 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 square feet.

2. A local government shall not establish by local law any of the following:

(a) In a local government having a population of one million or more, a minimum square footage requirement for an accessory dwelling unit greater than two hundred square feet, or in a local government having a population of less than one million, a minimum square footage requirement for an accessory dwelling unit that is greater than five hundred fifty square feet;

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

(c) Any other minimum or maximum size for an accessory dwelling unit, including those 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 a 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 standards. Notwithstanding any other provision of this section, a local government may provide, where a lot contains an existing dwelling, that an accessory dwelling unit located within and/or attached to the primary dwelling shall not exceed the buildable envelope for the existing dwelling, and that an accessory dwelling unit that is

detached from an existing dwelling shall be constructed in the same location and to the same dimensions as an existing structure, such as a garage;

(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 pathway exist or be constructed in conjunction with the creation of an accessory dwelling unit;

(g) Any setback for an existing dwelling 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; or

(h) Any health or safety requirements on accessory dwelling units that are not necessary to protect the health and safety of the occupants of such a dwelling. Nothing in this provision shall be construed to prevent a local government from requiring that accessory dwelling units are, where applicable, supported by septic capacity necessary to meet state health, safety, and sanitary standards, and that such units are consistent with the protection of wetlands and watersheds.

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

4. (a) No parking requirement shall be imposed on an accessory dwelling unit, except where no adjacent public street permits year-round on-street parking and the accessory dwelling unit is greater than one-half mile from a subway stop, rail station or bus stop a local government may require up to one off-street parking space per accessory dwelling unit. For purposes of this section, an adjacent public street shall be considered as permitting year-round on-street parking notwithstanding rules that prohibit parking during limited hours or on certain days of the week.

(b) A local government 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, except where no adjacent public street permits year-round on-street parking and the accessory dwelling unit is greater than one-half mile from a subway stop, rail station or bus stop a local government may require the replacement of up to one off-street parking space.

5. Notwithstanding any local law, a permit application to create an accessory dwelling unit in conformance with the local law 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 local government shall act on the application to create an accessory dwelling unit within ninety days from the date the local agency receives a completed application or, for a permitting local government having a population of one million or more, within sixty days. 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 local government may delay acting on the permit application for the accessory dwelling unit until the permitting

local government 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 time period for review shall be tolled for the period of the delay. Such review shall include all necessary permits and approvals including, without limitation, those related to health and safety. A local government shall not require an additional or amended certificate of occupancy in connection with an accessory dwelling unit. A local government 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.

6. Local governments 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 a local law 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 local government, or any decisional body granting such permits, or any other appellate board or body, in writing within thirty days of such denial.

7. No other local law, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this section except to the extent necessary to protect the health and safety of the occupants of an accessory dwelling unit and provided such law, policy, or regulation is consistent with the requirements of this section.

8. If a local government has an existing accessory dwelling unit ordinance that fails to meet the requirements of this section, that local law shall be null and void. Such local government shall thereafter apply the standards established in this section for the approval of an accessory dwelling unit until such local government adopts a local law that complies with this section. Nothing in this article shall be construed to render an existing dwelling unlawful.

9. The local government 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 accessory dwelling unit shall not be considered in the application of any local law, policy, or program to limit residential growth.

10. No provision of the multiple dwelling law shall apply to an accessory dwelling unit, irrespective of 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.

11. A local government 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 or minor violations of local law.

12. 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 government shall not impose any other fee in connection with an accessory dwelling unit.

13. A local government may require that a unit in the primary dwelling be owner-occupied in order for an accessory dwelling unit to be lawfully rented.

14. A local government may prohibit the seasonal or vacation rental of an accessory dwelling unit.

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

16. A local government shall adopt a local law pursuant to this article within one year of the effective date of this article. Upon application to the division and a showing of good cause, the division may grant a local government one six-month extension of the time to adopt a local law pursuant to this article.

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

2. (a) Within ninety days of receipt of a local government's law, or ninety days after expiration of the time to submit said local law, the division shall submit written findings to the local government as to whether the local government's local law complies with this article. Such findings shall include a determination as to whether the local government's local law 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 government's local law does not comply with this article, the division shall notify such local government and shall provide such local government 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 government shall consider the findings made by the division pursuant to this subdivision and shall amend the local law to comply with the findings of the division.

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

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

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

(b) Upon the receipt of the notice of a local government's violation of this article, the attorney general may bring a special proceeding 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 law 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 governments' compliance with the terms of this article; and

(c) the development of accessory dwelling units in the state, including but not limited to, information concerning the number of accessory dwelling units permitted and created, the size and characteristics of such units, and an assessment of the continued obstacles to the development of accessory dwelling units.

§ 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, including, without limitation, financing for design and construction, flood prevention, permitting, and septic enhancement.

2. An accessory dwelling unit financed with the assistance of such program shall if such assistance is in the form of a repayable loan be offered for rent at a below-market rate for a period of fifteen years and if any such assistance is in the form of a forgivable grant at a below-market rate for a period of no less than thirty years.

3. An accessory dwelling unit financed with the assistance of such program shall not be rented for a term less than one year.

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

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

6. 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, zip code, and county. Such report shall also summarize the demographic characteristics of participating homeowners, including income, race, ethnicity, and sex.

7. 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. Technical assistance shall include, without limitation, guidance on design and construction, flood prevention, permitting, financing, and septic enhancement.

§ 484. Tenant protections. 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 the foregoing.

(b) "Tenant" shall mean a tenant, sub-tenant, lessee, sublessee, or 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 unit.

2. A permit application to create an accessory dwelling unit in conformance with a local law adopted under this article shall be accompanied by a certification identifying whether the unit was rented to a tenant as of the date of the effective date of this article and the rent charged for the unit as of such date, notwithstanding whether the occupancy of such unit was authorized by law. A local government may not use such certification as the basis for an enforcement action against an applicant concerning the unauthorized habitation of a unit. Where a tenant is evicted or otherwise removed from a unit prior to approval of

a permit application to create an accessory dwelling unit, such tenant shall have a right of first refusal to return to the unit upon its first lawful occupancy as an accessory dwelling unit, notwithstanding whether such prior occupancy was authorized by law. The division shall promulgate regulations governing a tenant's right of first refusal.

3. A landlord shall not, over the course of any twelve-month period, increase the rent charged for an accessory dwelling unit by more than three percent or one and one-half times the annual percentage change in the consumer price index for the region in which the accessory dwelling unit is located, as established the August preceding the calendar year in question, whichever is greater. If a permit application to create the accessory dwelling unit included a certification stating that the unit was rented to a tenant as of the date of the effective date of this article, any rent increase shall be calculated on the basis of the rent amount identified in the certification, subject to compounded annual increases no greater than three percent or one and one-half times the annual percentage change in the consumer price index for the region in which the accessory dwelling unit is located as established the August preceding the calendar years in question, whichever is greater.

4. A landlord subject to this section shall, for any tenancy in an accessory dwelling unit commenced or renewed on or after the effective date of this article, provide as an addendum to a lease or rental agreement notice of the rent charged in the prior calendar year and, where applicable, the rent charged for the unit as of the date of the effective date of this article. The division shall determine the form and content of such notice.

5. A tenant subject to a rent amount not authorized by this article or unlawfully denied a right of first refusal under this article shall have a cause of action in any court of competent jurisdiction for compensatory and punitive damages and declaratory and injunctive relief and such other relief as the court deems necessary in the interests of justice.

§ 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.