

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.

LBD07619-11-1

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

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

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

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

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

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

18 (b) Authorize the creation of at least one accessory dwelling unit per
19 lot.

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

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

25 (i) Such unit may be rented separate from the primary residence, but
26 shall not be sold or otherwise conveyed separate from the primary resi-
27 dence;

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

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

32 (iv) If there is an existing primary dwelling, the total floor area of
33 an accessory dwelling unit shall not exceed fifty percent of the exist-
34 ing primary dwelling, unless such limit would prevent the creation of an
35 accessory dwelling unit that is no greater than six hundred square feet.

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

38 (a) In a local government having a population of one million or more,
39 a minimum square footage requirement for an accessory dwelling unit
40 greater than two hundred square feet, or in a local government having a
41 population of less than one million, a minimum square footage require-
42 ment for an accessory dwelling unit that is greater than five hundred
43 fifty square feet;

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

46 (c) Any other minimum or maximum size for an accessory dwelling unit,
47 including those based upon a percentage of the proposed or existing
48 primary dwelling, or limits on lot coverage, floor area ratio, open
49 space, and minimum lot size, for a dwelling that does not permit at
50 least an eight hundred square foot accessory dwelling unit with four-
51 foot side and rear yard setbacks to be constructed in compliance with
52 other local standards. Notwithstanding any other provision of this
53 section, a local government may provide, where a lot contains an exist-
54 ing dwelling, that an accessory dwelling unit located within and/or
55 attached to the primary dwelling shall not exceed the buildable envelope
56 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

1 local government acts on the permit application to create the new dwell-
2 ing, but the application to create the accessory dwelling unit shall be
3 considered without discretionary review or hearing. If the applicant
4 requests a delay, the time period for review shall be tolled for the
5 period of the delay. Such review shall include all necessary permits
6 and approvals including, without limitation, those related to health and
7 safety. A local government shall not require an additional or amended
8 certificate of occupancy in connection with an accessory dwelling unit.
9 A local government may charge a fee not to exceed one thousand dollars
10 for the reimbursement of the actual costs such local agency incurs
11 pursuant to this subdivision.

12 6. Local governments shall establish an administrative appeal process
13 for the denial of a permit for accessory dwelling units. When a permit
14 to create an accessory dwelling unit pursuant to a local law adopted
15 pursuant to this section is denied, the agency shall issue a notice of
16 denial which shall contain the reason such permit application was denied
17 and instructions on how the applicant may appeal such denial. All
18 appeals shall be submitted to the issuing local government, or any deci-
19 sional body granting such permits, or any other appellate board or body,
20 in writing within thirty days of such denial.

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

26 8. If a local government has an existing accessory dwelling unit ordi-
27 nance that fails to meet the requirements of this section, that local
28 law shall be null and void. Such local government shall thereafter apply
29 the standards established in this section for the approval of an acces-
30 sory dwelling unit until such local government adopts a local law that
31 complies with this section. Nothing in this article shall be construed
32 to render an existing dwelling unlawful.

33 9. The local government shall ensure that accessory dwelling units are
34 not counted toward the allowable residential density, or any requirement
35 respecting lot coverage or open space, for the lot upon which the acces-
36 sory dwelling unit is located under the existing zoning designation for
37 such lot. The accessory dwelling unit shall not be considered in the
38 application of any local law, policy, or program to limit residential
39 growth.

40 10. No provision of the multiple dwelling law shall apply to an acces-
41 sory dwelling unit, irrespective of whether such provisions of such law
42 apply to the primary dwelling, and a dwelling otherwise exempt from the
43 provisions of the multiple dwelling law shall not fall under the
44 provisions of such law as a result of the addition of an accessory
45 dwelling unit.

46 11. A local government shall not require, as a condition for minister-
47 ial approval of a permit application for the creation of an accessory
48 dwelling unit, the correction of nonconforming zoning conditions or
49 minor violations of local law.

50 12. Where an accessory dwelling unit requires a new or separate utili-
51 ty connection directly between the accessory dwelling unit and the util-
52 ity, the connection may be subject to a connection fee or capacity
53 charge that shall be proportionate to the burden of the proposed acces-
54 sory dwelling unit, based upon either its size or the number of its
55 plumbing fixtures upon the water or sewer system. Such fee or charge
56 shall not exceed the reasonable cost of providing such utility

1 connection. A local government shall not impose any other fee in
2 connection with an accessory dwelling unit.

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

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

8 15. A local government shall not issue a certificate of occupancy or
9 its equivalent for an accessory dwelling unit before the local govern-
10 ment issues a certificate of occupancy or its equivalent for the primary
11 dwelling.

12 16. A local government shall adopt a local law pursuant to this arti-
13 cle within one year of the effective date of this article. Upon appli-
14 cation to the division and a showing of good cause, the division may
15 grant a local government one six-month extension of the time to adopt a
16 local law pursuant to this article.

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

21 2. (a) Within ninety days of receipt of a local government's law, or
22 ninety days after expiration of the time to submit said local law, the
23 division shall submit written findings to the local government as to
24 whether the local government's local law complies with this article.
25 Such findings shall include a determination as to whether the local
26 government's local law contains rules that are not reasonable within the
27 meaning of paragraph (c) of subdivision one of section four hundred
28 eighty-one of this article. If the division finds that the local govern-
29 ment's local law does not comply with this article, the division shall
30 notify such local government and shall provide such local government
31 with a reasonable time, no longer than thirty days, to respond to the
32 findings before taking any other action authorized under this section.

33 (b) The local government shall consider the findings made by the divi-
34 sion pursuant to this subdivision and shall amend the local law to
35 comply with the findings of the division.

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

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

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

44 (b) Upon the receipt of the notice of a local government's violation
45 of this article, the attorney general may bring a special proceeding to
46 enforce the requirements of this article.

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

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

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

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

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

1 (c) the development of accessory dwelling units in the state, includ-
2 ing but not limited to, information concerning the number of accessory
3 dwelling units permitted and created, the size and characteristics of
4 such units, and an assessment of the continued obstacles to the develop-
5 ment of accessory dwelling units.

6 § 483. Low and moderate income homeowners program. 1. Within one
7 hundred eighty days of the effective date of this article, the division
8 shall establish a lending program to assist low-income homeowners and
9 moderate-income homeowners in securing financing for the creation of
10 accessory dwelling units, including, without limitation, financing for
11 design and construction, flood prevention, permitting, and septic
12 enhancement.

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

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

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

22 5. Such program shall be funded through capital projects appropri-
23 ations and reappropriations set forth in the state fiscal year housing
24 program.

25 6. The division shall issue an annual report, on or before July first
26 of each year, that includes an itemized list of each project financed
27 through the program, including a brief description of the project, zip
28 code, and county. Such report shall also summarize the demographic char-
29 acteristics of participating homeowners, including income, race, ethnic-
30 ity, and sex.

31 7. Within one hundred eighty days of the effective date of this arti-
32 cle, the division shall establish a program to provide technical assist-
33 ance to all homeowners seeking to create an accessory dwelling unit.
34 Technical assistance shall include, without limitation, guidance on
35 design and construction, flood prevention, permitting, financing, and
36 septic enhancement.

37 § 484. Tenant protections. 1. As used in this section, the following
38 terms shall have the following meanings:

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

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

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

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

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

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

20 4. A landlord subject to this section shall, for any tenancy in an
21 accessory dwelling unit commenced or renewed on or after the effective
22 date of this article, provide as an addendum to a lease or rental agree-
23 ment notice of the rent charged in the prior calendar year and, where
24 applicable, the rent charged for the unit as of the date of the effec-
25 tive date of this article. The division shall determine the form and
26 content of such notice.

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

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

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

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

40 (a) For an employer or licensing agency, because of an individual's
41 age, race, creed, color, national origin, sexual orientation, gender
42 identity or expression, military status, sex, disability, predisposing
43 genetic characteristics, familial status, marital status, or status as a
44 victim of domestic violence, to refuse to hire or employ or to bar or to
45 discharge from employment such individual or to discriminate against
46 such individual in compensation or in terms, conditions or privileges of
47 employment. In the case of an accessory dwelling unit as defined in
48 subdivision one of section four hundred eighty of the real property law,
49 the exemption from the provisions of this paragraph for the rental of a
50 housing accommodation in a building which contains housing accommo-
51 dations for not more than two families living independently of each
52 other, if the owner resides in one of such accommodations, shall not
53 apply.

54 § 4. This act shall take effect immediately.