

REBNY Comments | July 24<sup>th</sup>, 2025

## **The Real Estate Board of New York to The Department of Health and Mental Hygiene on proposed rules related to testing for radon and other pollutants in basement dwellings and ADUs**

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to submit comments on the Department of Health and Mental Hygiene's (DOHMH) proposed addition of Chapter 40 to Title 24 of the Rules of the City of New York.

This proposed rule would require certification by a qualified environmental professional confirming that radon and certain organic chemical vapor levels in basement and cellar apartments do not exceed maximum thresholds, as a prerequisite to obtaining a temporary or permanent Certificate of Occupancy, pursuant to Local Law 126 of 2024 and sections U202.09 and U202.10 of Local Law 127 of 2024.

REBNY supports efforts to ensure that residential units are safe and healthy for New Yorkers. However, the proposed rule includes requirements that may not be scientifically necessary in the New York City context, are not clearly defined, and could have unintended consequences for housing production, particularly for the creation of legal basement and cellar apartments that are a focus of the City's broader housing and resiliency goals.

While radon is a legitimate health risk in many parts of the country, radon is not a known public health concern in New York City. There are no known locations within the five boroughs where average radon levels in basements exceed the U.S. Environmental Protection Agency's (EPA) action level of 4 pCi/L. Moreover, the rule appears to establish a lower threshold of 2 pCi/L without providing justification or evidence that this more conservative standard is necessary for New York City conditions. Requiring testing and certification by a qualified environmental professional rather than allowing the use of inexpensive, over-the-counter radon kits adds cost and procedural burdens for property owners with no demonstrated public health benefit.

In contrast, REBNY recognizes the importance of identifying and mitigating indoor air risks from chlorinated solvents and other volatile organic compounds (VOCs), particularly where vapor intrusion (SVI) may occur. These risks are well-documented in several New York City neighborhoods with a history of dry cleaning or light industrial uses. However, the proposed rule does not clearly identify which specific chemical vapors must be tested for or whether it is explicitly intended to address SVI concerns. It also does not reference the New York State Department of Health's 2006 Soil Vapor Intrusion Guidance, which is a well-established standard for evaluating and mitigating SVI risk.

REBNY urges DOHMH to clarify the scope of the proposed testing requirements for organic vapors and to incorporate reference to the NYSDOH SVI Guidance. Best practices such as conducting sampling during the heating season, pre-sampling chemical inventories, and ensuring that HVAC systems are operational during testing should be codified to ensure the scientific rigor of these evaluations.

We appreciate DOHMH's commitment to public health and encourage the agency to consider adjustments to this rule to ensure it is both scientifically grounded and appropriately tailored to New York City's specific environmental and housing needs.

Thank you for the consideration of these points

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