



# TESTIMONY TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON THE PROPOSED INTERIM FLOOD RISK AREA MAP KATHERINE LEITCH, SENIOR POLICY ANALYST JULY 30, 2025

Thank you for the opportunity to comment on the Department’s proposed amendment to the Rules of the City of New York (RCNY), specifically the creation of Chapter 66 of Title 15. My name is Katherine Leitch, and I serve as a Senior Policy Analyst at the Citizens Housing and Planning Council (CHPC), a non-profit civic organization dedicated to addressing New York City’s pressing housing and planning challenges. We thank the City for issuing this draft rule and recommend changes in the final rule to promote clarity and ease of use.

For over a decade, CHPC has conducted extensive research on basement conversions and accessory dwelling units (ADUs), illuminating their critical yet frequently overlooked contribution to the city’s housing landscape. Additionally, CHPC served as the program evaluator for the East New York Basement Apartment Conversion Pilot (BACPP). Our ongoing research consistently demonstrates that overly restrictive regulations often render it physically or financially impossible for homeowners to legalize their basement apartments. While the proposed floodplain map and accompanying rules constitute an important element of a legalization framework, substantial concerns remain—the need for improved clarity regarding flood map applicability, the absence of an amendment process, and the importance of vesting rules. In addition, while beyond the scope of this rulemaking, the excessively precautionary application of future floodplain projections imposes needless barriers to making residents safer.

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The legalization of basement apartments intersects with housing policy, climate resilience, and social equity. New York City's severe housing shortage and escalating affordability crisis have driven many low-income households toward informal basement and cellar apartments, which operate outside official oversight. As tragically demonstrated by Hurricane Ida, these conditions can expose residents to considerable safety risks.<sup>1</sup>

Basement and cellar apartments frequently house the city's most vulnerable residents, providing essential, affordable shelter amid the ongoing housing shortage. Until alternative affordable housing solutions are substantially expanded, New Yorkers with few housing options will choose to live in existing basement and cellar spaces, maintaining access to employment opportunities, educational resources, and stable community ties. Legalizing basement apartments that meet basic safety standards serves as an effective harm-reduction measure, reducing the hazards faced by the significant population residing in these spaces. In cases of imminent danger, relocation may become necessary; however, people planning for flood safety should be under no illusion that displacement without guaranteed alternative accommodations would somehow reduce the risks these residents face.

Each incremental step toward legalization delivers tangible safety improvements and aligns with the broader public interest. Consequently, it is beneficial for the City to encourage homeowner participation to the greatest extent possible. Restricting eligibility through ambiguous or overly conservative floodplain delineations fails this test.

To effectively encourage voluntary homeowner participation, clear eligibility criteria and transparent administrative processes are essential. Specifically, CHPC recommends clarifying the applicability language of section 66-02 by adding, "A residence is within the

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<sup>1</sup> Leitch & MacLean, *From Lot to Neighborhood to City: An Action Plan for Basement Flood Safety & Stormwater Equity*, Citizens Housing and Planning Council (CHPC). Aug 2022.

10-year rainfall flood risk area or coastal flood risk area when the residence is within such mapped area.” This is the relevant standard for the ADU code referenced in this section. The existence of a portion of the lot within the flood risk area does not itself prohibit the existence of a subgrade ADU.

The City should aim to minimize the number of lots on these maps for which the maps leave ambiguities about eligibility. The need to pursue clarification with one or more City agencies will itself be a factor that makes legal ADU status unattainable for many owners.

In addition, CHPC urges the Department to establish a mechanism analogous to the coastal flood zone’s Letter of Map Amendment (LOMA) process for appealing floodplain designations based on site-specific surveys.<sup>2</sup> Regrading of sites or infrastructure improvements may remove a building from the area of flood risk. A property owner should have the recourse to appeal a designation in such a case, but it is unclear how this would occur under the rule as currently proposed.

In the event that clarification or redrawing of a boundary based on survey data is necessary, this process should be accessible and navigable. While DOB’s role as the City’s floodplain administrator equips them to administer such a process for coastal flood hazard areas, for rainfall hazard areas, it should be clear which agency is responsible, and that DEP, as the subject matter expert for these flood hazard geographies, provides any input needed on a timely basis.

Importantly, while maps may be revised in the future, the program’s rules should guarantee the eligibility status for homeowners to complete improvements, subject to applications that have already been approved, rather than leaving them vulnerable to the potential of

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<sup>2</sup> “Letter of Map Amendment & Letter of Map Revision-Based on Fill Process.” FEMA.Gov, 9 May 2023, [www.fema.gov/flood-maps/change-your-flood-zone/loma-lomr-f](https://www.fema.gov/flood-maps/change-your-flood-zone/loma-lomr-f).

disqualification due to future map revisions by DEP. This will be important for predictability for both residents and lenders, helping to finance building improvements.

While beyond the scope of this rulemaking, it is important to note that the flood risk standards defined in the legislation establishing an ADU code are unduly restrictive of ADUs in existing buildings. It is important that policies for housing safety and resilience are guided by sound risk management. Declaring areas ineligible now based on potential risk half a century into the future reduces the possibility of future harm to future residents while ensuring that harm is done to actual residents today. By deterring owners of occupied subgrade spaces from seeking legal status for them, a poorly calibrated risk standard perpetuates unsafe living conditions and the ever-present risk of displacement from enforcement actions.

An approach that considers all risks, not only flood risks, is necessary to strike a balance between immediate safety improvements and long-term climate resilience. Such an approach could prohibit the creation of new occupiable below-grade spaces in areas of projected future risk while allowing existing below-grade spaces in such areas to be used in ways that do not pose significant risks under present-day conditions.

In conclusion, CHPC urges DEP to incorporate the changes we have described within the final rule. We appreciate the Department's attention to this testimony and would be happy to discuss any of these recommendations in further detail.