BASEMENT APARTMENTS SAFE FOR EVERYONE

TESTIMONY TO NYC DEPARTMENT OF BUILDINGS ON RULEMAKING FOR IMPLEMENTING LOCAL LAW 126 OF 2024 (§105-07) DECEMBER 11, 2025

My name is Kate Leitch, and I am a Senior Policy Analyst at the Citizens Housing and Planning Council (CHPC), an 88-year-old policy research organization dedicated to advancing practical solutions to New York City's housing challenges. CHPC is a member of the BASE (Basement Apartments Safe for Everyone) coalition and served as the evaluator for the East New York Basement Apartment Conversion Pilot Program.

This testimony is submitted on behalf of the Basement Apartments Safe for Everyone (BASE) coalition. The basement and cellar apartment legalization program authorized by Local Law 126 represents the culmination of over a decade of BASE's efforts to establish a navigable path to legalization, advancing safety and housing stability that have been deterred by the longstanding approach to regulating these spaces. Our coalition has played an active and important role in the enactment of the State and City laws that authorize this rulemaking to implement a legalization program.

But the proposed rule would have the effect of deterring homeowners and tenants from entering the program, rather than enabling them to complete it. It is imperative that DOB not finalize this rule until a substantially revised rule can be issued for review and comment. We recognize the centrality of health and safety to DOB's mission, and the priority the agency places on ensuring that homeowners who enter the legalization program are prepared and able to complete the process. We agree that it is important to give homeowners a clear understanding of their obligations so they can make an informed decision to register for the program.

However, for a program intended to achieve legalization of already-occupied spaces, it's necessary that DOB take a different approach than it would for other types of work. The most effective and immediate way to improve safety for tenants, homeowners, and first responders is to bring informal units into the program's oversight. This means allowing buildings to enter the

program based on demonstration that the unit does not present immediate hazards, and enabling (as well as requiring) owners to make necessary improvements on a set schedule.

Simply providing interim legal status creates tangible safety benefits: the City and first responders become aware of the unit, the homeowner and tenant gain the protection of an enforceable lease, smoke and carbon monoxide detectors are installed, water sensors and alarms follow shortly thereafter, and tenants are enrolled in the City's emergency notification system. All parties gain clarity about their rights and responsibilities. Ideally, every building will go on to complete the legalization process. But even those that are ultimately unable to do so will have achieved better outcomes than what would occur otherwise—residents continuing to live under unknown, potentially hazardous conditions that may also put first responders put at risk.

For these reasons, we are deeply concerned that the draft rule would undermine the purpose of Local Law 126 and would endanger rather than protect the thousands of New Yorkers who rely on these homes.

Local Law 126 Was Designed to Bring Homes Into Safety—Not Drive Them Further Underground

Local Law 126 was enacted to create a safe, accessible pathway for legalizing existing basement and cellar units, including those currently occupied. The law was purposefully written with an understanding, based on decades of a strategy reliant on enforcement, that homeowners will not voluntarily come forward if disclosure exposes them to vacate orders, insurmountable costs, or the threat of tenant displacement.

The draft rules depart dramatically from the program's framing under Local Law 126. Instead of providing homeowners a safely navigable path toward legalization and allowing safety upgrades under government oversight, the rule would re-create the conditions that have long driven homeowners away from bringing buildings into compliance.

A Catch-22 That Makes ATRs Virtually Impossible

The first and most fundamental step in the legalization process is obtaining an Authorization for Temporary Residence (ATR). Under Local Law 126, the ATR is intentionally simple and low-cost: an inspection for imminent hazards, basic low-cost safety measures, and program registration. This low barrier is essential—without it, homeowners are at constant risk of a

vacate order and are deterred or even prohibited from pulling permits for the upgrades the program will require.

The proposed rules, however, condition ATR issuance on items that go beyond demonstration of basic safety. They require a series of costly and, in some cases, legally impossible steps: owners must hire design professionals, prepare existing and proposed conditions drawings demonstrating compliance, and potentially complete substantial construction, all at risk of fines, violations, or vacate orders.

This is a classic Catch-22: owners must install a fully compliant kitchen, for example, but cannot legally obtain a permit to do all the required work on that kitchen (or a three-fixture bathroom) without first receiving the ATR.

This structure all but guarantees that most owners will not participate. Worse, it encourages illegal work—the opposite of what this program is intended to do.

Excessive and Unnecessary Standards That Exceed Building Code Requirements

The draft rule also undermines the program by imposing requirements that exceed those in the Building Code and restrict legalizations that are authorized under Local Law 126. These include requirements to:

- Affix a permanent sign roughly the size of a door to the primary residence—approximately eight feet by three feet—with five-inch red lettering indicating the location of a basement or cellar unit.
- Apply the Ancillary Dwelling Unit (ADU) code to **all** basement/cellar units, even when the unit is not an ADU, something that is not required by statute. Note that this imposes a requirement for noncombustible (e.g., steel or concrete) fire separation between the unit and the residence above—an infeasible requirement for existing homes.
- Prohibit units over 800 square feet without a statutory basis or a safety rationale.
- Mandate a two-inch diameter kitchen sink waste pipe as a prerequisite for participation, even though the Plumbing Code allows a 1.5-inch pipe.

These requirements are not only unnecessary for life safety but in many cases also impossible for small homeowners to meet. They would prevent legalization for the vast majority of homes, with the result that residents will remain in the shadows rather than brought into safety.

A Punitive Approach That Endangers Tenants

The proposed rules also reintroduce the punitive enforcement dynamics that Local Law 126 was explicitly designed to avoid. They invite violations and vacate orders, including during the application process, before owners or tenants receive any protection through the program.

For instance, the rule identifies "illegal gas work" as a basis for a vacate order. Yet no homeowner can legalize gas work without a permit, and no permit can be issued without inviting violations that carry significant mandatory penalties. This Catch-22 punishes the homeowners and tenants the law seeks to help, and it does nothing to improve safety. The program's initial inspections should *trigger safety upgrades*, not displacement. The rule should be written to reflect that vacate orders would be used exclusively for imminent hazards, with non-eviction strategies deployed whenever possible.

In addition, the proposed process and timeline for resolving violations puts homeowners and tenants at risk based on potential agency delays. They create potential for an eviction order even if a homeowner were to respond promptly and thoroughly, if a plan examiner were to fail to process their filing within the specified timeline. The consequences for violations and the process for resolving them must moderate this risk to avoid deterring program participation.

Additional Concerns

Several additional gaps also require revision of the proposed rule:

- The proposed rule must include pathways for all eligible units to achieve registration and pull lawful permits for construction regardless of whether they are currently occupied or will be an ADU under code, and for all units that require relief from the Multiple Dwelling Law. For instance, a two-family building adding a third unit cannot simply file for construction of an ADU, but must participate in this program to receive MDL relief.
- Homeowners must be allowed to withdraw from the program without penalty—if they ultimately eliminate any illegal occupancy—when legalization is not feasible.

- Eliminating a basement unit should not require eliminating all residential use of the basement or cellar. The correct remedy is eliminating the *unit*, not the use.
- Rules must be promulgated to establish a path for three-plus-unit homes, as required under Local Law 126.

This rule should not be finalized until it is revised to address the issues above and align with the law's structure and intent to create a workable, scalable safety program, with a new draft circulated for public comment.

Thank you for the opportunity to testify.