



PUBLIC TESTIMONY OF WATERFRONT ALLIANCE

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The New York City Department of Buildings (DOB) RE: Proposed Rule §105-07, Establishment of Temporary Residence Program for Eligible Basement or Cellar

Submitted by Furhana Husani, Director of Programs and Climate Initiatives, Waterfront Alliance

Waterfront Alliance is the leader in waterfront revitalization, climate resilience, and advocacy for the New York-New Jersey Harbor region. Waterfront Alliance is committed to sustainability and to mitigating the effects of climate change across the region's hundreds of miles of waterfront. We convene the Rise to Resilience Coalition of 100+ groups advocating for policy related to climate resilience, we bring education focused on climate resilience to students in NYC DOE schools through our Estuary Explorers program, and we run the national Waterfront Edge Design Guidelines (WEDG®) program for promoting innovation in climate design.

We are pleased to submit public comments on the proposed rules for the Authorization for Temporary Residence (ATR) program. For this program to successfully enhance safety and housing stability, the DOB must adopt a comprehensive flood safety strategy that extends beyond mandated geographic exclusions. We also support the BASE (Basement Apartments Safe for Everyone) Coalition's assertion to immediately revise the financial and administrative rules that currently discourage program enrollment. We support

I. Comprehensive Flood Risk Assessment and Building Safety

The history of basement and cellar living underscores the critical danger posed by flooding. That reality was tragically on display when 11 people drowned in their basements during Hurricane Ida in 2021, and recently when two men in died in their basements during a flash flood on October 30, 2025. While the proposed rules correctly prohibit ATR eligibility for properties located within the special flood hazard area, the coastal flood risk area, or the 10-year rainfall flood risk area, the City must enforce additional consideration to building safety for all subgrade apartments, especially concerning unmapped flood hazards and construction risks.

- *Addressing Unmapped Stormwater Risk:* It is crucial to recognize that the risk of sudden, intense rainfall, or pluvial flooding, often affects areas not included in traditional flood zones. The City must ensure its safety protocols are robust enough to address stormwater flood risk in all



potential conversion sites. Furthermore, tools like the DEP's Rainfall Ready NYC Action Plan, intended to help residents prepare for intense rainstorms, often neglect key details about weather-related events and are difficult to find and navigate. The City must enhance its focus on community-level flood reduction by expanding programs like Cloudburst Management, Bluebelts, and other coastal and stormwater infrastructure.

- *Mandatory Warning Systems:* Flood safety relies on immediate warning systems. The proposed rule mandates that eligible units must be equipped with enhanced safety features, specifically water sensors and alarms, which must be installed within three months after the Authorization for Temporary Residence (ATR) is issued. These devices are essential for occupant safety as they notify tenants of an imminent threat and the urgent need to evacuate. Furthermore, owners must notify tenants of the emergency alarm system operated by the New York City Office of Emergency Management.
- *Mitigating Construction Hazards:* The legalization process must account for how construction might increase flood danger. If excavation is required to meet certain standards (such as ceiling height requirements), this action can lower the finished floor relative to the base flood elevation or groundwater levels, which undermines structural stability and creates new complications. Future implementation tools, like the proposed "one-stop shop," must explicitly include plans that address flood resilience.

II. Removing Financial and Administrative Barriers to Entry

The proposed rules are deeply concerning because they conflict with the spirit and purpose of Local Law 126 by setting an unreasonably high bar for program entry. This premature demand for full compliance effectively hinders safety improvements and will likely cause the program to fail.

- *Burdensome Prerequisites Before ATR:* The DOB rule requires owners to hire a Registered Design Professional (RDP), submit full design drawings, and ensure the unit has compliant kitchens and bathrooms before receiving the ATR. These requirements involve costly soft costs and construction prematurely. Upgrades should be part of the phased compliance timeline, not a prerequisite for entry.
- *Delaying Critical Safety Upgrades:* Requiring expensive work upfront will prevent or delay many residents from seeing essential, immediate safety improvements. Local Law 126 requires critical safety features, such as water sensors and alarms, to be installed in the first three months after receiving the ATR. By making program entry cost-prohibitive, the DOB is delaying the implementation of these life-saving measures.
- *Permitting Catch-22:* It is unclear in some cases how owners would be able to pull permits for the construction work needed (such as compliant electrical and gas work for kitchens) without first



obtaining the ATR. The proposed rules even require that any existing illegal gas work be the subject of a filed legalization application and have its sign-off obtained prior to ATR issuance.

III. Mitigating Programmatic Risk and Displacement

To maximize participation and ensure the program succeeds in providing a safe and legal housing path, the rules must mitigate the risks homeowners face upon enrolling.

- *Need for Clear, Penalty-Free Off-Ramps:* There must be a clear, penalty-free off-ramp for homeowners who are unable to complete the program despite good faith efforts. Without this defined withdrawal process, homeowners will be unwilling to take on the financial risk and investment of participating, as enrolling currently means "outing yourself" with no amnesty or off-ramp.
- *Minimizing Displacement:* The use of vacate orders that displace tenants should be minimized and restricted only to situations where there are imminent threats to life and safety. For instance, if illegal gas work is found, the remedy should be a gas shutoff order, not an eviction.

By reworking the proposed rules to prioritize accessible entry and the immediate implementation of key safety milestones, including robust flood sensors and warning systems, the DOB can maximize participation and fulfill the public safety mandate of the basement legalization program. As an organization that advocates for climate resilience in policy, planning, design, and construction, Waterfront Alliance strongly encourages DOB to consider the flood risk for all basements and cellar living. The mapped floodplain is dynamic and does not accurately capture compound flood risks. The gentleman who tragically died in his basement apartment in Washington Heights (around West 175 Street and Broadways) on October 30, 2025, did not live in any mapped floodplain. These risks can happen rapidly and the City must ensure residents are safe in the event of growing extreme rainfall.