



PUBLIC COMMENT OF WATERFRONT ALLIANCE

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The New York City Department of Housing Preservation and Development (HPD) RE: Proposed Rules Relating to Right of Return for Basement or Cellar Residences

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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 Public 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 testimony on the proposed rules establishing the Right of First Return. We emphasize that for the basement legalization program to achieve its mandate of promoting safety and housing stability, HPD's rules regarding tenant relocation must be supported by robust flood safety protocols. We also support the BASE (Basement Apartments Safe for Everyone) Coalition's assertion that HPD's rules must function within an administrative framework that does not prevent eligible homeowners from entering the program in the first place.

I. Comprehensive Flood Safety and Resilience

The need to legalize basement and cellar apartments is rooted in the extreme safety hazards these spaces pose, especially during flood events. 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 Authorization for Temporary Residence (ATR) program correctly mandates that properties located within the special flood hazard area, the coastal flood risk area, or the 10-year rainfall flood risk area are ineligible to apply, the City must maintain a comprehensive focus on safety that addresses all types of hazards:

- *Addressing Unmapped Stormwater Risk:* It is essential to focus on safety measures that protect tenants from stormwater (pluvial) flood risk, which often impacts neighborhoods not mapped within traditional flood zones. The city's current flood preparedness tools, such as the DEP's



Rainfall Ready NYC Action Plan, are often difficult to find and navigate and may neglect key details about weather-related emergency management. Expansion of programs focused on Cloudburst Management is vital to reduce neighborhood-scale flooding caused by extreme rainfall.

- *Mandatory Warning Systems:* For any unit allowed to proceed, immediate warning systems are non-negotiable. Local Law 126 requires that eligible units install water sensors and alarms within the first three months after the ATR is issued. These installations, alongside notification to tenants of the emergency alarm system operated by the New York City Office of Emergency Management, are crucial for occupant safety as they notify residents of an imminent threat and the need to evacuate.
- *Construction Risks:* Building safety must also be considered during conversion. When required to excavate floors to meet minimum ceiling height requirements, this action can lower the finished floor relative to the base flood elevation or groundwater levels, undermining structural stability and creating new complications.

II. The Necessity of Revising Program Entry to Implement Safety

The integrity of HPD's right-of-return rules depends entirely on a successful, non-punitive legalization program. We share the position of the BASE Coalition that the proposed Department of Buildings (DOB) rules should not be finalized as-is because they conflict with the spirit and purpose of Local Law 126. The rules set too high a bar for entry by prematurely requiring costly work—including the hiring of a Registered Design Professional (RDP), submission of full design drawings, and construction of compliant kitchens and bathrooms—before owners receive the ATR.

- *Delaying Life-Saving Measures:* The purpose of making entry accessible is to bring safety improvements to as many tenants and homeowners as possible. Requiring expensive soft costs and construction will prevent or delay residents from seeing essential, immediate safety improvements. These necessary safety features include the mandatory water sensors and alarms, which are required to be installed shortly *after* the ATR is issued. The current proposed rules hinder the quick implementation of these life-saving installations.
- *Permitting Challenges:* Furthermore, 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.

III. Tenant Safety and Relocation Support

We strongly urge HPD to amend the proposed rules concerning tenant relocation to ensure the maximum possible housing stability for the low-income tenants this program is meant to protect.

- *Inadequate Relocation Notice and Cost Burden:* The rules grant owners the right to require tenants to relocate with not less than thirty (30) days notice, and tenants are responsible for the cost of relocation. Thirty days is not enough time for tenants, who are often low-income and face



significant barriers in the housing market, to find a new living space. The rules should be amended to give tenants more time to relocate during construction.

- *Mandating Relocation Support:* Beyond the proposed rules, the City must invest in relocation support for tenants and prioritize expanding resources to prevent tenant displacement and maximize affordability of the units.
- *Preserving the Right to Return:* Tenants lose their right of first return if they fail to vacate by the required date. While the rules reference the possibility of obtaining the owner's written permission for an extension, they do not provide guidance for grounds for denial of a request. Given the punitive consequence of forfeiture, the rules should defer to a tenant's request for an extension if they are unable to find housing.
- *Minimizing Vacate Orders:* The HPD rules regarding tenant relocation are directly linked to the DOB rules concerning the issuance of vacate orders. The DOB rules must minimize the use of vacate orders that displace tenants only to situations where there are imminent threats to life and safety. For instance, if illegal gas work is found, the remedy could be a gas shutoff order, not an eviction.

IV. Need for Non-Punitive Off-Ramps

Finally, to encourage broad participation and safety adoption, the City must eliminate the personal and financial risk associated with entering the legalization program. There must be a clear, penalty-free off-ramp for homeowners who are unable to complete the program despite good faith efforts, absent which homeowners will be unlikely to take on the risk and investment of participating.

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 HPD 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 HPD 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.