

By Council Members Sanchez, Louis, Fariás and Rivera (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to establishing a pilot program to convert existing basement or cellar apartments to habitable dwelling units

Be it enacted by the Council as follows:

1 Section 1. Chapter 5 of title 28 of the administrative code of the city of New York is
2 amended by adding a new article 507 to read as follows:

3 **ARTICLE 507**
4 **PILOT PROGRAM FOR ELIGIBLE BASEMENT AND CELLAR**
5 **RESIDENCES**
6

7 **§28-507.1 Definitions.** For purposes of this article, the following terms have the following
8 meanings:

9
10 **APARTMENT.** The term “apartment” has the same meaning as defined in section BC 202 of the
11 New York city building code.

12
13 **APPLICATION.** The term “application” means an application for authorization for temporary
14 residence pursuant to this article.

15
16 **AUTHORIZATION FOR TEMPORARY RESIDENCE.** The term “authorization for
17 temporary” residence means an authorization issued by the department pursuant to section 28-
18 507.4 authorizing the temporary use of an eligible basement or cellar as an apartment prior to the
19 issuance of a certificate of occupancy or temporary certificate of occupancy for such use.

20
21 **BASEMENT.** The term “basement” means a story partly below the grade plane and having less
22 than one-half of its clear height, measured from finished floor to finished ceiling, below the grade
23 plane.

24
25 **CELLAR.** The term “cellar” means that portion of a building that is partly or wholly underground,
26 and having one-half or more of its clear height, measured from finished floor to finished ceiling,
27 below the grade plane.

28
29 **ELIGIBLE BASEMENT OR CELLAR RESIDENCE.** The term “eligible basement or cellar
30 residence” means a basement or cellar in an existing dwelling within the program area, unlawfully
31 arranged to be occupied as an apartment with acceptable kitchen and sanitation facilities as
32 described in department rules, and which apartment was in existence prior to April 20, 2024.

33
34 **FAMILY.** The term “family” has the same meaning as defined in the multiple dwelling law,
35 except that as used in this article, family shall not include any boarders, roomers, or lodgers.
36

1 **PRE-EXISTING VIOLATION.** The term “pre-existing violation” means a violation issued by
2 an agency of the city of New York for the illegal occupancy of a basement or a cellar for which a
3 notice of violation, administrative summons, criminal court summons, or other process was issued
4 prior to the date of issuance of an authorization for temporary residence by the department pursuant
5 to this article.

6
7 **PROGRAM AREA.** The term “program” area means Bronx community district 9; Bronx
8 community district 10; Bronx community district 11; Bronx community district 12; Brooklyn
9 community district 4; Brooklyn community district 10; Brooklyn community district 11; Brooklyn
10 community district 17; Manhattan community district 2; Manhattan community district 3;
11 Manhattan community district 9; Manhattan community district 10; Manhattan community district
12 11; Manhattan community district 12; and Queens community district 2, and such other
13 community districts as may be authorized pursuant to section 289 of the multiple dwelling law.

14
15 **RENTED.** The term “rented” means leased, let, or hired out, with or without a written agreement.

16
17 **TEMPORARY RESIDENCE PROGRAM.** The term “temporary residence program” means a
18 program established pursuant to this article to facilitate the legalization of eligible basement and
19 cellar residences within the program area and to authorize their temporary use as apartments
20 pending the issuance of a certificate of occupancy or temporary certificate of occupancy for such
21 use.

22
23 **TENANT.** The term “tenant” means an individual to whom an eligible basement or cellar
24 residence is rented.

25
26 **§ 28-507.2 Eligibility.** This article applies to private dwellings and multiple dwellings. The
27 department shall establish a temporary residence program in accordance with this article. To
28 participate in such program, an owner of an eligible basement or cellar residence shall apply for
29 authorization for temporary residence pursuant to section 28-507.4 on or before April 20, 2029.
30 An application for temporary residence may not be made where the eligible basement or cellar
31 residence is located within the 10-year rainfall flood risk area or the coastal flood risk area as
32 described in section 24-809, except as otherwise allowed pursuant to the New York city zoning
33 resolution.

34
35 **§ 28-507.3 Occupancy.** Notwithstanding section 27-751 of the 1968 New York city building code,
36 section 27-2087, section 1208.2 of the New York city building code, any applicable laws in
37 existence prior to December 6, 1968, or any provision of any other local law or the multiple
38 dwelling law that is inconsistent with or that would frustrate the purpose of this article, the
39 department may authorize the use of an eligible basement or cellar residence within the program
40 area as an apartment in accordance with this article.

41
42 **§ 28-507.4 Authorization for temporary residence.** The department may issue an authorization
43 for temporary residence for the use of an eligible basement or cellar residence in the program area
44 as an apartment prior to the issuance of a certificate of occupancy or temporary certificate of
45 occupancy in accordance with this section. The owner of an eligible basement or cellar residence
46 may submit an application for an authorization for temporary residence to the department in a form
47 and manner determined by the department. An application for an authorization for temporary

1 residence may not be used as the basis for an enforcement action for illegal occupancy of such
2 residence, provided that nothing in this article shall be construed to prevent the issuance of a vacate
3 order for an imminently hazardous or otherwise unsafe condition.
4

5 **§ 28-507.4.1 Issuance of authorization for temporary residence.** The department may issue
6 an authorization for temporary residence upon determining that:
7

8 1. The basement or cellar referenced in such application is an eligible basement or cellar
9 residence;
10

11 2. Such eligible basement or cellar residence contains an apartment that was in existence
12 prior to April 20, 2024; and
13

14 3. Such eligible basement or cellar residence has been inspected, and:
15

16 3.1 Would not pose an imminent risk to the life or safety of occupants;
17

18 3.2 Contains a battery-operated or hard-wired smoke detector and carbon monoxide
19 detector;
20

21 3.3 Contains at least 1 means of egress directly to the outdoors in accordance with the
22 construction standards of chapter 10 of the New York city building code, including
23 access to a public way. Such means of egress shall be an exterior door that swings
24 inward and is provided with landings on both the interior and exterior sides in
25 accordance with section 1010.1.6 of the New York city building code; and
26

27 3.4 Has a minimum clear ceiling height in accordance with section 202.5 of appendix
28 U of the New York city building code.
29

30 **§ 28-507.4.2 Rulemaking.** The department, in consultation with the fire department and the
31 office of emergency management, shall adopt rules governing the occupancy and use, prior to
32 the issuance of a certificate of occupancy or temporary certificate of occupancy, of eligible
33 basement and cellar residences that have been issued an authorization for temporary residence,
34 including minimum housing maintenance standards. Such rules shall:
35

36 1. Require occupancy of an eligible basement or cellar residence by not more than 1 family
37 maintaining a common household;
38

39 2. Prohibit an owner or occupant from renting or offering to rent such eligible basement or
40 cellar residence for less than 30 consecutive days; and
41

42 3. Prohibit registration of such residence for short-term rental pursuant to chapter 31 of title
43 26.
44

45 Except as otherwise provided in such rules, the provisions of chapter 2 of title 27 shall not
46 apply to such eligible basement and cellar residences.
47

1 § 28-507.4.3 Vacate orders. The department, the department of housing preservation and
2 development, or the fire department may stay an order to vacate an eligible basement or cellar
3 residence once an owner has applied for authorization for temporary residence or at any time
4 following the issuance of an authorization for temporary residence.
5

6 § 28-507.4.4 Expiration of authorization for temporary residence. An authorization for
7 temporary residence expires 10 years after the date of its issuance. Prior to such expiration
8 date, the owner must obtain a certificate of occupancy or temporary certificate of occupancy
9 for such residence in accordance with section 28-507.6. An owner must comply with the
10 conditions set forth in section 28-507.4.5 during such 10-year period. The issuance of an
11 authorization for temporary residence allows occupancy of the eligible basement or cellar
12 residence prior to the issuance of a certificate of occupancy or temporary certificate of
13 occupancy.
14

15 § 28-507.4.5 Requirements for maintaining an authorization for temporary residence. An
16 authorization for temporary residence shall be subject to the requirements set out in sections
17 28-507.4.5.1, 28-507.4.5.2, and 28-507.4.5.3
18

19 § 28-507.4.5 .1 Requirements within 3 months. Not later than 3 months following the
20 date such authorization is issued, the owner must submit documentation in a form and
21 manner determined by the department establishing that:
22

23 1. Such eligible basement or cellar residence has smoke and carbon monoxide alarms
24 in accordance with sections U103.6.2 and U103.6.3 of appendix U of the New York
25 city building code;
26

27 2. Such eligible basement or cellar residence has water sensors and alarms in
28 accordance with section U202.11 of appendix U of the New York city building code;
29

30 3. Such eligible basement or cellar residence has the required signage posted in a
31 manner prescribed by chapter 2 of title 27 and the rules of the department of housing
32 preservation and development; and
33

34 4. The owner has notified any tenants in such eligible basement or cellar residence
35 about enrollment in an emergency alert system operated by the office of emergency
36 management.
37

38 § 28-507.4.5.2 Authorization requirements within 1 year. Not later than 1 year
39 following the date such authorization is issued, the owner must submit documentation in a
40 form and manner determined by the department establishing that such eligible basement or
41 cellar residence:
42

43 1. Complies with the fire separation standards set forth in section U202.7 of appendix
44 U of the New York city building code; and
45

46 2. Is tested and meets the standard set forth in rules promulgated by the department of
47 health and mental hygiene in consultation with the mayor's office of environmental

1 remediation, in accordance with sections U202.9 and U202.10 of appendix U of the
2 New York city building code.

3
4 **§ 28-507.4.5.3 Authorization requirements within 2 years.** Not later than 2 years
5 following the date such authorization is issued, the owner must submit documentation in a
6 form and manner determined by the department establishing that such eligible basement or
7 cellar residence has an automatic sprinkler system in accordance with section U103.6.1 of
8 Appendix U of the New York city building code and section 28-507.9, provided, however,
9 that notwithstanding any provision of this article or the multiple dwelling law, in no case
10 shall the addition of an eligible basement or cellar residence require the installation of an
11 automatic sprinkler outside of the eligible basement or cellar residence, or outside of the
12 means of egress from such residence.

13
14 **§ 28-507.4.6 Additional safety or construction requirements.** An eligible basement or cellar
15 residence must be in compliance with any additional safety or construction requirements
16 established pursuant to rules promulgated by the department in consultation with the fire
17 department and the office of emergency management.

18
19 **§ 28-507.5 Deferral or waiver of penalties by the department.** Payment of any civil penalties
20 for violations issued by the department that would otherwise be required to be paid by an owner
21 of an eligible basement or cellar residence before the issuance of a permit for alterations to comply
22 with section 28-507.4 may be deferred, and upon issuance of a certificate of occupancy or
23 temporary certificate of occupancy in accordance with section 28-507.6, such deferred amounts
24 may be waived. Notwithstanding the preceding sentence, deferred amounts shall continue to be
25 due and owing to the department. Where an owner fails to comply with the requirements of this
26 article, deferred amounts shall no longer be deferred and payment may be enforced in accordance
27 with this code.

28
29 **§ 28-507.6 Certificates of occupancy pursuant to this article.** Notwithstanding any inconsistent
30 provision of the multiple dwelling law, article 118 of chapter 1, or of any other law, where an
31 eligible basement or cellar residence in a one- or two-family home has been issued an authorization
32 for temporary residence in accordance with section 28-507.4, the department may issue a
33 certificate of occupancy pursuant to the article as follows:

34
35 1. For a building erected prior to January 1, 1938 that does not have and is not otherwise
36 required to have a certificate of occupancy, issue a partial certificate of occupancy limited to
37 the new or altered apartment in the basement of a building or the new apartment in the cellar
38 of a building.

39
40 2. For a building with an existing certificate of occupancy, issue an amended certificate of
41 occupancy limited to the new or altered apartment in the basement of such building or the new
42 apartment in the cellar of such building.

43
44 **§ 28-507.6.1 Issuance of an amended or partial certificate of occupancy.** A partial or
45 amended certificate of occupancy shall be issued subject to the following conditions:

1 1. Upon inspection, the apartment being created or altered (i) conforms substantially to the
2 approved construction documents, complies with this code and other applicable laws,
3 except as specifically provided in this article, and is safe for occupancy, or (ii) the
4 department upon an inspection certifies that waiver of otherwise applicable requirements
5 is appropriate because such apartment provides for the health and safety of all occupants
6 of such dwelling by alternative means that are no less stringent than the requirements of
7 this article.

8
9 2. Upon inspection, the required means of egress from all floors of the building comply
10 with this code and other applicable laws.

11
12 3. A partial or amended certificate of occupancy or a temporary certificate of occupancy
13 may be issued where there are open pre-existing violations in the building. All such open
14 violations, including those specified in the exceptions below, shall remain administratively
15 open and the department may thereafter continue to enforce against such violations until,
16 in accordance with applicable provisions of this code, outstanding penalties are paid and,
17 if applicable, certificates of correction are approved by the department.

18
19 **Exceptions:**

20
21 1. Where a pre-existing violation in parts of the building outside of the new or altered
22 apartment is classified as “immediately hazardous,” the condition that gave rise to the
23 issuance of such immediately hazardous violation must be removed or remedied in
24 accordance with the New York city construction codes and to the satisfaction of the
25 commissioner of buildings, and evidence of such removal or remediation in the form
26 of plans, drawings, photos, affidavits, or a combination thereof, with the signature and
27 seal of a registered design professional or, if applicable, a licensee of the department in
28 the applicable trade, must be submitted to the department prior to the issuance of such
29 amended or partial certificate of occupancy or a temporary certificate of occupancy.

30
31 2. Any condition that gave rise to a pre-existing violation in the new or altered
32 apartment must be removed or remedied by work performed under permits issued
33 pursuant to this article.

34
35 3. Notwithstanding any inconsistent provision of this code, including sections 28-
36 118.14 and 28-219.1, a certificate of occupancy or a temporary certificate of occupancy
37 may be issued for a basement or cellar apartment created or altered pursuant to this
38 article where there are outstanding fines and civil penalties for pre-existing violations,
39 provided that such fines and civil penalties may remain due and owing, and the
40 department may thereafter enforce and collect such amounts in accordance with this
41 code, unless such department determines that such fines and civil penalties should be
42 waived in the interest of the program. When determining whether to waive such fines
43 and civil penalties, the department may consider factors including the number and
44 pecuniary amount of fines and civil penalties owed, the financial need of the owner,
45 and the likely effect of such fines and civil penalties on compliance with this code.

1 **§ 28-507.6.2 Refusal to issue a certificate of occupancy or temporary certificate of**
2 **occupancy.** The department may refuse to issue a certificate of occupancy or a temporary
3 **certificate of occupancy pursuant to this section if there are outstanding violations issued by**
4 **the department, penalties or open permits not signed off related for work performed under**
5 **permits issued pursuant to this article until such penalties have been paid, such violations have**
6 **been corrected, including filing certificates of correction, if applicable, and permits have been**
7 **closed, as required by this code.**
8

9 **§ 28-507.6.3 Certificates of occupancy to reference this article.** Every certificate of
10 **occupancy or temporary certificate of occupancy issued for a basement or cellar apartment in**
11 **a one- or two-family home created or altered pursuant to this article must contain a reference**
12 **to this article. A partial or amended certificate of occupancy or a temporary certificate of**
13 **occupancy issued pursuant to section 28-507.6 must contain a note that such certificate of**
14 **occupancy does not certify compliance with applicable laws with respect to parts of the**
15 **building outside of the apartment created or altered pursuant to this article.**
16

17 **§ 28-507.6.4 Certificate of occupancy for one- or two-family home.** Where a basement or
18 **cellar in a one- or two-family home has been issued an authorization for temporary residence**
19 **in accordance with section 28-507.4, the department shall issue a certificate of occupancy,**
20 **temporary certificate of occupancy, partial certificate of occupancy, or amended certificate of**
21 **occupancy for such dwelling in accordance with the requirements of appendix U of the New**
22 **York city building code.**
23

24 **§ 28-507.6.5 Certificate of occupancy for a multiple dwelling.** Except as may be provided
25 **in the rules of the department, in consultation with the fire department, the office of emergency**
26 **management, the department of housing preservation and development, the department**
27 **environmental protection, and the department health and mental hygiene, where a basement or**
28 **cellar in a multiple dwelling has been issued an authorization for temporary residence in**
29 **accordance with section 28-507.4, the department shall issue a certificate of occupancy,**
30 **temporary certificate of occupancy, or amended certificate of occupancy for such dwelling in**
31 **accordance with the requirements of this code for Group R-2 occupancy.**
32

33 **§ 28-507.7 Waiver of application, permit, and inspection fees by the department.** The
34 **commissioner shall waive all fees, which would otherwise be required to be paid to the department**
35 **by this title, the New York city electrical code, or the rules of the department, in connection with**
36 **applications, permits, and inspections for work in the program area related to the creation or**
37 **alteration of habitable apartments in basements and cellars where such apartments are officially**
38 **subsidized under the program administered by the department of housing preservation and**
39 **development pursuant to section 28-507.12.**
40

41 **§ 28-507.8 Waiver of fees by other agencies.** The department of environmental protection shall
42 **wave all fees which would otherwise be required to be paid to such department arising out of the**
43 **creation or alteration of habitable apartments in basements and cellars where such apartments are**
44 **officially subsidized under the program administered by the department of housing preservation**
45 **and development pursuant to section 28-507.12. Any other agency may promulgate rules to waive**
46 **fees that would otherwise be required to be paid arising out of the creation or alteration of such**
47 **apartments where such apartments are officially subsidized under the program administered by the**

1 department of housing preservation and development pursuant to section 28-507.12, and where
2 such agency determines that such waiver would facilitate such program.

3
4 **§ 28-507.9 Compliance with fire code sprinkler requirements for altered buildings on**
5 **substandard width streets.** Any habitable apartment in a basement or cellar created or altered
6 pursuant to section 28-507.3 shall be deemed to be an alteration subject to exception 5.1 of section
7 501.4.3.1 of the New York city fire code.

8
9 **§ 28-507.10 Construction.** Except as specifically provided in this article, nothing in this article is
10 intended to grant authorization for any work to be done in any manner in violation of the provisions
11 of this code, or any other law or rule.

12
13 **§ 28-507.11 Enforcement and revocation.** The provisions of this article shall be enforced in
14 accordance with section 28-507.11.1, 28-507.11.2, and 28-507.11.3.

15
16 **§ 28-507.11.1 Violations.** Violations of this article and rules of the department promulgated
17 pursuant to this article shall be subject to enforcement and penalties in accordance with chapter
18 2 of this title. Notices of violation, administrative summonses, and appearance tickets may be
19 issued by employees of the department or the fire department.

20
21 **§ 28-507.11.2 Inspections and revocation.** The department and the fire department may
22 inspect eligible basement or cellar residence participating in the program authorized by this
23 article in accordance with applicable law. The department may, after notice and opportunity to
24 be heard, revoke an authorization for temporary residence where 3 or more violations of this
25 article or rules of the department promulgated pursuant to this article have been committed
26 within a 1 year period, or where any violation of section 28-507.4 has been committed.

27
28 **§ 28-507.11.3 Reinstatement of prior actions upon expiration or revocation.** Where an
29 authorization for temporary residences expires or is revoked before a certificate of occupancy
30 or temporary certificate of occupancy is issued for an eligible basement or cellar residence, the
31 department, the department of housing preservation and development, or the fire department
32 may, as applicable, take any of the follow actions:

- 33
34 1. Issue a vacate order if the basement or cellar is occupied.
35
36 2. Reinstate any prosecution for illegal occupancy that was deferred or waived pursuant to
37 this article.
38
39 3. Reinstate and commence collection of any penalties that were deferred or waived
40 pursuant to sections 28-507.5 or 28-507.6, including interest that would have accrued from
41 the time of such deferral or waiver.

42
43 **§ 28-507.12 Technical assistance and outreach.** The department of housing preservation and
44 development shall establish a program to provide technical assistance to owners of eligible
45 basement or cellar residences that are contained within one-family or two-family homes and
46 conduct public education and outreach to owners of dwellings such department determines are
47 likely to include eligible conversions.

1
2 **§ 28-507.13 Tenant protections.** Protections for a tenant of an eligible basement or cellar
3 residence shall be in accordance with sections 28-507.13.1, 28-507.13.2, and 28-507.13.3.
4

5 **§ 28-507.13.1 Certification of rental status as of April 20, 2024.**An application for
6 authorization for temporary residence pursuant to section 28-507.4 must be accompanied by a
7 certification from the owner of an eligible basement or cellar residence indicating whether such
8 residence was rented to a tenant on April 20, 2024, notwithstanding whether the occupancy of
9 such residence was authorized by law. Such certification may not be used as the basis for an
10 enforcement action for the illegal occupancy of such unit, provided however that nothing in
11 this article shall prevent the issuance of a vacate order for imminently hazardous or unsafe
12 conditions.
13

14 **§ 28-507.13.2 Tenant right of first return.** A tenant in occupancy of an inhabited eligible
15 basement or cellar residence on April 20, 2024 who is evicted or otherwise removed from such
16 residence as a result of an alteration necessary to bring such residence into compliance with
17 the standards set out in this article shall have a right of first refusal to return to such unit as a
18 tenant upon its first occupancy following such alteration, notwithstanding whether such
19 occupancy on April 20, 2024 was authorized by law, subject to rules established by the
20 department of housing preservation and development.
21

22 **§ 28-507.13.3 Tenant cause of action.** A tenant unlawfully denied a right of first refusal to
23 return to an eligible basement or cellar residence pursuant to this article shall have a cause of
24 action in any court of competent jurisdiction for compensatory damages or declaratory and
25 injunctive relief as the court deems necessary in the interests of justice, provided that such
26 compensatory relief shall not exceed the annual rental charges for such eligible basement or
27 cellar residence.
28

29 **§ 28-507.14 Application deadline.** To participate in the temporary residence program, the owner
30 of an eligible basement or cellar residence must apply for authorization for temporary residence
31 pursuant to section 28-507.4 not later than April 20, 2029.
32

33 § 2. This local law takes effect 180 days after it becomes law.

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