

**CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

**Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Department of Housing Preservation and Development (“HPD”) is proposing rules to give a tenant who occupied a basement or cellar residence as of April 20, 2024, and was relocated or otherwise removed from such basement or cellar residence as a result of alterations necessary to bring such residence into compliance with the standards set forth in Article 507 of chapter 5 of title 28 of the administrative code of the city of New York, a right of first return to such basement or cellar residence as a tenant upon completion of the alterations.

**When and where is the hearing?** HPD will hold a public hearing on the proposed rules. The public hearing will take place virtually **on Friday, December 12, 2025** from 10 AM to 11 AM:

To participate in the public hearing, enter the Webex URL:

**<https://nychpd.webex.com/nychpd/j.php?MTID=m898156acbf5c312df1b2fddad8639891>**

If prompted to provide a password or number, please enter the following:

Meeting number: **2333 479 7419** Password: **UfsEfPMN525**

You may also join via audio device or dial in via phone:

Join by video system:

Dial **23334797419@webex.com**

You can also dial **173.243.2.68** and enter your meeting number

To dial in by phone, please use the following dial-in phone number and participant access code:

United States Toll (New York City) **+1-646-992-2010**

United States Toll **+1-408-418-9388**

Access code: **2333 479 7419**

Password if requested: **UfsEfPMN525**

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HPD through the NYC rules website at <http://rules.cityofnewyork.us>.

- **Email.** You can email comments to [rules@hpd.nyc.gov](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail comments to Deputy Commissioner AnnMarie Santiago, Department of Housing Preservation and Development, Room 6-01, 100 Gold Street, New York, N.Y. 10038.
- **Fax.** You can fax comments to Deputy Commissioner AnnMarie Santiago at 212 863-7010.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 212 863-8340 or by emailing [wallaca@hpd.nyc.gov](mailto:wallaca@hpd.nyc.gov) before 5:00 PM **on Wednesday, December 10, 2025**. Although you can indicate during the hearing that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

**Is there a deadline to submit comments?** The deadline for submission of comments is **December 12, 2025**.

**What if I need assistance to participate in the hearing?** You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at [wallaca@hpd.nyc.gov](mailto:wallaca@hpd.nyc.gov). You may also tell us by telephone at 212 863-8340. We request advance notice so that we have sufficient time to arrange the accommodation. Please tell us by **December 3, 2025**. This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rules will be available to the public at the Office of Legal Affairs, 100 Gold Street, Fifth Floor, New York, N.Y. 10038.

**What authorizes HPD to make these rules?** Sections 1043 and 1802 of the New York City Charter (“City Charter”) and sections 27-2090 and 28-507.13.2 of the New York City Administrative Code authorize HPD to make these rules. The rule was not included in the agency's regulatory agenda.

**Where can I find HPD's rules?** The agency's rules are in Title 28 of the Rules of the City of New York.

**What laws govern the rulemaking process?** HPD must comply with Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rules**

Local Law 126 of 2024, which is codified as article 507 of chapter 5 of title 28 of the administrative code, authorizes the Department of Buildings (“DOB”) to establish a program to legalize occupancy of existing basement and cellar residences in certain community districts. Owners who are enrolled in the program in accordance with DOB rules may continue to rent illegal basement or cellar residences for up to 10 years if they complete established benchmarks for legalization during such 10 year period and complete all necessary work by the end of such 10 year period, and a certificate of occupancy or temporary certificate of occupancy has been issued for such basement or cellar residence. LL 126 also provides that a tenant who occupied such a basement or cellar residence on April 20, 2024 and who must vacate such basement or cellar residence in order for the necessary work to be performed safely has the right of first return to such basement or cellar residence after the alteration work is completed.

The Department of Housing Preservation and Development (“HPD”) is proposing rules to establish standards and procedures to effectuate this right of first return. The proposed rules would require that an owner who is unable to safely complete necessary alteration of a basement or cellar residence with a tenant in residence provide notice to the tenant explaining the authorization for temporary residence, the date the work is expected to commence, the scope of the proposed work, and the tenant’s right of first return to the basement or cellar residence following completion of the proposed alteration. The proposed rules also include obligations that the tenant must fulfill in order to preserve their right of first return to the basement or cellar residence, including a requirement that the tenant vacate the basement or cellar residence at the required time and advise the owner at the time that they vacate of their intent to return to the basement or cellar residence.

New material is underlined.

[Deleted material is in brackets.]

Section one. Title 28 of the Rules of the City of New York is amended to add a new chapter 65 to read as follows:

Chapter 65 Tenant Right of First Return to Basement or Cellar Residence Following Alteration to Achieve Compliance with the Standards of Article 507 of Chapter 5 of Title 28 of the Administrative Code of the City of New York.

§65-01 Definitions.

§65-02 Applicability.

§65-03 Owner Notice to Tenant of Right of First Return.

§65-04 Tenant Disqualification From Claiming Right of First Return.

§65-05 Notice to Owner of a Tenant’s Contact Information During Renovation of the Basement or Cellar Residence.

§65-06 Owner’s Notice to Tenant of Ability to Return to Residence and Tenant’s Responsibility to Respond.

§65-07            Applicability of the Requirements of this Chapter to Multiple Instances of Tenant Relocation.

§65-01            Definitions

Apartment. The term "apartment" has the same meaning as defined in section BC 202 of the New York city building code.

Authorization for temporary residence. The term "authorization for temporary residence" means an authorization issued by the department of buildings pursuant to section 28-507.4 of the administrative code of the city of New York authorizing the temporary use of an eligible basement or cellar as an apartment prior to the issuance of a certificate of occupancy or temporary certificate of occupancy for such use.

Basement. The term "basement" means a story partly below the grade plane and having less than one-half of its clear height, measured from finished floor to finished ceiling, below the grade plane.

Cellar. The term "cellar" means that portion of a building that is partly or wholly underground, and having one-half or more of its clear height, measured from finished floor to finished ceiling, below the grade plane.

Owner. The term "owner" has the same meaning as set forth in paragraph 45 of subdivision a of section 27-2004 of the administrative code.

Rented. The term "rented" means leased, let, or hired out, with or without a written agreement.

Temporary residence program. The term "temporary residence program" means the program established pursuant to Article 507 of chapter 5 of title 28 of the administrative code of the city of New York to facilitate the legalization of eligible basement and cellar residences within the program area, as defined in Article 507, and to authorize their temporary use as apartments pending the issuance of a certificate of occupancy or temporary certificate of occupancy for such use.

Tenant. The term "tenant" means an individual to whom a basement or cellar residence that is participating in the temporary residence program had been rented as of April 20, 2024.

#### §65-02            Applicability.

These rules apply to the occupancy of basement and cellar residences where an authorization for temporary residence has been issued in accordance with §28-507.4 of the administrative code of the city of New York and the rules of the department of buildings. When an authorization for temporary residence of a basement or cellar residence is revoked or expires prior to the issuance of a certificate of occupancy or temporary certificate of occupancy, these rules are no longer applicable to such basement or cellar residence.

#### §65-03            Owner Notice to Tenant of Right of First Return.

(a) The owner of a basement or cellar residence for which an authorization for temporary residence has been issued pursuant to §28-507.4 of the administrative code of the city of New York must provide notice to any tenant of such residence, within five days following the issuance of the authorization, that relocation of the tenant may be necessary in order for the

required work to legalize the basement or cellar residence to be done safely and that the tenant is responsible for any costs associated with such relocation.

(b) If the owner determines that relocation of the tenant will be necessary in order for the required work to legalize the basement or cellar residence to be done safely, the owner must provide a second notice to the tenant not less than thirty (30) days before the owner reasonably expects to begin the work required pursuant to the authorization for temporary residence.

(c) In the event that an agency of the city of New York issues an Order to Vacate the basement or cellar residence and the owner is unable to provide the notice required by this section to the tenant within the times required under subdivisions (a) or (b) of this section, the owner must deliver the notice to the tenant no later than thirty (30) days following the date that the tenant provided the owner with the information listed in §65-05 of this chapter.

(d) The owner must deliver each notice to the tenant, by regular mail, at the address provided by the tenant pursuant to §65-05 of this chapter. In cases where the tenant has provided an email address, pursuant to §65-05 of this chapter, the owner must deliver each notice to the email address provided, in addition to delivery by regular mail.

(e) Notices must be in writing, and must include the following:

(1) the date on which the required work is expected to start, which must not be less than thirty (30) days from the date of the notice;

(2) the identification number of the authorization for temporary residence, as provided by the department of buildings;

(3) a general description of the work that the owner intends to perform in the basement or cellar residence;

(4) a general description of the tenant's right of first return pursuant to §28-507.13.2 of the administrative code of the city of New York, including the requirement that the tenant provide the owner with contact information as set forth in §65-05 of this chapter and the requirement

that the owner will provide notice to the tenant of the expected date of ability to return to the residence as set forth in §65-06 of this chapter; and

(5) the date on which the owner reasonably expects that the alteration work will be completed and the tenant may be able to return to the basement or cellar residence.

(f) In the event of any change to the anticipated return date, the owner must notify the tenant of the new anticipated return date as soon as practicable after the owner becomes aware of the change.

#### §65-04 Tenant Disqualification From Claiming Right of First Return.

Any tenant who, following proper notice of the right of first return, as described in §65-03 of this chapter, does not vacate the basement or cellar residence, and has not obtained written approval from the owner of an extension of time to vacate the basement or cellar residence, will forfeit their right of first return to the basement or cellar residence as provided in §28-507.13.2 of the administrative code of the city of New York.

#### §65-05 Notice to Owner of a Tenant's Contact Information During Renovation of the Basement or Cellar Residence.

(a) A tenant who wishes to preserve their right of first return to a basement or cellar residence must, not later than ninety (90) days after vacating the basement or cellar residence, provide the owner of the basement or cellar residence with the following:

(1) a mailing address, which may be a post-office box, where written notice may be sent to the tenant; and

(2) a phone number or email for the tenant.

(b) A tenant may designate another individual as a designated contact by providing a mailing address and phone number or email for such individual instead of their own. Where a tenant

designates a contact person, the owner will satisfy the requirements to provide notice by providing notice to the designated contact person. In cases where the tenant has provided an email address for the designated contact person, the owner must also deliver each notice required by this chapter to the email address provided, in addition to delivery by regular mail.

(c) It is the responsibility of the tenant to advise the owner of any change to the contact information provided to the owner pursuant to subdivision (a) or subdivision (b) of this section.

§65-06           Owner's Notice to Tenant of Ability to Return to Residence and Tenant's Responsibility to Respond.

(a) Not less than sixty (60) days prior to the date the owner reasonably expects that the work required to bring the basement or cellar residence into compliance with the standards established in Article 507 of chapter 5 of title 28 of the administrative code of the city of New York will be completed, the owner must notify the tenant, in writing, of the anticipated date that the tenant may return to the basement or cellar residence. The notice must be sent to the tenant or the tenant's designated contact person using the contact information provided pursuant to §65-05 of this chapter. In cases where the tenant has provided an email address, the owner must also deliver the notice to the email address provided, in addition to delivery by regular mail.

(b) The notice required by subdivision (a) of this section must include a written lease, including the initial monthly rent amount, to commence upon the tenant's return to the residence.

(c) In order to exercise the right of first return, the tenant must notify the owner of their intent to return to the basement or cellar residence, in writing, either by regular mail or by email, no more than thirty (30) days after receiving the notice described in subdivision (a) of this section. The tenant's return to the owner of a signed copy of a lease will be deemed sufficient notice of the tenant's intent to return.



(d) The failure of the tenant to respond as required by subdivision (c) of this section will be deemed a waiver by the tenant of their right of first return, as described in §28-507.13.2 of the administrative code of the city of New York.

§65-07            Applicability of the Requirements of this Chapter to Multiple Instances of Tenant Relocation

The requirements of this chapter apply separately to each instance in which a tenant is relocated from a basement or cellar residence and shall not exempt the owner or the tenant from the requirements of this chapter in any subsequent occurrence in which the tenant is relocated from the same basement or cellar residence prior to the expiration of the authorization for temporary residence pursuant to §28-507.4.4 of the administrative code of the city of New York.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Rules Relating to Right of Return for Basement or Cellar Residences

**REFERENCE NUMBER:** 2025 RG 083

**RULEMAKING AGENCY:** Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Senior Counsel

Date: October 23, 2025

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS**

**253 BROADWAY, 10<sup>th</sup> FLOOR**

**NEW YORK, NY 10007**

**212-788-1400**

**CERTIFICATION / ANALYSIS**

**PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Rules Relating to Right of Return for Basement or Cellar Residences

**REFERENCE NUMBER:** HPD-105

**RULEMAKING AGENCY:** Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

October 23, 2025

Date