# Legislation Details (With Text)

| | | | | | |
|---|---|---|---|---|---|
| **File #:** | Int 1004-2018 | **Version:** | A | **Name:** | Establish a demonstration program to facilitate the creation and alteration of habitable apartments in basements and cellars of certain one- and two-family dwellings. |
| **Type:** | Introduction | | | **Status:** | Enacted |
| | | | | **In control:** | Committee on Housing and Buildings |
| **On agenda:** | 6/28/2018 | | | | |
| **Enactment date:** | 3/4/2019 | | | **Enactment #:** | 2019/049 |

**Title:** A Local Law to establish a demonstration program to facilitate the creation and alteration of habitable apartments in basements and cellars of certain one- and two-family dwellings

**Sponsors:** Brad S. Lander, Fernando Cabrera, Rafael L. Espinal, Jr., Inez D. Barron, Kalman Yeger, Carlina Rivera, Chaim M. Deutsch, Jumaane D. Williams, Laurie A. Cumbo, Diana I. Ayala, Mathieu Eugene, Ben Kallos, (by request of the Mayor)

**Indexes:** Report Required

**Attachments:** 1. Summary of Int. No. 1004-A, 2. Summary of Int. No. 1004, 3. Int. No. 1004, 4. June 28, 2018 - Stated Meeting Agenda with Links to Files, 5. Hearing Transcript - Stated Meeting 6-28-18, 6. Minutes of the Stated Meeting - June 28, 2018, 7. Committee Report 11/13/18, 8. Hearing Testimony 11/13/18, 9. Hearing Transcript 11/13/18, 10. Committee Report 2/11/19, 11. Hearing Transcript 2/11/19, 12. Proposed Int. No. 1004-A - 2/22/19, 13. February 13, 2019 - Stated Meeting Agenda with Links to Files, 14. Hearing Transcript - Stated Meeting 2-13-19, 15. Minutes of the Stated Meeting - February 13, 2019, 16. Int. No. 1004-A (FINAL), 17. Fiscal Impact Statement, 18. Mayor's Letter, 19. Local Law 49

| Date | Ver. | Action By | Action | Result |
|---|---|---|---|---|
| 6/28/2018 | * | City Council | Introduced by Council | |
| 6/28/2018 | * | City Council | Referred to Comm by Council | |
| 11/13/2018 | * | Committee on Housing and Buildings | Hearing Held by Committee | |
| 11/13/2018 | * | Committee on Housing and Buildings | Laid Over by Committee | |
| 2/11/2019 | * | Committee on Housing and Buildings | Hearing Held by Committee | |
| 2/11/2019 | * | Committee on Housing and Buildings | Amendment Proposed by Comm | |
| 2/11/2019 | * | Committee on Housing and Buildings | Amended by Committee | |
| 2/11/2019 | A | Committee on Housing and Buildings | Approved by Committee | Pass |
| 2/13/2019 | A | City Council | Approved by Council | Pass |
| 2/13/2019 | A | City Council | Sent to Mayor by Council | |
| 3/4/2019 | A | Mayor | Hearing Held by Mayor | |
| 3/4/2019 | A | Mayor | Signed Into Law by Mayor | |
| 3/5/2019 | A | City Council | Recved from Mayor by Council | |

Int. No. 1004-A



powered by Legistar™

By Council Members Lander, Cabrera, Espinal, Barron, Yeger, Rivera, Deutsch, Williams, Cumbo, Ayala, Eugene and Kallos (by request of the Mayor)

A Local Law to establish a demonstration program to facilitate the creation and alteration of habitable apartments in basements and cellars of certain one- and two-family dwellings

Be it enacted by the Council as follows:

Section 1. Definitions. a. Except as indicated in subdivision b of this section, the terms used in this local law have the meanings ascribed to such terms in title 28 of the administrative code of the city of New York.

b. For purposes of this local law, the following terms have the following meanings:

PROGRAM AREA. The term "program area" means Brooklyn community district 5, excluding:

(1) the area of any special enhanced commercial district as described in section 132-11 of the zoning resolution of the city of New York; and

(2) the area of such community district that is generally south of a line drawn across such district that reflects the area of such community district at risk of future flooding,

(i) beginning at the intersection of Van Sinderen Avenue and Linden Boulevard;

(ii) then east along Linden Boulevard to the point of intersection with Williams Avenue;

(iii) then east along Hegeman Avenue to the point of intersection with Malta Street;

(iv) then south along Malta Street to the point of intersection with Linden Boulevard;

(v) then east along Linden Boulevard to the point of intersection with Georgia Avenue;

(vi) then north along Georgia Avenue to the point of intersection with Hegeman Avenue;

(vii) then east along Hegeman Avenue to the point of intersection with Barbey Street:

(viii) then north along Barbey Street to the point of intersection with McClancy Place;

(ix) then west along McClancy Place to the point of intersection with Schenck Avenue;

(x) then north along Schenck Avenue to the point of intersection with New Lots Avenue;

(xi) then east along New Lots Avenue to the point of intersection with Barbey Street;

(xii) then north along Barbey Street to the point of intersection with Dumont Avenue;



powered by Legistar™

(xiii) then east along Dumont Avenue to the point of intersection with Warwick Street;

(xiv) then south along Warwick Street to the point of intersection with New Lots Avenue;

(xv) then east along New Lots Avenue to the point of intersection with Montauk Avenue;

(xvi) then north along Montauk Avenue to the point of intersection with Sutter Avenue;

(xvii) then west along Sutter Avenue to the point of intersection with Atkins Avenue;

(xviii) then north along Atkins Avenue to the point of intersection with Belmont Avenue;

(xix) then east along Belmont Avenue to the point of intersection with Fountain Avenue;

(xx) then south along Fountain Avenue to the point of intersection with Sutter Avenue;

(xxi) then east along Sutter Avenue to the point of intersection with Hemlock Street;

(xxii) then south along Hemlock Street to the point of intersection with Blake Avenue;

(xxiii) then east along Blake Avenue to the point of intersection with Lincoln Avenue;

(xxiv) then north along Lincoln Avenue to the point of intersection with Sutter Avenue; and

(xxv) then east along Sutter Avenue and ending at the intersection of Sutter Avenue with Conduit Boulevard.

1968 BUILDING CODE. The term "1968 building code" has the same definition as such term is defined in section 28-101.5 of the administrative code.

ADMINISTRATIVE CODE. The term "administrative code" means the administrative code of the city of New York.

APARTMENT. The term "apartment" means a dwelling unit providing permanent provisions for both sanitation and kitchen facilities, occupied or arranged to be occupied, by not more than 1 family maintaining a common household.

BASEMENT. The term "basement" means a story partly below the grade plane and having less than one -half 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. Notwithstanding any local law to the contrary, as used herein, a cellar shall be counted as a story in measuring the height of a building.

CITY FINANCIAL ASSISTANCE. The term “city financial assistance” means any loan, grant, tax credit, tax exemption, tax abatement, subsidy, mortgage, debt forgiveness, land conveyance for less than appraised value, land value or other thing of value allocated, conveyed or expended by the city.

PRE-EXISTING VIOLATION. The term “pre-existing violation” means a violation issued by the department of buildings for which a notice of violation, administrative summons, criminal court summons or other process was issued prior to the date of issuance of the initial permit for work pursuant to this local law.

QUALIFIED ENVIRONMENTAL PROFESSIONAL. The term "qualified environmental professional" has the same meaning as in section 24-03 of title 15 of the rules of the city of New York.

§ 2. Scope and applicability. a. There shall be a time-limited demonstration program to facilitate the creation and alteration of habitable apartments in basements and cellars in certain dwellings within the program area in accordance with this local law.

b. Except as otherwise indicated herein, this local law applies to existing buildings within the program area that are:

(1) existing one-family dwellings to be converted to two-family dwellings where any new apartment is entirely on a floor partially below the grade plane; or

(2) existing two-family dwellings with an apartment entirely on a floor partially below the grade plane to be altered to create at least 1 additional sleeping room in such apartment.

§ 3. Financial and technical assistance and outreach. a. The department of housing preservation and development shall assist homeowners who participate in the demonstration program by providing city financial assistance to homeowners who meet the criteria for participation in such program to be established by such department

b. The department of housing preservation and development shall also provide technical assistance to homeowners who participate in the demonstration program. Such assistance may be provided by the department or a not-for-profit corporation identified by the department as capable of providing such assistance.

c. The department of housing preservation and development shall also conduct public education and outreach regarding the demonstration program to eligible homeowners in the program area. Such public education and outreach may be provided directly by the department or by a qualified not-for-profit corporation selected by the department.

§ 4. Apartments in basements. Notwithstanding any inconsistent provisions of section 27-751 of the 1968 building code, paragraphs 1 and 3 of subdivision c of section 27-2087 of the administrative code, section 1208.2 of the New York city building code or of applicable laws in existence prior to December 6, 1968 (i) a habitable apartment with a clear ceiling height in all habitable rooms of 7 feet and 6 inches, which may be lowered to 7 feet at the request of the department of housing preservation and development subject to approval by the fire department for cellars or basements identified by the department as otherwise eligible for the demonstration program, with projections as allowed by exception 1 of section 1208.2 of the New York city building code but in no event with such projections lower than 7 feet, or (ii) a habitable apartment in a fully detached two-family dwelling with all exterior walls at least 3 feet from any lot line and with a minimum clear ceiling height in all habitable rooms of 7 feet including projections, may be created or altered subject to the conditions set forth in this local law, including compliance with the construction standards in the specific provisions of law cited in this section even if not otherwise required by such law or any other law:

1. General. Such apartment must comply with provisions of law applicable to an apartment in such dwelling not located in the cellar or basement except that where there is a conflict with a provision of this section the provision of this section shall apply.

2. Sprinklers. Such apartment must have an automatic sprinkler system that meets the construction requirements of section 903 of the New York city building code and section thirteen of this local law.

3. Emergency escape and rescue openings. All sleeping rooms in such apartment must have emergency escape and rescue openings meeting the construction requirements of section 1029 of the New York city building code and section 1025 of the New York city fire code.

4. Smoke and carbon monoxide alarms. Such apartment must contain smoke and carbon monoxide alarms meeting the requirements of chapter 9 of the New York city building code.

5. Fire separation. Such apartment must have all of the following fire separations:

(a) Boilers and furnaces. All boilers and furnaces in such apartment must be enclosed and separated from the rest of the building by noncombustible construction having at least a one-hour fire-resistance rating meeting the requirements of section 703 of the New York city building code.

(b) Egress stairs. All stairways providing required means of egress in such apartment must be separated from the rest of the apartment and the existing above grade apartment by noncombustible construction having at least a one-hour fire-resistance rating meeting the requirements of section 1022 of the New York city building code.

(c) Existing above grade apartment. Such apartment must be separated from the existing above grade apartment by noncombustible construction having at least a one-hour fire-resistance rating meeting the requirements of section 420 of the New York city building code.

6. Means of egress. Such apartment must be provided with a means of egress directly to the outdoors complying with the construction standards of chapter 10 of the New York city building code, including access to a public way. The exterior door shall be provided with landings on both the interior and exterior sides in accordance with Section 1008.1.6 of the New York city building code.

7. Windows.

(a) Each habitable room in such apartment must have at least 1 window with 6 square feet of openable area to provide natural ventilation as required pursuant to section 1203.4.1.2.1 of the New York city building code and additional windows, including glazed area in doors providing light directly into such room,

cumulatively with the minimum net glazed area to provide natural light as required pursuant to section 1205.2.1 of the New York city building code.

(b) Portions of windows below grade plane may be included in calculations of such minimum net glazed area required to provide natural light if:

(1) The window head is located between 0 and 6 inches below the lowest permitted projection below ceiling height;

(2) Such portions are surrounded by a window well or similar open area that:

(A) is at least 6 inches deeper than the bottom of the window;

(B) is at least 3 times as wide, in the direction perpendicular to the window, as the depth below grade plane of such window portions;

(C) is at least twice as wide, in the direction parallel to the window, including 6 inches wider on each side, as the depth below grade plane of such window portions; and

(D) is provided with a drain to prevent any ponding of storm water, in accordance with chapter 11 of the New York city plumbing code.

(3) No cantilever, permanent shading structure, or other obstruction is less than 3 feet above the window head or protrudes more than 1 foot in the direction perpendicular to the window; and

(4) No other encroachment or obstruction is within the window well, except as otherwise required pursuant to the New York city building code. Supplemental steps that provide access to the required yard, court, open space or street may also be permitted. Where provided, such steps shall be dimensioned in accordance with section 1009.4 of the New York city building code and shall include a landing at the bottom of such window well in accordance with section 1009.5 of the New York city building code.

§ 5. Apartments in cellars. Notwithstanding any inconsistent provisions of section 502.1 of the New York city building code, sections 27-232 and 27-2004 of the administrative code, subdivision a of section 27-2087 of the administrative code or of applicable laws in existence prior to December 6, 1968, a habitable

apartment may be created in a cellar if such apartment complies with section four of this local law and has a second, remote means of egress directly to the outdoors complying with the construction standards of chapter 10 of the New York city building code, including access to the public way, even if compliance with such standards is not otherwise required by such chapter or any other law. Such means of egress shall be provided with landings on both the interior and exterior sides of the door in accordance with section 1008.1.6 of the New York city building code. Such cellar must have at least 2 feet of height above grade plane. Such cellar shall be counted as a story for the purposes of the New York city housing maintenance code, the 1968 building code, and the New York city construction codes or applicable laws in existence prior to December 6, 1968 and the space in such apartment shall be counted as floor area in accordance with section 12-10 of the zoning resolution of the city of New York. Occupancy in such a cellar shall be considered occupancy in a basement for the purposes of subdivision c of section 27-2087 of the administrative code.

§ 6. Deferral or waiver of penalties by the department of buildings. a. Notwithstanding the provisions of sections 28-213.1.1, 28-213.1.2, 28-213.3, and 28-219.1 of the administrative code, civil penalties for the department of buildings violations that would otherwise be required to be paid by a homeowner participating in the demonstration program before the issuance of a permit may be deferred or waived pursuant to a determination by the department that such penalties would preclude such homeowner's participation in the demonstration program in connection with the following:

1. the issuance of a permit to create or alter an apartment in a basement or cellar pursuant to this local law; or

2. the issuance of a permit after the effective date of this local law to a building in the program area to create either a new apartment entirely on a floor partially below the grade plane or at least 1 additional sleeping room in an existing apartment entirely on a floor partially below the grade plane.

b. Notwithstanding the provisions of subdivision a of this section, deferred amounts shall continue to be due and owing to the department of buildings and payment thereafter may be enforced in accordance with the

New York city construction codes.

§ 7. Certificates of occupancy pursuant to this local law. a. At the option of the owner and notwithstanding any inconsistent provision of article 118 of chapter 1 of the administrative code or of any other law, where an apartment in a basement is created or altered pursuant to section four of this local law or an apartment in a cellar is created pursuant to sections four and five of this local law (i) a partial certificate of occupancy may be issued limited to the new or altered apartment in the basement of a building or the new apartment in the cellar of a building if such building was erected prior to January 1, 1938 and does not have and is not otherwise required to have a certificate of occupancy, or (ii) for a building with an existing certificate of occupancy, an amended certificate of occupancy may be issued limited to the new or altered apartment in the basement of such building or the new apartment in the cellar of such building, subject to the following conditions:

1. Upon inspection, the apartment being created or altered conforms substantially to the approved construction documents, complies with the New York city construction codes and other applicable laws, except as specifically provided in this local law, and is safe for occupancy;

2. Upon inspection, the required means of egress from all floors of the building comply with the New York city construction codes and other applicable laws;

3. An amended or partial certificate of occupancy or a temporary certificate of occupancy may be issued where there are open pre-existing violations in the building. All such open violations, including those specified in the exceptions, shall remain administratively open and the department of buildings may thereafter continue to enforce against such violations until, in accordance with applicable provisions of the New York city construction codes, outstanding penalties are paid and, if applicable, certificates of correction are approved by the department of buildings.

Exceptions:

1. Where a pre-existing violation in parts of the building outside of the new or altered apartment is

classified as "immediately hazardous," the condition that gave rise to the issuance of such immediately hazardous violation must be removed or remedied in accordance with the New York city construction codes and to the satisfaction of the commissioner of buildings and evidence of such removal or remediation in the form of plans, drawings, photos, affidavits or a combination thereof, with the signature and seal of a registered design professional or, if applicable, a licensee of the department of buildings in the applicable trade must be submitted to the department prior to the issuance of such amended or partial certificate of occupancy or a temporary certificate of occupancy.

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

4. Notwithstanding any inconsistent provision of the New York city construction codes, including sections 28-118.14 and 28-219.1, a certificate of occupancy or a temporary certificate of occupancy may be issued for a basement or cellar apartment created or altered pursuant to this local law where there are outstanding fines and civil penalties for pre-existing violations provided that such fines and civil penalties shall remain due and owing, and the department may thereafter enforce and collect such amounts in accordance with the New York city construction codes.

b. The department of buildings may refuse to issue a certificate of occupancy or a temporary certificate of occupancy pursuant to this section if there are outstanding department of buildings violations, penalties or open permits not signed off related to work performed under permits issued pursuant to this local law until such penalties have been paid, such violations have been corrected, including filing certificates of correction, if applicable, and permits have been closed, as required by the New York city construction codes.

c. 1. Every certificate of occupancy or temporary certificate of occupancy issued for a basement or cellar apartment created or altered pursuant to this local law must contain a reference to this local law.

2. A partial or amended certificate of occupancy or a temporary certificate of occupancy issued pursuant to subdivision a of this section must contain a note that such certificate of occupancy does not certify

compliance with applicable laws with respect to parts of the building outside of the apartment created or altered pursuant to this local law.

§ 8. Waiver of application, permit and inspection fees by department of buildings. The commissioner of buildings shall waive all fees, which would otherwise be required to be paid to the department of buildings by title 28 of the administrative code, the electrical code or the rules of the department of buildings, in connection with applications, permits and inspections for work in the program area related to the creation or alteration of habitable apartments in basements and cellars where such apartments are officially subsidized under a program administered by the department of housing preservation and development.

§ 9. Waiver of fees by other agencies. The department of environmental protection shall waive all fees which would otherwise be required to be paid arising out of the creation or alteration of habitable apartments in basements and cellars where such apartments are officially subsidized under a program administered by the department of housing preservation and development. Any other agency may promulgate rules to waive fees that would otherwise be required to be paid arising out of the creation or alteration of such apartments where such apartments are officially subsidized under a program administered by the department of housing preservation and development, and where such agency determines that such waiver would facilitate such program.

§ 10. Time limit for filing of construction documents. Completed construction documents pursuant to this local law shall be filed with the department of buildings within 18 months from the effective date of this local law subject to the provisions of articles 104 and 105 of chapter 1 of title 28 of the administrative code of the city of New York pertaining to time limitation of applications and expiration or permits.

§ 11. Radon levels. No certificate of occupancy or temporary certificate of occupancy may be issued for an apartment in a basement or cellar created or altered pursuant to sections four or five of this local law unless a certification is submitted to the department of buildings that the level of radon in such apartment after the completion of construction is tested in accordance with, and meets the standards set forth in, rules promulgated

by the department of health and mental hygiene, which shall require the level of radon in such an apartment be below 2 picocuries per liter of air.

§ 12. Vapor barriers and soil excavation. a. No certificate of occupancy or temporary certificate of occupancy shall be issued for an apartment in a basement or cellar created or altered pursuant to sections four or five of this local law unless, in accordance with rules promulgated by the department of environmental protection, either:

(i) a qualified environmental professional submits a certification to the department of buildings that a vapor barrier was applied prior to the installation of flooring; or.

(ii) in cases where such creation or alteration is limited exclusively to the addition of a habitable sleeping room in an existing lawful basement apartment, a qualified environmental professional submits a certification to the department of buildings that indoor air and vapor sampling was conducted throughout the apartment in accordance with the rules of the department of environmental protection, the results of which qualify the apartment for an exemption from the requirement of a vapor barrier in accordance with such rules.

b. No certificate of occupancy or temporary certificate of occupancy shall be issued for an apartment in a basement or cellar created or altered pursuant to sections four or five of this local law where such creation or alteration includes excavation within or to expand an existing building footprint for the purpose of increasing the ceiling height of such apartment, unless the department of environmental protection furnishes a notice to the department of buildings stating that the department of environmental protection has determined that appropriate measures to protect public health and the environment for the allowable use have been undertaken in accordance with rules promulgated by such department, and that such department does not object to the issuance of such certificate of occupancy or temporary certificate of occupancy.

§ 13. Compliance with fire code sprinkler requirements for altered buildings on substandard width streets. Any habitable apartment in a basement or cellar created or altered pursuant to sections four and five of this local law shall be deemed to be an alteration subject to the exception set forth in subdivision 5.1 of section

501.4.3.1 of the New York city fire code.

§ 14. Construction. a. Except as specifically provided in this local law, nothing in this local law is intended to grant authorization for any work to be done in any manner in violation of the provisions of the New York city construction codes, or any other law or rule.

b. Nothing in this local law is intended to effect, alter or amend any provision of the zoning resolution of the city of New York.

§ 15. Rules. The department of buildings, the fire department, the department of environmental protection, the department of housing preservation and development and the department of health and mental hygiene may adopt any rules necessary to carry out the provisions of this local law.

§ 16. Report. No later than 48 months after the date this local law takes effect, an agency appointed by the mayor shall submit to the mayor and the speaker of the city council a report summarizing the impact of the demonstration program established by section two of this local law.

§ 17. This local law takes effect 120 days after it becomes law, provided that the provisions of paragraph 2 of subdivision a of section six of this local law and sections eight and nine of this local law shall not apply to any building in the program area for which a complete application for construction document approval is filed more than 18 months after the date this local law takes effect.

CCF/APB
LS 3106, 3817, 6549
2/5/19 10:36 PM