Int. No. 1127-A

By Council Members Sanchez, Louis, Farías 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:

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

ARTICLE 507
PILOT PROGRAM FOR ELIGIBLE BASEMENT AND CELLAR RESIDENCES

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

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

APPLICATION. The term "application" means an application for authorization for temporary residence pursuant to this article.

AUTHORIZATION FOR TEMPORARY RESIDENCE. The term "authorization for temporary" residence means an authorization issued by the department pursuant to section 28-507.4 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.

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

FAMILY. The term "family" has the same meaning as defined in the multiple dwelling law, except that as used

in this article, family shall not include any boarders, roomers, or lodgers.

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

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

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 a program established pursuant to this article to facilitate the legalization of eligible basement and cellar residences within the program area 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 an eligible basement or cellar residence is rented.

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

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

§ 28-507.4 Authorization for temporary residence. The department may issue an authorization for temporary residence for the use of an eligible basement or cellar residence in the program area as an apartment prior to the issuance of a certificate of occupancy or temporary certificate of occupancy in accordance with this section. The owner of an eligible basement or cellar residence may submit an application for an authorization for temporary residence to the department in a form and manner determined by the department. An application for an authorization for temporary residence may not be used as the basis for an enforcement action for illegal occupancy of such residence, provided that nothing in this article shall be construed to prevent the issuance of a vacate order for an imminently hazardous or otherwise unsafe condition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 28-507.4.4 Expiration of authorization for temporary residence. An authorization for temporary residence expires 10 years after the date of its issuance. Prior to such expiration date, the owner must obtain a certificate of occupancy or temporary certificate of occupancy for such residence in accordance with

section 28-507.6. An owner must comply with the conditions set forth in section 28-507.4.5 during such 10-year period. The issuance of an authorization for temporary residence allows occupancy of the eligible basement or cellar residence prior to the issuance of a certificate of occupancy or temporary certificate of occupancy.

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

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

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

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

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

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

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

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

2. Is tested and meets the standard set forth in rules promulgated by the department of health and mental hygiene in consultation with the mayor's office of environmental remediation, in accordance with sections U202.9 and U202.10 of appendix U of the New York city building code.

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

§ 28-507.4.6 Additional safety or construction requirements. An eligible basement or cellar residence must be in compliance with any additional safety or construction requirements established pursuant to rules

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promulgated by the department in consultation with the fire department and the office of emergency management.

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

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

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

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

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

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

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

3. A partial or amended 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 below, shall remain administratively open and the department may thereafter continue to enforce against such violations until, in accordance with applicable provisions of this code, outstanding penalties are paid and, if applicable, certificates of correction are approved by the department.

Exceptions:

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

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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 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 article.

3. Notwithstanding any inconsistent provision of this code, 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 article where there are outstanding fines and civil penalties for pre-existing violations, provided that such fines and civil penalties may remain due and owing, and the department may thereafter enforce and collect such amounts in accordance with this code, unless such department determines that such fines and civil penalties should be waived in the interest of the program. When determining whether to waive such fines and civil penalties, the department may consider factors including the number and pecuniary amount of fines and civil penalties owed, the financial need of the owner, and the likely effect of such fines and civil penalties on compliance with this code.

§ 28-507.6.2 Refusal to issue a certificate of occupancy or temporary certificate of occupancy. The department may refuse to issue a certificate of occupancy or a temporary certificate of occupancy pursuant to this section if there are outstanding violations issued by the department, penalties or open permits not signed off related for work performed under permits issued pursuant to this article 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 this code.

§ 28-507.6.3 Certificates of occupancy to reference this article. Every certificate of occupancy or temporary certificate of occupancy issued for a basement or cellar apartment in a one- or two-family home created or altered pursuant to this article must contain a reference to this article. A partial or amended certificate of occupancy or a temporary certificate of occupancy issued pursuant to section 28-507.6 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 article.

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

§ 28-507.6.5 Certificate of occupancy for a multiple dwelling. Except as may be provided in the rules of the department, in consultation with the fire department, the office of emergency management, the department of housing preservation and development, the department environmental protection, and the department health and mental hygiene, where a basement or cellar in a multiple dwelling has been issued an authorization for temporary residence in accordance with section 28-507.4, the department shall issue a certificate of occupancy, temporary certificate of occupancy, or amended certificate of occupancy for such

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dwelling in accordance with the requirements of this code for Group R-2 occupancy.

§ 28-507.7 Waiver of application, permit, and inspection fees by the department. The commissioner shall waive all fees, which would otherwise be required to be paid to the department by this title, the New York city electrical code, or the rules of the department, 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 the program administered by the department of housing preservation and development pursuant to section 28-507.12.

§ 28-507.8 Waiver of fees by other agencies. The department of environmental protection shall waive all fees which would otherwise be required to be paid to such department arising out of the creation or alteration of habitable apartments in basements and cellars where such apartments are officially subsidized under the program administered by the department of housing preservation and development pursuant to section 28-507.12. 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 the program administered by the department of housing preservation and development pursuant to section 28-507.12, and where such agency determines that such waiver would facilitate such program.

§ 28-507.9 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 section 28-507.3 shall be deemed to be an alteration subject to exception 5.1 of section 501.4.3.1 of the New York city fire code.

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

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

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

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

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

1. Issue a vacate order if the basement or cellar is occupied.

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2. Reinstate any prosecution for illegal occupancy that was deferred or waived pursuant to this article.

3. Reinstate and commence collection of any penalties that were deferred or waived pursuant to sections 28-507.5 or 28-507.6, including interest that would have accrued from the time of such deferral or waiver.

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

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

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

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

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

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

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

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