



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to indoor asthma allergen hazards in residential dwellings and pest management, and to repeal section 27-2018 of the administrative code of the city of New York, relating to rodent and insect eradication and extermination

Be it enacted by the Council as follows:

Section 1. Statement of findings and purposes. According to the United States environmental protection agency, Americans spend an average of 90 percent of each 24 hour period indoors. The Council finds that poor indoor air quality resulting from indoor asthma allergen hazards is a serious threat to the approximately one million New Yorkers, including around 177,000 children, diagnosed with asthma.

Asthma is a leading cause of school absenteeism among children and the most common cause of hospitalization for children fourteen years and younger. Children living in low income areas are four times more likely to be hospitalized for asthma than children living in high income neighborhoods. Exposure to aeroallergens has been identified as a major environmental risk factor in the development of asthma in children, as an important determinant of asthma severity in children, and possibly as a key variable in accounting for the observed increase in the prevalence and severity of asthma in children observed over the past two decades. The Council finds that major indoor allergens, which often trigger asthma, include infestation of pests such as cockroaches, rats, and mice. According to the Department of Health and Mental Hygiene, residents of New York City with pest infestations in their homes are one and a half to two times more likely to suffer from

asthma and tend to experience more severe symptoms.

The Council also finds that another major indoor allergen is fungi, commonly known as mold, many species of which can thrive in a residential indoor environment under certain conditions and produce potent mycotoxins, which are fungal metabolites that have been identified as toxic agents. The inhalation of mycotoxins can cause respiratory difficulties, cause or exacerbate allergies, particularly in persons who have a history of allergic diseases, and aggravate asthma. Fungal exposure is not only associated with new onset asthma and exacerbated asthma, but also adversely affects persons with other lung problems such as COPD (chronic obstructive pulmonary disease) and lung cancer. In addition, unsafe remediation of indoor mold hazards can result in increased risks to occupants and workers alike, including the development of organic dust toxic syndrome or hypersensitivity pneumonitis.

The Council also finds that the contamination of a dwelling with mold hazards and pest infestation can be caused by a variety of building maintenance problems, generally related to water infiltration, moisture control, and pest entryways. The response to these hazards requires proper assessment of the underlying cause of fungal growth and the prompt and safe remediation of contaminated building materials and ventilation systems, and elimination of pest entryways. Mold complaints to the Department of Health and Mental Hygiene have increased dramatically over recent years. Moreover, many of the 70,000-plus New York City homes flooded by Superstorm Sandy in 2012 developed mold infestations, and due to slow-moving repair efforts after the storm, extensive mold was often left unabated and the contamination spread. The problem was also frequently exacerbated by hasty and ineffective remediation attempts by owners.

The Council further notes that the New York City Housing Authority, pursuant to a class action settlement in a federal lawsuit captioned Baez v. New York City Housing Authority, has committed to implementing extensive protocols in public housing for the prevention, detection, and prompt and safe remediation of mold contamination and the underlying defects that may lead to such contamination.

The Council further finds that the response by private building owners and the Department to indoor

allergen hazards has not been consistent, nor guided by appropriate standards. While it is intended that the Department shall have the primary role of enforcing violations of the housing maintenance code concerning pest infestation and mold, it is also intended that the Department of Health and Mental Hygiene shall have a significant role in the promulgation of rules and in the development of necessary procedures pursuant to this article.

§ 2. Section 27-2018 of subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is REPEALED, and section 27-2018.1 thereof is renumbered as section 27-2018.

§ 3. The title of article 4 of subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended to read as follows:

ARTICLE 4

CONTROL OF PESTS AND OTHER ASTHMA ALLERGEN TRIGGERS

§27-2017 Definitions.

§27-2017.1 Owners' responsibility to remediate.

§27-2017.2 Owners' responsibility to notify occupants and to investigate.

§27-2017.3 Violation for mold.

§27-2017.4 Violation for pests.

§27-2017.5 Violation for asthma triggers in a dwelling unit upon turnover.

§27-2017.6 Department inspections.

§27-2017.7 Department implementation and enforcement.

§27-2017.8 Integrated pest management practices

§27-2017.9 Work practices.

§27-2017.10 Department removal of violations placed by the department of health and mental hygiene.

§27-2017.11 Reporting.

§27-2017.12 Waiver of benefit void.

§ 27-2018 Notice of bedbug infestation history

§ 27-2019 Elimination of harborages

§ 4. Section 27-2017 of subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended to read as follows:

§27-2017 Definitions. When used in this article:

[(a) Eradication means the elimination of rodents or insects and other pests from any premises through the use of traps, poisons, fumigation or any other method of extermination.

(b) Insects and other pests include the members of class insecta, including houseflies, lice, bees, cockroaches, moths, silverfish, beetles, bedbugs, ants, termites, hornets, mosquitoes and wasps, and such members of the phylum arthropoda as spiders, mites, ticks, centipedes and wood lice.]

Common area. The term “common area” means a portion of a dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling, as well as commonly used areas such as a laundry room.

[(c)] Harborage. The term “harborage” [Harborage] means any condition which provides shelter or protection for [rodents or insects and other] pests

Indoor allergen hazard. The term “indoor allergen hazard” means any indoor infestation of pests or conditions conducive to pest life, or an indoor mold hazard.

Indoor mold hazard. The term “indoor mold hazard” means any condition of mold growth on an indoor surface, building structure or ventilation system, including mold that is within wall cavities, that is likely to cause harm to a person or that has been cited as a violation by the department.

Integrated pest management. The term “integrated pest management” means ongoing prevention, monitoring and pest control activities and the elimination of pests from any building, lot, or dwelling. This

includes, but is not limited to, the elimination of conditions conducive to pests and the use of traps, and, when necessary, the use of pesticides.

Pest. The term “pest” means any unwanted member of the Class Insecta, including, but not limited to mosquitoes, or of the Order Rodentia, including but not limited to the Norway rat, and any other unwanted plant, animal or fungal life that is a pest because it is destructive, annoying or a nuisance.

Remediation or remediate. The term “remediation” or “remediate” means the eradication of pests in accordance with section 27-2017.8 of this article and the eradication of indoor mold hazards in accordance with rules promulgated pursuant to section 27-2017.9 of this article

Underlying defect. The term “underlying defect” means a condition that causes an indoor mold hazard, such as a water leak or water infiltration from plumbing or defective masonry pointing or other moisture condition, or an infestation of pests, including holes or entryway paths for pests.

Visible mold. The term “visible mold” means mold that is readily identifiable by visual inspection, including mold that is behind furniture or other interior obstructions.

§ 5. Subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended to add sections 27-2017.1 through 27-2017.12, to read as follows:

§27-2017.1 Owners' responsibility to remediate. The existence of an indoor allergen hazard in any dwelling unit in a multiple dwelling is hereby declared to constitute a condition dangerous to life and health. An owner of a dwelling shall keep the premises free from pests and other indoor allergen hazards and from any condition conducive to indoor allergen hazards, and shall take action to prevent the reasonably foreseeable occurrence of such a conditions and shall expeditiously remediate such conditions and any underlying defect, when such underlying defect exists, consistent with section 27-2017.8 and the rules promulgated pursuant to section 27-2017.9 of this article.

§27-2017.2 Owners' responsibility to notify occupants and to investigate. a. The owner of a multiple

dwelling shall cause an investigation to be made for indoor allergen hazards in all occupied dwelling units and in common areas.

b. 1. Investigations shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause an indoor allergen hazard, or an occupant makes a complaint concerning a condition that is likely to cause an indoor allergen hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause an indoor allergen hazard.

2. No occupant of a dwelling unit shall refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of indoor allergen hazards.

c. All leases offered to tenants or prospective tenants in such multiple dwellings must contain a notice, conspicuously set forth therein, which advises tenants of the obligations of the owner and tenant as set forth in this section. Such notice must be in a manner approved by the department, the content of which shall, at a minimum, be in English and in the covered languages set forth in section 8-1002 of the code. The owner of such multiple dwelling shall provide the occupant of such dwelling unit with the pamphlet developed by the department of health and mental hygiene pursuant to section 17-199.7 of the code. Such pamphlet shall be made available in English and in the covered languages set forth in section 8-1002 of the code.

§27- 2017.3. Violation for mold a. The presence of mold in any room in a dwelling unit in a multiple dwelling shall constitute an indoor mold hazard violation as provided in this section, except when such mold is present on tile or grout:

(1) The presence of mold in an amount measuring in total less than thirty square feet in a room within a dwelling unit shall constitute a class B violation.

(2) The presence of mold in an amount measuring in total greater than or equal to thirty square feet in a room within a dwelling unit, shall constitute a class C violation.

(3) In addition, the presence of mold as provided in subparagraphs (i) or (ii) of this paragraph shall constitute a class C violation if:

(i) There is an existing class B indoor mold hazard violation for which the certification period has expired and the violation has not been certified as corrected within the certification time period, and the department has reinspected the unit within seventy days of the certification date of the class B indoor mold hazard violation and has found that the mold condition that was the cause of the class B indoor mold hazard violation continues to be present in the same room in the dwelling unit; or

(ii) The owner has submitted a false certification of correction of a class B indoor mold hazard violation.

b. The presence of visible mold in an amount measuring greater than or equal to thirty square feet in any one room or any one level of a hallway of a common area or fifty square feet in the aggregate shall constitute a class B an indoor mold hazard violation of this code as provided in this section. The presence of visible mold in an amount measuring less than thirty square feet in any one room or any one level of a hallway of a common area or fifty square feet in the aggregate shall constitute shall constitute a class A indoor mold hazard violation of this code as provided in this section

c. (1) The date for correction of a class B indoor mold hazard violation shall be as set forth in subdivision c of section 27-2115 of this code.

(2) The date for correction of a class C indoor mold hazard violation shall be twenty-one days after service of the notice of violation as provided on such notice.

(3) The department may postpone the date by which a class C indoor mold hazard violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as may be necessary to

make the required repair, provided, however, that where a class C indoor mold hazard violation has been issued as a result of a reinspection of a class B indoor mold hazard violation that remains uncorrected, no postponement shall be granted. Such postponement shall not exceed fourteen days from the date of correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to correct the violation within the time set for the postponement.

§27- 2017.4. Violation for pests a. The presence of pests in any room in a dwelling unit in a multiple dwelling or a common area shall constitute a Class C violation of this code as provided in this section.

b. When correcting a pest violation issued pursuant to this section, an owner shall comply with the work practices set out in subdivision a of section 27-2017.8 of this article.

§27-2017.5 Violation for asthma triggers in a dwelling unit upon turnover. a. Prior to the reoccupancy of any vacant dwelling unit in a multiple dwelling, or a vacant dwelling unit in a private dwelling where such dwelling unit is to be occupied by persons other than the owner or the owner's family, the owner shall, within such dwelling unit, have the responsibility to remediate all visible mold and pest infestations, and any underlying defects in such dwelling unit and to thoroughly clean and vacuum all carpeting and furniture provided by such owner to incoming occupants, consistent with the work practices set out in subdivision a of section 27-2017.8 and the rules promulgated pursuant to section 27-2017.9 of this article

b. Any owner who fails to comply with the provisions of subdivision a of this section, or the rules of the department shall be liable for a class C immediately hazardous violation.

§27-2017.6 Department inspections. a. When entering a dwelling unit in a multiple dwelling for the purpose of investigating the existence of any violation of the code, the department shall make diligent efforts to ascertain whether there are pests or visible mold in the dwelling unit and shall inquire of the occupant whether pests or mold are present in the dwelling unit.

b. In any dwelling unit in a multiple dwelling the department shall conduct an inspection pursuant to subdivision a of this section no later than twenty days after the department's receipt of a complaint describing a

condition that would constitute a violation under sections 27-2017.3 or 27-2017.4 of this article. Where the department attempts to perform an inspection of a dwelling unit within the time period required by this subdivision but is unable to gain access, the department shall be required to make a second attempt to gain access to such dwelling unit within five days of such prior attempt. If the department is unable to gain access to that dwelling unit during this additional time period, the department shall provide written notice to the occupant of such dwelling unit that no further attempts at access shall be made unless a new complaint is submitted.

c. For each room where visible mold or an indoor mold hazard is found, the department shall also inspect for evidence of an underlying defect and shall indicate on the inspection report the location with the room of any visible mold, the condition of the subsurface below it, and the location of any underlying defect.

d. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days.

e. The pamphlet developed by the department of health and mental hygiene pursuant to section 17-199.7 of the code shall be left at the premises of the dwelling unit at the time of an inspection made by the department pursuant to this section. Such pamphlet shall be delivered by the department in conjunction with all notices of violation issued pursuant to paragraph one of subdivision o of section 27-2115 of the code. Failure to include such pamphlet with such notices of violation shall not render null and void the service of such notices of violation. Such pamphlet shall also be made available to any member of the public upon request.

f. Notwithstanding any other provision of law, failure by the department or the department of health and mental hygiene to comply with any time period provided in this article or section 27-2115 of this chapter relating to responsibilities of the department and the department of health and mental hygiene, shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article.

§27-2017.7 Department implementation and enforcement. a. The department shall provide appropriate training for indoor allergen inspection and for supervisory personnel. The department shall provide for the continuing education of inspection and supervisory personnel regarding changes in applicable federal, state, and local laws and guidance documents and require that each such individual has successfully demonstrated knowledge of those materials and the requirements of this article.

b. The department, with the approval of the department of health and mental hygiene, shall promulgate a comprehensive written procedure to guide department personnel in implementing and enforcing this article. Such procedures shall include a methodology and a form to be used by department personnel when conducting an inspection to carry out and record an inspection pursuant to section 27-2017.6 of this article.

c. The department shall promulgate rules for the implementation and enforcement of this article and to effect compliance with all applicable provisions of this article, rules promulgated thereunder, and all applicable city, state or federal laws, rules or regulations. Such rules shall be subject to the approval of the department of health and mental hygiene prior to their promulgation and shall include, but not be limited to, establishing:

1. Procedures by which an owner may apply to the department to postpone the date by which a violation shall be corrected pursuant to section 27-2017.3 or 27-2017.4 of this article; and

2. Procedures to implement and to enforce compliance with paragraph 2 of subdivision o of section 27-2115 of the code, which shall include, but not be limited to, the requirement that an owner certify to:

(i) the correction of a violation of this article of the code,

(ii) compliance with section 27-2017.8 of this article; and

(iii) compliance with the rules promulgated by the department pursuant to section 27-2017.9 of this article.

§27- 2017.8 Integrated pest management practices. a. When any premises are subject to infestation by pests, the owner shall use integrated pest management measures and eliminate conditions conducive to pests, and comply with following work practices:

(1) inspect for, and physically remove pest nests, waste, and other debris by High-Efficiency Particulate Air (HEPA) vacuuming, washing surfaces, or otherwise collecting and discarding such debris;

(2) eliminate points of entry and passage for pests by repairing and sealing any holes, gaps or cracks in walls, ceilings, floors, molding, base boards, around pipes and conduits, or around and within cabinets by using sealants, plaster, cement, wood, escutcheon plates, or other durable material. Attach door sweeps to any door leading to a hallway, basement, or outside the building to reduce gaps to no more than one-quarter inch; and

(3) eliminate sources of water for pests by repairing drains, faucets, and other plumbing materials that accumulate water or leak. Remove and replace saturated materials in interior walls.

(4) The use of pesticides shall not substitute for pest management measures described in this section. Any pesticide applied must be applied by a pest professional licensed by New York State Department of Environmental Conservation (DEC).

b. An owner's certification of correction of a pest violation that was issued pursuant to section 27-2017.4 of this article shall include an affidavit affirming that the work practices required pursuant to subdivision a of this section were properly performed. The department may also by rule require additional documentation for certification of correction of a pest violation.

§27-2017.9. Work practices. a. The department shall promulgate rules, with the approval of the department of health and mental hygiene, establishing work practices when correcting indoor mold hazards, and underlying defects including violations cited by the department pursuant to this article. The department shall from time-to-time review and revise such rules based upon, among other things, the latest scientific data and developing federal and industry standards.

b. The work practices promulgated pursuant to subdivision a of this section shall include the requirement that when correcting an indoor mold hazard violation issued pursuant to this article, or when correcting an indoor mold hazard identified as a result of an inspection by an owner, such owner shall comply with the following work practices:

(1) investigate and correct any moisture or leak conditions that are causing or may cause mold violations;

(2) remove or securely cover with plastic sheeting any furniture or other items in the work area that cannot be removed;

(3) minimize the dispersion of dust and debris from the work area to other parts of the dwelling unit through methods such as: sealing ventilation ducts/grills and other openings in the work area with plastic sheeting; isolating the work area with plastic sheeting and covering egress pathways; cleaning or gently misting surfaces with a dilute soap or detergent solution prior to removal; the use of HEPA vacuum-shrouded tools or a vacuum equipped with a HEPA filter at the point of dust generation;

(4) clean mold with soap or detergent and water;

(5) remove and discard materials that cannot be cleaned properly;

(6) properly remove and discard plastic sheeting, cleaning implements, and contaminated materials in sealed, heavy weight plastic bags; and

(7) clean any remaining visible dust from the work area using wet cleaning methods or HEPA vacuuming.

c. An owner's certification of correction of an indoor mold hazard violation issued pursuant to this article shall include an affidavit affirming that the work practices required pursuant to this section were properly performed. The department may also by rule require additional documentation for certification of correction of an indoor mold hazard violation.

§27-2017.10 Department removal of violations placed by the department of health and mental hygiene. Where the owner of the dwelling or relevant dwelling unit within such dwelling fails to comply with an order of the department of health and mental hygiene to correct a violation placed by the department of health and mental hygiene pursuant to section 17-199.6 of the code, the department of health and amental hygiene shall certify such conditions to the department of housing preservation and development within ten days after the

date set for correction in said order. The department of housing preservation and development may take such enforcement action as is necessary, including performing or arranging for the performance of work to correct the certified condition..

§27-2017.11 Reporting. a. Within four months after the close of the first fiscal year after which this the local law adding this article takes effect and for every fiscal year thereafter, the commissioner shall provide to the council a written report on the department's implementation of this article during the preceding fiscal year. Such report shall include, at a minimum, an analysis of the department's program, a detailed statement of revenue and expenditures and a statistical section designed to provide a detailed explanation of the department's enforcement including, but not limited to, the following:

1. The number of complaints for visible mold, indoor mold hazards, and pests in dwelling units, disaggregated by city or non-city ownership of the building which is the subject of the complaint;

2. The number of inspections by the department pursuant to this article, disaggregated by the city or non-city ownership of the building where the inspection occurred;

3. The number of violations issued by the department pursuant to this article;

4. The number of violations issued pursuant to this article that were certified as corrected by the owner, the number of such certifications that did not result in the removal of such violations, and the number of civil actions brought by the department against such owners; and

5. The number of jobs performed in which violations issued pursuant to this article were corrected by the department, the total amount spent by the department to correct the conditions that resulted in the violations, and the average amount spent per dwelling unit to correct such conditions; and

6. A statistical profile with geographic indexing, such as by community district, council district, and/or zip code, of multiple dwellings in which violations are placed, indicating the ages and general condition of the multiple dwellings and other factors relevant to the prevalence of indoor mold hazards and pests, which may include asthma rates in the relevant community, outstanding violations, and emergency repair charges.

7. The number of trainings conducted for owners and building maintenance personnel on the appropriate work methods for controlling and removing indoor allergen hazards in rental housing.

b. The department of health and mental hygiene shall prepare a statistical profile on asthma rates in the population, including asthma-related hospitalizations and asthma-related emergency department visits, with geographic indexing, such as by community district, and/or zip code. This report shall be utilized by the department in its implementation of this article to ascertain the sources and reduce the presence of asthma allergens. Such report shall be submitted to the council within nine months after the close of each calendar year.

c. The department shall maintain a central register of all department orders to correct a violation under this article. Such register shall indicate, if applicable, the date of the complaint, address of the premises, and the date of each inspection and reinspection.

§27-2017.12 Waiver of benefit void. a. No owner may seek to have an occupant of a dwelling unit waive the benefit or protection of any provision of this article. Any agreement by the occupant of a dwelling unit purporting to waive the benefit or protection of any provision of this article is void. Any owner who violates this section, or the rules promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any owner who violates this section shall be liable for a civil penalty of not more than five hundred dollars per violation.

b. Notwithstanding any other provision of this article, nothing herein shall be construed to alter existing or future agreements which allocate responsibility for compliance with the provisions of this article between a tenant shareholder and a cooperative corporation or between the owner of a condominium unit and the board of managers of such condominium.

c. The provisions of this article, other than section 27-2017.10, shall not apply to a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of

record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family.

§6. Section 27-2115 of the administrative code of the city of New York is amended by adding a new subdivision o to read as follows:

(o) (1) Notwithstanding any other provision of law, when the department serves a notice of violation to correct and certify a condition that constitutes a violation of article four of subchapter two of this chapter, the notice of violation shall specify the date by which the violation shall be corrected as provided in such article, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. The notice of violation shall further specify that the violation shall be corrected in accordance with section 27-2017.8 and the rules established pursuant to section 27-2017.9 of the code, where applicable. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice of violation shall be deemed completed three days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent simultaneously by regular mail to the occupant at the dwelling unit that is the subject of such notice of violation.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with section 27-2017.8 and the rules established pursuant to section 27-2017.9 of the code, where applicable. All certifications shall be delivered to the department and acknowledgment of receipt therefore obtained or shall be

mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement saying that the violation was properly corrected by the person who performed the work if performed by an employee or agent of the owner. Notification of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Whenever the department shall issue a notice of violation to correct a condition that constitutes a violation of sections 27-2017.3 or 27-2017.4 of article four of subchapter two of this chapter, the department shall conduct a final inspection to verify that the violation has been corrected. Where the department determines that the violation has not been corrected, the department may take such enforcement action as is necessary, including performing or arranging for the performance of the work to correct the violation.

(4) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article four of subchapter 2 of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than two thousand dollars nor more than ten thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner then such owner shall be responsible for such civil penalty. In addition, any such person making a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(5) Notwithstanding any other provision of law, a person who violates article four of subchapter two of this chapter by failing to correct such violation in accordance with the work practices in section 27-2017.8 and in the rules established pursuant to section 27-2017.9 of the code shall be subject to a civil penalty of five hundred dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for

correction in the notice of violation until the date the violation is corrected and certified to the department, and in addition to any civil penalty shall, whenever appropriate, be punished under the provisions of article three of subchapter five of the code. There shall be a presumption that the condition constituting a violation continues after the service of the notice of violation. The owner shall be responsible for the correction of all violations noticed pursuant to article four of subchapter two of this chapter, but in an action for civil penalties pursuant to this subdivision may in defense or mitigation of such owner's liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was placed;

or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iii) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefore; or

(iv) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises. Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require. If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(6) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article

§7. Chapter 1 of title 17 of the administrative code of the city of New York is amended by adding new sections 17-199.5, 17-199.6, 17-199.7 and 17-199.8 to read as follows:

§17-199.5 Encouragement of physician referrals for indoor allergen hazards. a. The department shall report to the Council no later than 18 months from the effective date on activities it has undertaken to educate physicians and other health care providers who treat persons with asthma about the role of indoor allergens in asthma exacerbation and the availability of inspections for asthma triggers in their patients' primary residence by the department and the department of housing preservation and development, and on any mechanism they have to refer to the department or the department of housing preservation and development, with consent, the contact information for patients who report these conditions in their primary residence. The report shall describe what was done following such a referral, and what the outcomes were of any that were made and received during this period.

§17-199.6 Investigations of indoor allergen hazards in dwellings of persons with medically diagnosed persistent asthma. a. The department shall establish procedures to permit doctors, nurses, or other health professionals, upon the consent of their patients, to request a department investigation of possible indoor allergen hazards in dwellings where persons reside who have been medically diagnosed with moderate persistent or severe persistent asthma. Such procedures may provide for the referral to the department of housing preservation and development of such requests that would be subject to section 27-2017.6 of the code. The procedures shall also provide for an investigation to be made when the department is notified that a person

who has been medically diagnosed with moderate persistent or severe persistent asthma is residing in a dwelling with possible indoor allergen hazards not otherwise subject to enforcement by the department of housing preservation and development under section 27-2017.6 of the code. Such indoor allergen hazards may include, but are not limited to, mold that is not readily observable to the eye, including mold that is hidden within wall cavities, construction dust or such other conditions as the department shall from time-to-time determine by rule are indoor allergen hazards.

b. In the event that the department determines that an indoor allergen hazard exists, the department shall order the owner to correct the condition and the underlying causes of such a condition within twenty-one days, in a manner and under such safety conditions as it may specify, including the integrated pest management practices in section 27-2017.8 and the work practices established pursuant to section 27-2017.9 of the code.

c. In the event that the department determines that the owner or other person having the duty or liability to comply with an order issued pursuant to this section fails to substantially comply therewith within twenty-one days after service thereof, the department may, in accordance with section 27-2017.10 of the code, refer such order to the department of housing preservation and development. The department of housing preservation and development shall take such enforcement action as is necessary, including performing or arranging for the performance of the work to correct the certified condition..

§17-199.7 Education about indoor allergen hazards. The department shall develop a pamphlet, the content of which shall, at a minimum, be in English and in the covered languages set forth in section 8-1002 of the code, explaining the hazards associated with indoor allergens and describing the procedures to be used in order for a violation of sections 27-2017.3 and 27-2017.4 of the code to be corrected, including the work practices to be established pursuant to section 27-2017.9 of the code. Such pamphlet shall be made available in accordance with section 27-2017.6 of the code. Such pamphlet shall also be made available to any member of the public upon request. The department shall also develop a training curriculum for educating owners and building maintenance personnel on the appropriate work methods for controlling and removing indoor allergen

hazards in rental housing.

§17-199.8 Inspection by the department of unsafe work practices for indoor allergen remediation. The department of health and mental hygiene shall respond to complaints of unsafe work practices related to the correction of mold violations which result in chemical vapors, dust, or other environmental conditions, and promptly refer complaints of unsafe pest control to the new york state department of environmental conservation.

§8. The provisions of this local law shall take effect 180 days after its enactment, except that the commissioners of health and mental hygiene and housing preservation and development shall promulgate all rules and take all other actions necessary to implement this local law on or before the date upon which it shall take effect.

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