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**THE COUNCIL**

**Committee Report of the Infrastructure Division**

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**Committee on Housing and Buildings**

Hon. Robert E. Cornegy, Jr., Chair

**January 23, 2020**

**Int. No. 873-A:** By Council Members Chin, Koslowitz, Kallos, Lander, Louis and Cumbo

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to permanent removal of lead-based paint

**Administrative Code:** Amends subchapter 2 of chapter 9 of title 17; amends sections 17-920, 17-924, 27-2056.7, 27-2056.8, 27-2056.9, 27-2056.17 and 27-2115

**Int. No. 891-A:** By Council Members Levin, Holden, Cumbo, Kallos and Lander

**Title:** A Local Law to amend the administrative code of the city of New York, In relation to lead poisoning prevention and control in certain dwellings, and to repeal section 27-2056.1 of such administrative code relating to the findings and purpose of provisions of such code relating to lead poisoning from paint

**Administrative Code:** Repeals section 27-2056.1; adds a new section 27-2056.1

**Int. No. 919-A:** By Council Members Torres, Treyger, Holden, Cumbo, Kallos and Lander

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to investigations of lead-based paint hazards by independent and certified inspectors, and contractor certifications for construction activities that disturb lead-based paint, and to repeal subdivision 9 of section 20-386 and subdivision 15 of section 20-393 of such administrative code, relating to salespersons for home improvement businesses

**Administrative Code:** Repeals subdivision 9 of section 20-386 and subdivision 15 of section 20-393; amends sections 20-386, 20-387, 20-388, 20-390, 27-2056.4 and 27-2056.17

**Introduction**

On January 23, 2020, the Committee on Housing and Buildings, chaired by Council Member Robert E. Cornegy, Jr., held a hearing on Int. No. 873-A, Int. No. 891-A and Int. No. 919-A. These bills were first heard on September 27, 2018. More information about these bills along with the materials for that hearing can be found at <https://bit.ly/2Gd46k0>.

**Int. No. 873-A**

Int. No. 873-A would require schools operated by the Department of Education to conduct regular surveys and inspections of covered facilities[[1]](#footnote-1) within such schools for lead-based paint hazards, the results of which would be made publicly available and delivered to parents and guardians. This bill would also require the Department of Housing Preservation and Development, when conducting certain inspections, to determine whether there has been a violation of the Housing Maintenance Code requirement that the owner of a building constructed before 1960 remediate lead-based paint hazards, including on friction surfaces, when a new tenant moves in. Finally, this bill would establish a presumption that a building owner who is unable to provide a record of having completed lead hazard remediation upon turnover has violated the provisions requiring such remediation.

This bill would take effect one year after becoming law.

**Int. No. 891-A**

Int. No. 891-A would expand the meaning of “multiple dwelling” for the purposes of the lead law requirements described in the Housing and Maintenance provisions of the Administrative Code to also include non-owner-occupied private dwellings. It would also repeal section 27-2056.1 of the Administrative Code, which contains the original statement of intent for Local Law 1 of 2004 and is largely outdated.

This bill would take effect one year after becoming law.

**Int. No. 919-A**

Int. No. 919-A would require the owners of certain dwellings to, upon the earlier of either within five years of the bill’s effective date or one year of a child moving in, arrange for a thorough inspection for lead-based paint hazards to be conducted by an independent EPA-certified inspector. It would also require home improvement contractors to be EPA-certified to ensure that they are prepared to follow lead-related safety standards. Finally, this bill would repeal two subdivisions related to the definition and conduct of a “salesperson” in the context of a home improvement contract, which is a term that is no longer used as an alternative to “contractor.”

This bill would take effect 180 days after becoming law.

**Update**

On Thursday, January 23, 2020, the Committee adopted Int. No. 873-A by a vote of 11 in the affirmative, zero in the negative, and zero abstentions, Int. No. 891-A by a vote of 11 in the affirmative, zero in the negative, and zero abstentions, and Int. No. 919-A by a vote of 11 in the affirmative, zero in the negative, and zero abstentions.

Int. No. 873-A

By Council Members Chin, Koslowitz, Kallos, Lander, Louis and Cumbo

..Title

A Local Law to amend the administrative code of the city of New York, in relation to permanent removal of lead-based paint

..Body

Be it enacted by the Council as follows:

Section 1. The heading of subchapter 2 of chapter 9 of title 17 of the administrative code of the city of New York, as amended by local law number 64 for the year 2019, is amended to read as follows:

Subchapter 2

Remediation of Lead-Based Paint Hazards in Schools and Facilities Providing Day Care Services

§ 2. The definition of “covered facility” in section 17-920 of the administrative code of the city of New York, as amended by local law number 64 for the year 2019, is amended to read as follows:

Covered facility. The term "covered facility" means the [interior and exterior of a building, structure, area or premises where day care services are provided, except that for programs] rooms, areas and other spaces regulated by [article] articles 43 or 47 of the New York city health code[, "covered facility" means the rooms and areas of a school facility used to provide such day care services].

§ 3. Section 17-924 of the administrative code of the city of New York, as amended by local law number 71 for the year 2019, is amended to read as follows:

§ 17-924 Annual survey for lead-based paint hazards. a. The operator of a covered facility shall conduct a survey of such facility annually, and more often if necessary, to determine the physical condition of surface-coating material throughout each such facility and shall provide a copy of the survey results (i) to the department, which will make the information publicly available online, and (ii) to the parent or guardian of each child that attends such facility, as required by rules of the department. The department may require by rule that such annual survey be submitted electronically.

b. In a covered facility located in a school operated by the department of education, the survey required by subdivision a of this section shall include rooms and areas where children of an applicable age are located, including classrooms, libraries, cafeterias, and gymnasiums designated for use by such children of an applicable age. A room or area of a school operated by the department of education may not be designated for use as a covered facility unless such room or area has, within the prior year, been included in a survey conducted in accordance with this section.

c. In addition to the requirements of this section, department of education shall conduct a survey of classrooms in a covered facility located in a school operated by the department at least three times a year to determine the physical condition of surface-coating material in classrooms and shall provide a copy of the survey results (i) to the department, which will make the information publicly available online, and (ii) to the parent or guardian of each child that attends such facility, as required by rules of the department.

§ 4. Subdivisions a and b of section 27-2056.7 of the administrative code of the city of New York, subdivision a as amended by local law number 66 for the year 2019, and subdivision b as added by local law number 1 for the year 2004, are amended, and a new subdivision b-1 is added, to read as follows:

a. When the department of health and mental hygiene issues a commissioner's order to abate pursuant to section 173.13 of the New York city health code or a successor rule that addresses lead-based paint hazards or unsafe lead paint in a specific dwelling unit in a multiple dwelling, the department, within [fifteen] 15 days of the receipt of such order, shall notify the owner of the multiple dwelling where the dwelling unit is located that the owner shall, within [forty-five] 45 days of the department's notice, provide to the department all records required to be maintained under this article. Upon the department's receipt of those records and a determination that there may exist uncorrected lead-based paint hazards in dwelling units where a child of applicable age resides, the department within [ten] 10 days of the end of the record order production period, shall attempt to inspect [such] units where a child of applicable age resides to determine whether there are any violations of [section] sections 27-2056.6 [of this article] or 27-2056.8.

b. If the owner does not provide to the department the records as mandated by subdivision a of this section, the department shall within [forty-five] 45 days of such failure attempt to inspect dwelling units where a child of applicable age resides to determine whether there are any violations of [section] sections 27-2056.6 [of this article] or 27-2056.8 in such units.

b-1. 1. Inspections pursuant to this section shall be conducted in accordance with section 27-2056.9. If a tenancy began after the earliest date for which a record is required to be provided to the department pursuant to subdivision a of this section, the department shall issue a violation pursuant to subdivision c of section 27-2056.8 to any owner who has failed, in response to a demand by the department and in accordance with rules of the department, to produce a record required to be retained by this article pertaining to compliance with the provisions of section 27-2056.8, where (i) the department obtains information from the tenant or another source regarding the date upon which the current tenancy of such dwelling unit began, and (ii) no violation is issued pursuant to subdivision d-1 of section 27-2056.9.

2. A property owner may rebut the information provided by the tenant or another source in accordance with this subdivision regarding the date upon which the current tenancy of such multiple dwelling unit began by submitting documents in accordance with rules of the department. A property owner may correct a violation of section 27-2056.8 by abating the friction surface that tested positive and either (i) providing results of XRF tests for all other window and door friction surfaces within the dwelling unit that demonstrate such surfaces do not contain lead based paint, or (ii) providing documentation satisfactory to the department to demonstrate appropriate abatement of all other window and door friction surfaces within the dwelling unit.

§ 5. Subdivision c of section 27-2056.8 of the of the administrative code of the city of New York, as added by local law number 1 for the year 2004, is amended to read as follows:

c. Any owner who fails to comply with the provisions of subdivision a of this section, or the rules of the department of health and mental hygiene or the department promulgated pursuant to [section 27-2056.11(a)(3)] paragraph 3 of subdivision a of section 27-2056.11 as determined by subdivision d-1 of section 27-2056.9 shall be liable for a class C immediately hazardous violation. An owner who is presumed to have failed to comply with the provisions of subdivision a of this section or such rules, pursuant to an audit as provided in section 27-2056.7 or section 27-2056.17, shall be liable for a class B violation and a civil penalty in an amount not to exceed $1500.

§ 6. Section 27-2056.9 of the administrative code of the city of New York is amended by adding a new subdivision d-1, after subdivision d and before subdivision e, to read as follows:

d-1. When conducting an inspection pursuant to this section, the department shall attempt to obtain information from the tenant or another source regarding the date upon which the current tenancy of such dwelling unit began. If the tenancy began after August 2, 2004 and the inspection pursuant to this section indicates a failure by the owner to comply with the requirements of section 27-2056.8, the department shall issue a violation pursuant to subdivision c of section 27-2056.8. A property owner may rebut the information provided by the tenant or another source regarding the date upon which the current tenancy of such multiple dwelling unit began by submitting documents in accordance with rules of the department. A property owner may correct a violation of section 27-2056.8 by abating any friction surface that tested positive or is presumed to contain lead based paint pursuant to section 27-2056.5, and either (i) providing results of XRF tests for all window and door friction surfaces within the unit that demonstrate such surfaces do not contain lead based paint, or (ii) providing documentation satisfactory to the department to demonstrate appropriate abatement of all other window and door friction surfaces within the dwelling unit.

§ 7. Subdivision c of section 27-2056.17, as added by local law number 70 for the year 2019, is relettered subdivision e, and two new subdivisions c and d are added to read as follows:

c. The department shall issue a violation pursuant to subdivision c of section 27-2056.8 to any owner who fails, in response to a demand by the department and in accordance with rules of the department, to produce a record required to be retained by this article pertaining to compliance with the provisions of section 27-2056.8 if the department obtains information from the tenant or another source regarding the date upon which the current tenancy of such dwelling unit began. Such owner may rebut such information provided by the tenant or another source by submitting documents in accordance with rules of the department.

d. The department shall issue a violation pursuant to section 27-2056.4 to any owner who fails, in response to a demand by the department and in accordance with rules of the department, to produce within 45 days of such request such records as are required to be retained by this article pertaining to compliance with the provisions of section 27-2056.4.

§ 8. Paragraph (1) of subdivision (l) of section 27-2115 of the administrative code of the city of New York, as added by local law number 1 for the year 2004, is amended to read as follows:

(l)(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 fourteen of subchapter two of this chapter, the notice of violation shall specify date by which the violation shall be corrected, which shall be twenty-one days after the service of the notice of violation for a class C violation and thirty days after the service of the notice of violation for a class B violation, 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 the work practices established in accordance with section 27-2056.11 of this code. 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. The department may postpone the date by which a 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. 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 insure correction of the violations within the time set for the postponement. The department may grant one additional postponement of no more than fourteen days for the reasons authorized by this section so long as the paint or other condition which is the subject of the violation has been stabilized. The department is also authorized to promulgate rules establishing criteria for a postponement of the time to correct for a longer period of time where such postponement is requested because of one or more substantial capital improvements will be made that will, when completed, significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit including, but not limited to, a requirement that the paint which is the subject of the violation is stabilized. The department shall provide to the owner and the occupant a written statement signed and dated by the person making such decision setting forth the reasons for each postponement of the date by which a violation shall be corrected or the reason for the denial of such application for a postponement. Said written statement shall be part of the records of the department.

§ 9. This local law takes effect 1 year after it becomes law, except that the commissioner of health and mental hygiene and the commissioner of housing preservation and development may take such measures as are necessary for its implementation, including the promulgation of rules, before such date.

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Int. No. 891-A

By Council Members Levin, Holden, Cumbo, Kallos and Lander

..Title

A Local Law to amend the administrative code of the city of New York, in relation to lead poisoning prevention and control in certain dwellings, and to repeal section 27-2056.1 of such administrative code relating to the findings and purpose of provisions of such code relating to lead poisoning from paint

..Body

Be it enacted by the Council as follows:

Section 1. Section 27-2056.1 of article 14 of subchapter 2 of chapter 2 of tile 27 of the administrative code of the city of New York is REPEALED and a new section 27-2056.1 is added to read as follows:

§ 27-2056.1 Terminology. For the purposes of this article, the term “multiple dwelling” includes a private dwelling where at least one dwelling unit within such dwelling is occupied by persons other than the owner of such dwelling or a member of such owner’s family, provided, however, that the provisions of this article, other than section 27-2056.14, shall not apply to a dwelling unit that is occupied by such owner or a member of such owner’s family.

§ 2. This local law takes effect 1 year after it becomes law, except the commissioner of housing preservation and development may take such actions as are necessary for implementation, including the promulgation of rules, before such effective date.

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Int. No. 919-A

By Council Members Torres, Treyger, Holden, Cumbo, Kallos and Lander

..Title

A Local Law to amend the administrative code of the city of New York, in relation to investigations of lead-based paint hazards by independent and certified inspectors, and contractor certifications for construction activities that disturb lead-based paint, and to repeal subdivision 9 of section 20-386 and subdivision 15 of section 20-393 of such administrative code, relating to salespersons for home improvement businesses

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision 9 of section 20-386 of the administrative code of the city of New York is REPEALED and subdivisions 1 and 5 of such section 20-386 are amended to read as follows:

1. “Persons” means an individual, firm, company, [salesperson,] partnership, or corporation, trade group or association.

5. “Contractor” means any person [or salesperson], other than a bona fide employee of the owner, who owns, operates, maintains, conducts, controls or transacts a home improvement business and who undertakes or offers to undertake or agrees to perform any home improvement or solicits any contract therefor, whether or not such person is licensed or subject to the licensing requirements of this subchapter, and whether or not such person is a prime contractor or subcontractor with respect to the owner.

§ 2. Subdivision (a) of section 20-387 of the administrative code of the city of New York is amended to read as follows:

(a) No person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor [or salesperson] from an owner without a license therefor.

§ 3. Subdivision 1 of section 20-388 of the administrative code of the city of New York is amended to read as follows:

1. The fee for a license to conduct a home improvement business shall be fifty dollars and for each renewal thereof the fee shall be fifty dollars. [The fee for a salesperson's license employed by a home improvement contractor shall be twenty-five dollars and for each renewal thereof the fee shall be twenty-five dollars.]

§ 4. Subdivisions 6 and 7 of section 20-390 of the administrative code of the city of New York are renumbered subdivisions 7 and 8, and a new subdivision 6 is added to read as follows:

6. Each applicant for a license or renewal thereof shall submit either (i) documentation satisfactory to the commissioner of the applicant’s certification from the federal environmental protection agency, as required by subparts E and L of part 745 of title 40 of the code of federal regulations or successor regulations, or (ii) a signed affirmation that such certification is not required for any home improvement work performed by such applicant, in accordance with the rules of the department. Documentation of a certification submitted with an application for a license or a renewal thereof must include the name, EPA certificate number of the applicant, and the expiration date of such EPA certificate.

§ 5. Subdivision 15 of section 20-393 of the administrative code of the city of New York is REPEALED.

§ 6. Paragraphs b and c of subdivision 16 of section 20-393 of the administrative code of the city of New York, as renumbered by local law number 24 for the year 1996, are amended to read as follows:

b. No contractor [or salesperson] shall offer, deliver, pay, credit or allow to the owner any gift, bonus award or merchandise, trading stamps, or cash loan as an inducement to enter a home improvement contract.

c. A contractor [or salesperson] may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work; provided no such item shall exceed a cost value of two dollars and fifty cents and no owner and/or other person shall receive more than one such item in connection with any one transaction.

§ 7. Section 27-2056.4 of the administrative code of the city of New York is amended by adding a new subdivision a-1, to be inserted after subdivision a and before subdivision b of such section, to read as follows:

a-1. Within five years of the effective date of this subdivision, or within one year after a child of applicable age comes to reside in a dwelling unit subject to the requirements of subdivision a of this section, whichever is sooner, one investigation for the presence of lead-based paint undertaken pursuant to subdivision a of this section shall be performed by a person who (i) is not the owner or the agent of the owner or any contractor hired to perform work related to the remediation of lead-based paint hazards, and (ii) is certified as an inspector or risk assessor pursuant to section 745.226 of title 40 of the code of federal regulations. Such inspection shall consist of the use of an x-ray fluorescence analyzer on all types of surfaces in accordance with the procedures described in chapter 7 of the United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing, including on chewable surfaces, friction surfaces, and impact surfaces, to determine whether lead-based paint is present, and where such paint is located, in such dwelling unit. Provided, however, that the investigation specified by this subdivision shall not be required if an investigation that complies with the requirements of this subdivision was previously completed and the owner retains records of such investigation, or if the dwelling unit has an exemption from the presumption of lead paint, as provided in subdivision b of section 27-2056.5 of this article.

§ 8. Subdivision a of section 27-2056.17 of the administrative code of the city of New York, as amended by local law number 70 for the year 2019, is amended to read as follows:

a. The owner of any multiple dwelling or dwelling that performs any work or provides any notices pursuant to this article shall retain all records relating to such work or notices for a period of no less than ten years from the completion date of such work or notification, as provided in the rules of the department and this article. If the multiple dwelling is subject to the requirements of section 27-2056.4 or section 27-2056.8, for each dwelling unit in such dwelling the owner shall keep a record of: (i) the date that such unit turned over whenever such turnover occurs; (ii) the name of each inspector, risk assessor or contractor who performed required investigations pursuant to subdivision a-1 of section 27-2056.4; (iii) all testing results performed pursuant to subdivision a-1 of section 27-2056.4 and any other lead based paint testing that has occurred in such unit; and (iv) whether the department has granted an exemption from the presumption established by section 27-2056.5 for any unit in the multiple dwelling. The owner shall make any such records required to be retained by this article available to the department upon the department's request, and shall transfer such records to the owner's successor in title.

§ 9. This local law takes effect 180 days after it becomes law, except that the commissioner of housing preservation and development, the commissioner of health and mental hygiene and the commissioner of consumer affairs shall take such actions as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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1. This bill would amend the definition of “covered facility” to also include spaces in schools regulated by article 47 of the New York City Health Code. This amendment would extend to schools the existing requirements for operators of facilities providing day care services to survey and remediate lead-based hazards. This bill would also establish additional requirements for the Department of Education to survey and inspect for lead-based paint hazards. [↑](#footnote-ref-1)