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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

**March 17, 2021**

**Proposed Int. No. 874-A:** By Council Members Chin, Cumbo, Kallos, Lander, Vallone and Rosenthal

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to improving tenant notification, interagency cooperation, conducting inspections and issuing stop work orders, in connection with lead paint and construction work

**Administrative Code:** Amends sections 17-179, 27-2056.4, 27-2056.11, 27-2056.12, 27-2056.13, 27-2056.14, 28-120.1, 28-120.1.3 and 28-207.2; adds new sections 28-105.12.12 and 28-105.12.13

**Building Code:** Amends section 3303.10.2

**Introduction**

On March 17, 2021, the Committee on Housing and Buildings, chaired by Council Member Robert E. Cornegy, Jr., will hold a hearing on Proposed Int. No. 874-A, in relation to improving tenant notification, interagency cooperation, conducting inspections and issuing stop work orders, in connection with lead paint and construction work. This bill was first heard on September 27, 2018. More information about this bill along with the materials for that hearing can be found at <https://on.nyc.gov/3qTvA35>.

**Background**

*The City’s Current Lead Laws*

The use of lead-based paint in residential buildings was first banned in New York City in 1960.[[1]](#footnote-1) It was subsequently banned by the federal government in 1978.[[2]](#footnote-2) However, exposure to this toxic substance, which is especially harmful to children, has continued. Local Law 1 of 2004 (“Local Law 1”), also known as the Childhood Lead Poisoning Prevention Act, was enacted to reduce the likelihood of childhood exposure to lead, with a particular focus on identifying and remediating lead-based paint hazards in apartments and day care facilities.[[3]](#footnote-3)

Local Law 1 requires, in part, that building owners investigate units and common areas in which lead-based paint may be present, with special attention paid to units where a child under age six resides.[[4]](#footnote-4) Any lead-based paint hazards or violations must be addressed using safe work practices to prevent additional exposure to lead, and detailed records of investigation and remediation efforts must be maintained.[[5]](#footnote-5) Owners are also required to inquire as to the presence of children under age six residing in the building, and to provide all tenants with information regarding the presence of lead-based paint (if applicable) and the owner’s responsibilities under Local Law 1.[[6]](#footnote-6)

In addition to the requirements placed on building owners, Local Law 1 also creates a presumption that lead-based paint is present in any day care facility built before 1978.[[7]](#footnote-7) Any lead-based paint or paint of unknown lead content that is peeling or on a deteriorated, impact, or friction surface must be immediately remediated, and only lead-free paint can be used to paint equipment within the facility.[[8]](#footnote-8) The operator of a day care facility is required to conduct an annual survey to ensure that surface-coating material throughout the facility is in compliance.[[9]](#footnote-9)

Pursuant to Local Law 1, the Department of Housing Preservation and Development (“HPD”) is primarily responsible for the implementation and enforcement of the law’s requirements, with The Department of Health and Mental Hygiene (“DOHMH”) also maintaining a significant role in the development of rules and procedures.[[10]](#footnote-10) Local Law 1 requires that the agencies provide training and create inspection and remediation standards as well as safe work practices.[[11]](#footnote-11) Further, Local Law 1 requires effective collaboration between the agencies throughout the process of conducting inspections and correcting violations by, among other things, requiring HPD to audit and/or inspect multiple dwellings for lead paint following a commissioner’s order to abate from DOHMH.[[12]](#footnote-12)

However, despite the requirements of Local Law 1, lead continues to pose a substantial hazard to the health of children in the City.[[13]](#footnote-13) The stated goal of Local Law 1, which was to eradicate childhood lead poisoning, has not been realized, with 3,866 children under six years of age identified with elevated blood lead levels in 2018.[[14]](#footnote-14)

*Recent Developments*

On March 13, 2019, the Council passed 10 pieces of lead-related legislation building upon the requirements of Local Law 1.[[15]](#footnote-15) These bills took a number of approaches to ensure the safety of children and spaces potentially overlooked by the City’s lead laws. One approach requires the investigation and remediation of lead hazards not only where children live, but also where they spend ten or more hours per week.[[16]](#footnote-16) Another approach lowered the blood lead reference level and the lead-based paint and the lead dust thresholds to trigger more proactive investigations of lead poisoning and lead hazards.[[17]](#footnote-17) In addition, annual investigation requirements were extended to preschools and nursery schools,[[18]](#footnote-18) and education, outreach, and reporting requirements were strengthened to effectively inform parents, guardians, and communities about lead hazards and lead poisoning prevention.[[19]](#footnote-19) Finally, requirements were added to increase awareness and testing of lead in water.[[20]](#footnote-20)

On February 11, 2020, the Council passed a package of 4 bills further strengthening the city’s lead laws. Int. No. 904-A[[21]](#footnote-21) expanded the investigations DOHMH is required to undertake when a pregnant person is found to have an elevated blood lead level, and, after the birth of a child, requires DOHMH to monitor such child for elevated blood lead levels and assess whether the apartment where such child resides contains any lead-based paint or unsafe lead paint. The bill also requires DOHMH to conduct outreach to new and expected parents about the availability of inspections for lead paint hazards in their homes, and to provide them with information about blood lead testing for children, unsafe construction or renovation work practices, and the availability of inspections for such practices. Int. No. 873-A[[22]](#footnote-22) requires schools operated by the Department of Education to conduct regular surveys and inspections of covered facilities[[23]](#footnote-23) within such schools for lead-based paint hazards, the results of which must be made publicly available and delivered to parents and guardians. This bill also requires HPD, 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 established 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. Int. No. 891-A[[24]](#footnote-24) expanded 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. Finally, Int. No. 919-A requires 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 also requires home improvement contractors to be EPA-certified to ensure that they are prepared to follow lead-related safety standards.

**Proposed Int. No. 874-A**

Proposed Int. No. 874-A would establish requirements to strengthen interagency communication, tenant notification, and inspections related to lead-based paint and lead dust hazards. First, this bill would require DOHMH to add certain information regarding lead dust hazards to existing pamphlets. This bill would also expand existing DOHMH referral procedures where a child may have been exposed to lead to automatically refer such child to a medical provider for blood lead testing, regardless of whether a referral is requested by a parent or guardian. This bill would also require DOHMH to post a notice in the lobby of a building when, in the course of completing certain inspections, a lead hazard has been discovered in the common area. Building owners would be required to post additional notices on every floor of that same building.

This bill would also require statements of compliance with lead safe work practices as a condition of certain permit applications, and would require DOB to maintain records of all such permits. This bill would add lead safe work practices to the requirements of a Tenant Protection Plan, while also allowing DOB to issue a stop work order where DOHMH has made a referral based on unsafe lead work practices. Where DOB receives a complaint alleging the violation of the lead safe practices described in a tenant protection plan, this bill would require DOB to inspect within 24 hours, take dust wipes upon inspection, and refer such dust wipes and any hazardous conditions to DOHMH for inspection and analysis.

A technical correction was made to the provision describing the effective date of this bill on March 15, 2021. This bill would take effect one year after becoming law.

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Proposed Int. No. 874-A

By Council Members Chin, Cumbo, Kallos, Lander, Vallone and Rosenthal

..Title

A Local Law to amend the administrative code of the city of New York, in relation to improving tenant notification, interagency cooperation, conducting inspections and issuing stop work orders, in connection with lead paint and construction work

..Body

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 17-179 of the administrative code of the city of New York, as amended by local law number 73 for the year 2019, is amended to read as follows:

b. The department shall develop a pamphlet explaining the hazards associated with lead-based paint and lead-contaminated dust and describing the procedures to be used in order for a violation of sections 27-2056.6 [and], 27-2056.7, 27-2056.8 and 27-2056.11 of this code to be corrected. The pamphlet shall include appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information and to report unsafe lead-based paint work practices. Such pamphlet shall also describe building owners’ responsibilities under article 14 of subchapter 2 of chapter 2 of title 27, including such building owners’ responsibilities to remediate all lead-based paint hazards and underlying defects upon turnover of any dwelling unit, and such building owners’ responsibilities to annually inspect any dwelling unit where a child of applicable age resides for lead-based paint hazards. Such pamphlet shall be made available in accordance with section 27-2056.9 of this code. Such pamphlet shall also be made available on the department’s website and to any member of the public upon request, and shall be available in any designated citywide language, as defined by section 23-1101 of this code.

§ 2. Subparagraph (i) of paragraph 3 of subdivision e of section 27-2056.4 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:

(i) Upon receipt of such notice the occupant shall have the responsibility to deliver by February fifteenth of that year, a written response to the owner indicating whether or not a child of applicable age resides therein. If, subsequent to delivery of such notice, the owner does not receive such written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect that occupant's dwelling unit to ascertain the residency of a child of applicable age and, when necessary, conduct an investigation in order to make that determination. Where, between February sixteenth and March first of that year, the owner has made reasonable attempts to gain access to a dwelling unit to determine if a child of applicable age resides in that dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance. The department of health and mental hygiene may require by rule that such notification to such department be provided electronically.

§ 3. Paragraph 2 of subdivision a of section 27-2056.11 of the administrative code of the city of New York is amended by adding a new subparagraph (iv) to read as follows:

(iv) The department of health and mental hygiene may by rule require the electronic submission of any notice required to be submitted to such department by this paragraph.

§ 4. Paragraph 1 of subdivision b of section 27-2056.12 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:

 (1) the number of addresses inspected and the number of [commissioners] commissioner’s orders and violations issued pursuant to section 27-2056.11 and any regulations promulgated thereunder, disaggregated by whether such inspections occurred in response to complaints, referrals from the department of buildings or another cause;

§ 5. Section 27-2056.13 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:

 § 27-2056.13 Transmittal of Violations to the Department of Health and Mental Hygiene. The department shall send a notice which shall be addressed to the dwelling unit in the multiple dwelling, when a dwelling unit is identified, for which a violation of this article was issued. Such notice shall include a telephone number for the department of health and mental hygiene. The department shall also refer to the department of health and mental hygiene the address of the unit in the multiple dwelling for which such violation was issued, where applicable, the name of the complainant, if any, and the complainant's telephone number, if available. The department of health and mental hygiene, pursuant to section 17-179 of this code, shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment[, and upon the request of a parent or guardian, arrange for blood lead screening of] for any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening.

§ 6. Section 27-2056.14 of the administrative code of the city of New York, as amended by local law number 66 for the year 2019, is amended to read as follows:

§ 27-2056.14 Inspections by Department of Health and Mental Hygiene and Removal of Health Code Violations by Department of Housing Preservation and Development. a. Whenever a report has been made to the department of health and mental hygiene of a person under eighteen years of age with an elevated blood lead level that is at or above the blood lead reference level established pursuant to section 17-912 residing in any dwelling unit, the department of health and mental hygiene shall conduct such investigation as may be necessary to identify potential sources of the elevated blood lead level, including but not limited to, an inspection of the dwelling unit where such person resides. If the department of health and mental hygiene issues an order to correct any violation, the department of health and mental hygiene shall notify the department of each dwelling unit in a dwelling for which the department of health and mental hygiene has issued an order to correct a violation. 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, the department of health and mental hygiene shall certify such conditions to the department of housing preservation and development. The certification procedure shall be completed within sixteen days of the report of the elevated blood lead level. The conditions so certified shall be corrected within eighteen days of certification to the department.

 b. In the event that the department of health and mental hygiene issues an order to correct a violation for a condition in a common area of a dwelling identified during an investigation conducted pursuant to subdivision a of this section or section 17-185, the department of health and mental hygiene shall post a notice of such order in a conspicuous manner in the building lobby, and the building owner shall post a notice of such order on each floor within ten feet of the elevator, or, in a building where there is no elevator, within ten feet of or in the main stairwell on such floor. Such notice shall remain posted until a determination by the department of health and mental hygiene that the violating condition has been corrected, and shall include an explanation of the hazards of lead exposure, a description of precautionary measures to prevent exposure to lead dust and an appropriate telephone number to obtain lead poisoning screening, diagnosis and treatment information.

§ 7. Article 105 of chapter 1 of title 28 of the administrative code of the city of New York is amended by adding new sections 28-105.12.12 and 28-105.12.13 to read as follows:

**§ 28-105.12.12 Statement of lead-based paint compliance.** Where the work for which a permit is sought involves disturbance of lead-based paint, as defined in section 27-2056.2, or paint of unknown lead content, the application shall include a statement of compliance with section 27-2056.11 and, where applicable, subpart E or subpart L of part 745 of title 40 of the code of federal regulations. The application shall also include a statement that any firm performing proposed work holds the certification or certifications required to perform work pursuant to such section, such certification number(s) and, where applicable, that such firm has filed or will file a notice of commencement required pursuant to paragraph (2) of subdivision a of section 27-2056.11 with the department of health and mental hygiene.

**§ 28-105.12.13 Reporting to the Department of Health and Mental Hygiene**. The department shall maintain an electronic record of all permits issued that indicate that section 28-105.12.12 applies to the building subject to such permit. The department shall make such permit information available to the department of health and mental hygiene.

§ 8. Subdivision 3.1 of section 28-120.1 of the administrative code of the city of New York, as added by local law number 106 for the year 2019, is amended to read as follows:

**3.1.** [There] **Lead and asbestos.** Where the work involves disturbance of lead-based paint, as defined in section 27-2056.2, or paint of unknown lead content or asbestos, there shall be included a statement of compliance with applicable provisions of law relating to lead and asbestos, [and such statement shall describe with particularity what means and methods are being undertaken to meet such compliance] including whether the firm performing proposed work holds the certification or certifications required to perform such work pursuant to section 27-2056.11, and disclosure of any open violations related to lead issued by the department of health and mental hygiene or the department of housing preservation and development.

§ 9. Section 28-120.1.3 of the administrative code of the city of New York, as amended by local law number 106 for the year 2019, is amended to read as follows:

**§ 28-120.1.3 Notice to occupants.** Upon issuance of a permit for work containing a tenant protection plan, the owner shall (i) distribute a notice regarding such plan to each occupied dwelling unit and (ii) post a notice regarding such plan in a conspicuous manner in the building lobby, as well as on each floor within ten feet of the elevator, or in a building where there is no elevator, within ten feet of or in the main stairwell on such floor. The notice shall be in a form created or approved by the department and shall include:

1. A statement that occupants of the building may obtain a paper copy of such plan from the owner and may access such plan on the department website;

2. The name and contact information for the site safety manager, site safety coordinator or superintendent of construction required by section 3301.3 of the New York city building code, as applicable, or, if there is no site safety manager, site safety coordinator or superintendent of construction, the name and contact information of the owner of the building or such owner’s designee; [and]

3. A statement that occupants of the building may call 311 to make complaints about the work; and

4. Where the work involves the disturbance of lead-based paint, as defined in section 27-2056.2, or paint of unknown lead content, occupants of the building shall be directed to information regarding the hazards associated with lead-contaminated dust in a form established by the department in collaboration with the department of health and mental hygiene.

§ 10. Section 28-207.2 of the administrative code of the city of New York, as amended by local law number 62 for the year 2019, is amended to read as follows:

**§ 28-207.2 Stop work orders.** Whenever the commissioner has issued a notice of proposed revocation pursuant to section 28-105.10.1 of this code or finds that any building work is being executed in violation of the provisions of this code, the 1968 building code, the zoning resolution or of any laws or rules enforced by the department, or in a dangerous or unsafe manner, or, if the department of health and mental hygiene makes a referral to the department regarding unsafe lead work practices, the commissioner or his or her authorized representative may issue a stop work order.

§ 11. Section 3303.10.2 of the New York city building code, as amended by local law number 116 for the year 2019, is amended to read as follows:

**3303.10.2 Inspections of tenant protection plan.** The owner shall notify the department in writing at least 72 hours prior to the commencement of any work requiring a tenant protection plan. The department shall conduct an inspection of 10 percent of such sites within seven days after the commencement of such work to verify compliance with the tenant protection plan. The department shall conduct follow up inspections of such sites every 180 days until such construction is completed to verify compliance with the building code and tenant protection plan. Thereafter, the department shall conduct an inspection within 10 days of receipt of a complaint concerning such work. Where the department receives a complaint alleging that dust is not being contained or controlled in accordance with a tenant protection plan, it shall conduct an inspection within 24 hours. The department shall, in collaboration with the department of health and mental hygiene, develop a procedure to complete a lead-contaminated dust test upon a determination that dust is not being contained or controlled during such tenant protection plan inspections or an inspection conducted in response to a complaint, and take any appropriate enforcement action, including the issuance of an order pursuant to section 28-207.2 of the administrative code. The department of health and mental hygiene shall assist the department to implement such procedure, including submitting dust samples collected by the department to a laboratory for analysis. The department shall refer the result of any such inspection to the department of health and mental hygiene for review and further inspection in accordance with the New York city health code.

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

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1. N.Y.C. Department of Housing Preservation and Development, <https://www1.nyc.gov/site/hpd/owners/Lead-Based-Paint.page>. [↑](#footnote-ref-1)
2. U.S. Environmental Protection Agency, <https://www.epa.gov/lead/protect-your-family-exposures-lead>. [↑](#footnote-ref-2)
3. Local Law 1 of 2004, available at <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-60589>. [↑](#footnote-ref-3)
4. *Id.*  [↑](#footnote-ref-4)
5. *Id.*  [↑](#footnote-ref-5)
6. *Id.*  [↑](#footnote-ref-6)
7. *Id.*  [↑](#footnote-ref-7)
8. *Id.*  [↑](#footnote-ref-8)
9. *Id.*  [↑](#footnote-ref-9)
10. *Id.*  [↑](#footnote-ref-10)
11. *Id.*  [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. N.Y.C. DOHMH, Report to the New York City Council on Progress in Preventing Childhood Lead Poisoning in New York City, August 30, 2018, available at https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-18.pdf. [↑](#footnote-ref-13)
14. N.Y.C. DOHMH, Report to the New York City Council on Progress in Preventing Childhood Lead Poisoning in New York City, September 30, 2019, available at <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-19.pdf>. [↑](#footnote-ref-14)
15. Local Laws 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73 for the year 2019. *See* N.Y.C. Council, Stated Meeting, March 13, 2019, <https://nyc.legistar.com/MeetingDetail.aspx?ID=683513&GUID=6B168C90-0D6F-4FF5-9637-10BD41E3C554&Options=info&Search=>. [↑](#footnote-ref-15)
16. *See* Local Law 064/2019 (Intro. No. 464-B), <https://nyc.legistar.com/LegislationDetail.aspx?ID=3343772&GUID=D826FA06-E66A-4ECD-BBF1-B30F7BE3C3C2&Options=&Search=>. [↑](#footnote-ref-16)
17. *See* Local Law 066/2019 (Intro. No. 865-A), <https://nyc.legistar.com/LegislationDetail.aspx?ID=3498451&GUID=32932F9A-CBB0-4413-95F3-4AFCCCE64F41&Options=&Search=>. [↑](#footnote-ref-17)
18. *See* Local Law 071/2019 (Intro. No. 920-A), <https://nyc.legistar.com/LegislationDetail.aspx?ID=3498552&GUID=4B027FB2-02C8-4571-9F3B-5DA56A4A1AF8&Options=&Search=>. [↑](#footnote-ref-18)
19. *See* Local Laws 68/2019 (Intro. No. 877-A), 69/2019 (Intro. No. 881-A), 70/2019 (Intro. No. 918-A), 73/2019 (Intro. No. 1117-A), accessible at <https://nyc.legistar.com/MeetingDetail.aspx?ID=683513&GUID=6B168C90-0D6F-4FF5-9637-10BD41E3C554&Options=info&Search=>. [↑](#footnote-ref-19)
20. *See* Local Law 73/2019 (Intro. No. 1117-A), <https://nyc.legistar.com/LegislationDetail.aspx?ID=3683904&GUID=BEAFC322-DEFE-4780-BF47-3C6FE9D5BF72&Options=&Search=>. [↑](#footnote-ref-20)
21. *See* Local Law 30/2020 (Intro No. 904-A), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3498517&GUID=E93C70A4-5C93-4372-9FF8-61AABE7F4391&Options=ID|Text|&Search=904>. [↑](#footnote-ref-21)
22. *See* Local Law 28/2020 (Intro. No. 873-A), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3498486&GUID=C44E1098-18F0-4821-A9EE-8FC5355230F0&Options=ID|Text|&Search=873>. [↑](#footnote-ref-22)
23. This bill amended 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-23)
24. *See* Local Law 29/2020 (Intro. No. 891-A), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3498519&GUID=0F583E43-17F2-4497-BCD1-AA89F40CB05A&Options=ID|Text|&Search=891>. [↑](#footnote-ref-24)