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Title: A Local Law to amend the administrative code of the city of New York, in relation to remediating lead water hazards in day care facilities

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Indexes: Agency Rule-making Required

Attachments: 1. Summary of Int. No. 91-A, 2. Summary of Int. No. 91, 3. Int. No. 91, 4. January 31, 2018 - Stated Meeting Agenda, 5. Hearing Transcript - Stated Meeting 01-31-2018, 6. Minutes of the Stated Meeting - January 31, 2018, 7. Committee Report 9/27/18, 8. Hearing Testimony 9/27/18, 9. Hearing Testimony 9/27/18 (Con't), 10. Hearing Transcript 9/27/18, 11. Proposed Int. No. 91-A - 10/6/20

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9/27/2018	*	Committee on Health	Hearing Held by Committee	
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12/31/2021	A	City Council	Filed (End of Session)	

Proposed Int. No. 91-A

By Council Members Vallone, Koo, Levin, Cornegy, Maisel, Holden, Cumbo, Kallos and Lander

A Local Law to amend the administrative code of the city of New York, in relation to remediating lead water hazards in day care facilities

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 17 of the administrative code of the city of New York, as added by local law number 1 for the year 2004, is retitled as follows:

Chapter 9

[Lead-Based Paint in Day Care Facilities] Lead

§ 2. Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York is REPEALED and a new subchapter 1 is added to such chapter to read as follows:

Subchapter 1

RESERVED

§ 3. Subchapter 2 of chapter 9 of title 17 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:

Subchapter 2

Remediation of Lead-Based Paint Hazards in [Day Care] Certain Facilities Serving Children

§ 17-920 Definitions. As used in this subchapter, the terms “chewable surface,” “deteriorated subsurface,” “friction surface,” “impact surface,” “lead-based paint,” “lead-based paint hazard,” “lead-contaminated dust,” “peeling” and “remediation” shall have the meanings ascribed to such terms in section 27-2056.2 of the housing maintenance code and:

Covered facility. The term “covered facility” means a day care facility.

Day care facility. The term “day care facility” means a facility used to provide day care service.

Day care service. The term “day care service” means a service which, during all or part of the day, regularly gives care to seven or more children of applicable age, not all of common parentage, which operates more than five hours per week for more than one month a year. Day care service shall not mean a kindergarten or higher grade in a facility operated by the board of education.

§ [17-910 Presumption] 17-921 Lead-based paint presumption. a. All paint or similar surface-coating material on the interior of any day care facility in a structure erected [prior to] before January 1, 1978, shall be

presumed to be lead-based paint.

b. The presumption established by this section may be rebutted by the operator [or owner] of [the day care] such facility or by the owner of the premises where such facility is located by submitting to the department a sworn written statement by [the] such operator or owner [of the day care facility] supported lead-based paint testing or sampling results, a sworn written statement by the person who performed the testing if performed by an employee or agent of [the] such operator or owner [of the day care facility], and such other proof as the department may require. Testing performed to rebut the presumption may only be performed by a person who has been certified as an inspector or risk assessor in accordance with subparts L and Q of part 745 of title 40 of the code of federal regulations or successor regulations. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the department.

§ [17-911] 17-922 Remediation of lead-based paint hazards. a. There shall be no peeling lead-based paint in any portion of any day care facility.

b. [Lead based] Lead-based paint or paint of unknown lead content that is peeling, or which is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces shall be immediately remediated in a manner authorized by the department.

c. Any equipment that is painted shall be painted with lead-free paint.

d. Whenever a condition prohibited by this section is found to exist, the department shall immediately serve an order on the operator [or owner] of such [day care] facility or the owner of the premises where such facility is located to remediate the condition. In the event such order is not complied with within [forty-five] 45 days [of] after service thereof, the department shall immediately request an agency [of the city of New York] to execute such order pursuant to the provisions of section 17-147 of this code. The agency shall execute the order within [forty-five] 45 days of the department's request. The city [of New York] shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, including as credits toward lease payments.

e. When lead-based paint hazards are remediated pursuant to this section such work shall be performed

in compliance with work practices established by the department pursuant to section [17-912] 17-923 of this subchapter.

§ [17-912] 17-923 Department rules. The department shall promulgate such rules as may be necessary for the implementation of this [chapter] subchapter. Such rules shall incorporate work practices that are no less protective of public health than those set forth in subdivision d and e of section 173.14 [(d) and (e)] and those parts of subdivision b of such section of the health code applicable thereto or a successor rule, and shall include a requirement that lead-contaminated dust clearance testing be performed at the completion of such work. Such rules shall require that such work be performed by a person who has, at a minimum, successfully completed a course on lead-safe work practices given by or on behalf of the department or, by the United States environmental protection agency or an entity authorized by it to give such course, or by the United States department of housing and urban development or an entity authorized by it to gives such course. Such rules shall not apply where such work disturbs surfaces of less than [(a)] (i) two square feet of peeling lead-based paint per room or [(b)] (ii) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

§ [17-913] 17-924 Annual [Survey] survey for lead-based paint hazards. The operator of a day care 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 to the department.

§ 17-925 Remediation of lead in water used for drinking or cooking at covered facilities.

a. All water supplied for drinking or cooking purposes in a covered facility shall have lead levels below a water lead action level established by rule of the department.

b. The operator of a covered facility or the owner of the premises where such facility is located shall:

1. Except as provided in subdivision c of this section, at least once in each year, cause a sample of water from each fixture in such facility that supplies water for drinking or cooking purposes to be analyzed for lead

by a laboratory certified to perform such analysis by the United States environmental protection agency, or a state agency of appropriate jurisdiction, and provide, in a form and manner established by the department, a copy of the results of such analysis to the parent or guardian of each child that attends such facility and to the department; or

2. (i) Install, and thereafter maintain and replace in accordance with manufacturer specifications, water filtration or treatment systems that will reduce lead concentrations in water supplied for drinking or cooking purposes at such facility and that have been certified by NSF International, or another certifying body designated by rule of the department, to reduce lead concentrations in water in accordance with NSF/ANSI standard 53 or 58, as in effect on the effective date of the local law that added this section, or such other standard as the department may adopt by rule or (ii) otherwise provide occupants of such facility with an adequate supply of safe, water for drinking and cooking purposes in accordance with rules promulgated by the department, provided that if electing to comply with this paragraph, such owner or operator shall at least once in each year, in a time and manner established by the department, provide the department with a certification describing the manner of such compliance and provide a copy of such certification to the parent or guardian of each child that attends such facility.

c. 1. For a covered facility located in a building erected before June 19, 1988, the operator of such facility, or the owner of such building, may only elect to comply with paragraph 1 of subdivision b of this section for such facility if the department has authorized such election for such facility based upon submission of an application, in a form and manner established by the department, showing that (i) a person performed tests, using a lead test kit registered by the United States environmental protection agency pursuant to section 745.88 of title 40 of the code of federal regulations, of the pipes, pipe fittings, joints, valves, faucets and fixture fittings utilized to supply water for drinking or cooking purposes in such facility to determine the lead content thereof, (ii) such person determined that such tests yielded negative responses for lead, (iii) such person is a certified renovator, as such term is defined in section 745.83 of title 40 of the code of federal regulations, as in

effect on the effective date of the local law that added this section, or is otherwise approved to perform such tests by the department, the department of buildings or another agency designated by the mayor, (iv) such application includes a copy of the results of such tests certified by such person and (v) a copy of such application was provided to the parent or guardian of each child attending such facility.

2. The department may reduce the frequency of sampling for a covered facility under paragraph 1 of subdivision b of this section from once in each year to once in every three years upon submission of an application, in a form established by such department, showing that for each of the immediately preceding three years, the results of sampling in accordance with such paragraph have indicated that lead levels in such samples were below the water lead action level established under subdivision a of this section.

d. If a test that is required by federal, state or local law or rule, or an order issued by a court or a federal, state or local agency having appropriate jurisdiction, indicates that water supplied for drinking or cooking at a covered facility has a lead level at or above the water lead action level established under subdivision a of this section, the operator of such facility or the owner of the premises where such facility is located shall:

1. Notify the department and the parent or guardian of each child that attends such facility in a time and manner established by the department; and

2. Comply with paragraph 1 of subdivision b of this section, except that an operator of such covered facility, or an owner of the premises where such a facility is located, who installs a water filtration or treatment system pursuant to such paragraph need not thereafter replace such system in accordance with such paragraph if such operator or owner submits to the department, in a time and manner established by the department, a certification showing that (i) a sample of water was obtained from each fixture in such facility that supplies water for drinking or cooking purposes, (ii) each such sample was obtained after the installation of such system but did not include water that passed through such system, (iii) each such sample was analyzed for lead by a laboratory certified to perform such analysis by the United States environmental protection agency, or a state agency having appropriate jurisdiction, (iv) such analysis indicated that the lead level for each such sample is

below the water lead action levels established under section 17-912 of the code, provided that such certification shall include a copy of the results of such analysis as provided by such laboratory, and (v) a copy of such certification was provided to a parent or guardian of each child attending such facility.

e. Conditions prohibited by this section shall be remediated in the manner set forth under subdivision d of section 17-922.

§ 2. This local law takes effect 120 days after it becomes law, except that the department of health and mental hygiene may promulgate such rules, and take such other actions, as are necessary for the timely implementation of this law prior to such date.

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