Legislation Details (With Text)

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Attachments:	1. Summary of Int. No. 907, 2. Int. No. 907, 3. May 9, 2018 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 05-09-18, 5. Minutes of the Stated Meeting - May 9, 2018, 6. Committee Report 9/27/18, 7. Hearing Testimony 9/27/18, 8. Hearing Testimony 9/27/18 (Con't), 9. Hearing Transcript 9/27/18		

Date	Ver.	Action By	Action	Result
5/9/2018	*	City Council	Introduced by Council	
5/9/2018	*	City Council	Referred to Comm by Council	
9/27/2018	*	Committee on Health	Hearing Held by Committee	
9/27/2018	*	Committee on Health	Laid Over by Committee	
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12/31/2021	*	City Council	Filed (End of Session)	

Int. No. 907

By Council Members Rodriguez, Holden, Cumbo and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to remediating lead soil hazards in certain facilities serving children

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:

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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 Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York is REPEALED and a new subchapter 1 is added to such chapter to read as follows: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, a preschool, a nursery school or a school.

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 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 Reserved.

§ 17-296 Remediation of lead in soil at covered facilities. a. For the purposes of this section, the term "covered soil area" means area that is (i) on premises where a covered facility is located, (ii) partially or wholly covered in bare soil and (iii) accessible to children attending such facility.

b. Lead levels in covered soil areas on premises where a covered facility is located shall be below the soil lead reference levels established by rule of the department.

c. The operator of a covered facility or the owner of the premises where such facility is located shall (i)

at least once in each year cause a lead test to be conducted, in a manner established by department rule, on a sample of soil from each covered soil area on such premises and (ii) provide a copy of the results of such test to the department and the parent or guardian of each child that attends such facility, in a time and manner established by the department.

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 a covered soil area on premises where a covered facility is located has a lead level at or above the soil lead reference level established under subdivision b of this section, the operator of such facility or the owner of such premises 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. Cover, replace or otherwise remediate such soil area in a manner established by rule of the department.

d. The department may reduce the frequency of sampling required under subdivision c 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 soil lead reference levels established under subdivision b of this section.

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

§ 4. This local law takes effect 120 days after it becomes law, except that the commissioner of health and mental hygiene may take such actions as are necessary for implementation of this local law, including the promulgation of rules, before such effective date.

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