



Legislation Details (With Text)

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Int. No. 783

By Council Members Sanchez, Powers, Farias, Stevens, Riley, Salamanca, Dinowitz, Ayala, Velázquez, Feliz, Hudson, Abreu, Louis, Rivera, Schulman, Marte and Avilés (in conjunction with the Bronx Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to building water system maintenance and inspection.

Be it enacted by the Council as follows:

Section 1. Chapter 1 of Title 17 of the administrative code of the city of New York is amended by adding a new section 17-194.2 to read as follows:

§ 17-194.2 Building water systems; maintenance and inspection.

a. Definitions. For purposes of this section, the following terms have the following meanings:

Building. The term “building” has the same meaning as in section 28-101.5 of this code but shall not include healthcare facilities otherwise governed by the New York State department of health for purposes of legionella prevention.

Building water system. The term “building water system” means all potable and nonpotable water

systems in a building or on the site of a building, including, but not limited to, hot and cold plumbing systems, hot tubs or spas, decorative fountains, misters, atomizers, air washers, humidifiers, ice machines and water tanks, pumps, heaters and piping of a redundant water distribution system and other water systems and devices that release water aerosols, but does not include open and closed-circuit cooling towers as governed by section 17-194.1 of this chapter.

Cleaning. The term “cleaning” means physical, mechanical, or other removal of biofilm, scale, debris, rust, other corrosion products, sludge, algae and other potential sources of contamination.

Cluster. The term “cluster” means two or more cases of legionnaires’ disease or pontiac fever that appear to be linked by space and which occur within a twelve-month period of each other to warrant further investigation.

Covered building. The term “covered building” means a large building, a building with a water device, a building which primarily houses people older than 65 or a building that has multiple housing units and a centralized hot water system.

Large building. The term “large building” means a building with ten or more floors.

Owner. The term “owner” has the same meaning as in section 28-101.5 of this code.

Water device. The term “water device” means a device that releases water aerosols, including, but not limited to, a hot tub or spa that is not drained between each use, a decorative fountain or a centrally installed mister, atomizer, air washer or humidifier.

b. Registration. Every owner of a covered building shall register with the department.

c. Management program and plan. An owner of a large building, or a building which primarily houses people older than 65, or a building that has multiple housing units and a centralized hot water system shall develop and implement a building water system management program and plan for such building, and the owner of a building that has a water device shall develop and implement a management program and plan for such water device, to minimize the growth and transmission of Legionella bacteria in the building’s water

system, consistent with the American society of heating, refrigeration, and air conditioning engineers standard 188 for the year 2018 (ASHRAE 188-2018), or subsequent publication, or comparable standards adopted by a nationally-recognized, accepted, and appropriate organization, and the requirements of this section, and with the manufacturer's instructions. Such program shall be developed by a program team, which shall include the building owner or designee, a qualified person, employees, suppliers, consultants, or other individuals that the building owner recognizes to have authority and responsibility for the actions required by the program. The plan must be updated and amended by a responsible person or persons as needed to reflect any changes in the management team, system design, operation or system control requirements for the building water system or water device. The plan must be kept in the building where the building water system or water device is located and must be made available to the department for inspection upon and at the time of a request. At a minimum, the plan must include and describe:

1. Names and contact information and description of the function of each person on the management team, including the owner of the building, any manager or other person designated by the owner with the requirements of this section, and a list of the consultants, service companies, and qualified persons who clean, disinfect, deliver chemicals or services to the building water system or water device;

2. Identification, specifications, and a description of each building water device or water system and all components that release water aerosols;

3. A risk management assessment, identifying risk factors for legionella proliferation, and anticipated conditions and specific risk management procedures for the building water device or all parts of the building water system;

4. Control measures, corrective actions, documentation, including a written checklist for routine monitoring, and reporting to comply with this section and any routine maintenance activities recommended by the manufacturer's instructions, including performance measures, which may sufficiently demonstrate adequate implementation of the operation requirements described in the management program and plan;

5. Specific, detailed seasonal and temporary shutdown and start-up procedures; and

6. Notification and communication strategies among management team members regarding the required corrective actions in response to process control activities, monitoring, sampling results, and other actions taken to maintain the building water system or water device.

d. System maintenance. Building water systems and water devices in covered buildings must be maintained and operated in accordance with the management program and plan. Such program shall include routine maintenance to address all components and operations, including but not limited to, general system cleanliness, overall distribution operation, and flushing areas of stagnation. At least annually, covered building owners shall flush their entire building water systems in accordance with rules promulgated by the department. The owner is required to notify tenants of the building 72 hours prior to a building water system flush. In addition, the building water system or water device must be cleaned, flushed, and purged whenever routine monitoring indicates a need for cleaning in accordance with the management program and plan. Cleaning protocol indicated by the manufacturer's instructions or industry standards and worker protective measures must be specified in the management program and plan. Any replacement part or equipment used in a building water system or water device must comply with the manufacturer's design and performance specifications.

e. Minimum requirements for inspection and testing. At a minimum, building water systems or water devices shall be inspected and tested at least as frequently as every six months. Each inspection shall include an evaluation of the general condition of the components of the building water system or water device, the quality of the water connections and control, and proper functioning of the equipment.

f. Inspections, cleaning, and disinfection. All inspections, cleaning and disinfection required by this section shall be performed by or under the supervision of a qualified person. For any inspection that includes tests conducted pursuant to this section, such qualified person shall, within five days of such inspection, report to the department the date on which such inspection occurred. The building owner shall ensure that such report is submitted to the department by the qualified person within five days of the inspection. When the department

inspects a property pursuant to this section, it shall check the accuracy of the dates reported pursuant to this subdivision against the dates of inspection in the records of the building owner.

g. Monitor sampling. Building owners subject to the provisions of this section shall retain the services of a qualified third-party water sampler to sample the building water at least once every six months. The qualified third-party water sampler shall send the water sample to a laboratory to be tested for the presence of legionella bacteria. Building owners are required to take any corrective actions as specified in the management program if the legionella sample yields a positive result as indicated by TABLE A and must notify tenants and visitors immediately if a legionella sample results in level 3 through 4 as described in TABLE A.

TABLE A

Level	Legionella Culture Result	Process Triggered by Legionella Culture Results
1	<10 CFU/ml	Maintain water chemistry.
2	≥10 CFU/ml to <50 CFU/ml	Monitor conditions for 30 days, retest after 30 days. If CFU/ML increases, complete steps as indicated for level 3 until level 1 is reached.
3	≥ 50 CFU/ml to <100 CFU/ml	Initiate immediate disinfection within 24 hours, reviewing treatment program, performing visual inspection to evaluate need to perform cleaning and further disinfection. Retest water within 3-7 days. Subsequent test results must be interpreted in accordance with this Table until level 1 is reached.
4	≥ 100 CFU/ml	Initiate immediate disinfection within 24 hours. Within 48 hours perform full remediation of the potable water system by hyperhalogenating, draining, cleaning, and flushing. Review treatment program, retest water within 3-7 days. Subsequent test results must be interpreted in accordance with this Table until level 1 is reached. For Legionella results at this level, notify Department within 24 hours of receiving test result.

h. Recordkeeping. An owner of a covered building shall keep and maintain records of all inspections and tests performed pursuant to this section for at least three years. Such owner shall maintain a copy of the management program and plan required by this section on the premises of the covered building. Such records and plan shall be made available to the department immediately upon request.

i. Reporting. An owner shall submit a report containing all information required by this section in a manner and format determined by the department on an annual basis which shall be submitted no later than

January 31 of the year following the year subject to the report. The department may require any submission required by section 17-194.2 be submitted electronically.

j. Enforcement. 1. Department investigation. The department is authorized to investigate any covered building subject to section 17-194.2 whether it is based on a complaint or through random audit. The department may enter the premise of such building subject to investigation without prior notice to the building owner to enforce the provisions of section 17-194.2, and review and obtain a copy of any records or plan required to be kept under this section, for compliance with the requirements of this section or any rules promulgated thereunder.

2. Civil penalties. Any owner subject to the provisions of section 17-194.2 found in violation shall be fined in an amount determined by the department but shall not be less than \$500 for the first violation and \$1,000 for the second violation and \$5,000 for each subsequent violation.

3. Environmental control board. A notice of violation served for civil penalties pursuant to this section shall be returnable at the environmental control board or any tribunal established within the office of administrative trials and hearings.

k. Transparency. 1. Department transparency. The department shall post conspicuously on its website in a clear, detailed manner the procedure which the department follows when investigating a legionella cluster, which shall include, but not be limited to, the threshold and criteria that triggers such investigation, the steps taken by the department to investigate and identify the cluster, the public outreach conducted by the department, the results of such investigation, and the steps taken by the department to rectify the outbreak. The department shall post conspicuously on its website the detailed information regarding the cluster identified, including, but not limited to, the geographical area identified as well as the potential source and potential health effects of legionnaires' disease and pontiac fever to at-risk populations. If a source has been identified, the department shall post the estimated length of time that the level of legionella bacteria may remain elevated in or could be an infection risk from that source.

l. New construction. For any covered building subject to the provisions of section 17-194.2 for which construction begins on or after the effective date of this law, a building owner shall ensure prior to issuance of occupancy certificate that such building water system has been thoroughly cleaned, sanitized and flushed.

m. Extended building water system shutdown and start up. If a covered building water system or water device has been shut down for an extended period of time not less than 30 days, in order for the building to start up, the building owner is required to: i. either fully clean and disinfect, drain to waste and disinfect, or sufficiently hyperhalogenate or hyperchlorinate, where applicable, the recirculated water before startup; and ii. collect samples for legionella culture under subdivision g of this section and take any necessary corrective actions as required under this section.

n. Waiver or modification. The commissioner or designee may grant a waiver or modification when strict application of any provision of section 17-194.2 presents practical difficulties or unusual hardships. The commissioner in a specific instance may modify the application of such provision consistent with the general purpose of section 17-194.2 and upon such conditions as, in his or her opinion, are necessary to protect the health or safety of the public.

o. Guidance. The department, in consultation with the department of buildings, shall hold information sessions, at least twice annually, for interested building owners and other stakeholders, regarding the requirements for maintaining, cleaning, and inspecting building water systems and water devices in accordance with section 17-194.2. The information provided in such information sessions shall also be posted on the website of the department in simple and understandable terms.

l. Department report. The commissioner, in consultation with the department of buildings, shall submit a report to the mayor and the speaker of the city council on or before May 15 each year until May 15, 2031, reporting at minimum on the following information for the prior year:

1. The number of annual certifications that a covered building water system or water device was inspected, tested, cleaned and disinfected;

2. The number of reports of tests for the presence of microbes that reveal levels that present a serious health threat received by the department as indicated by levels 2, 3, or 4 in TABLE A of this section;

3. The number of inspections of covered building water systems and devices conducted pursuant to this section and the rules of the department, the number and types of any violations cited during such inspections, and the number of buildings that were not inspected;

4. The number of cleanings, disinfections, or other actions performed by or on behalf of the department;
and

5. The number of persons diagnosed with legionnaires' disease in the city in each of the previous 10 years, to the extent known or reasonably discoverable by the department.

§ 2. This local law takes effect 180 days after it becomes law, except that the department shall take measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

HKA
LS #5854 & LS #9442
9/8/22