



Legislation Text

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By The Speaker (Council Member Johnson) and Council Members Holden, Kallos, Moya, Cohen, Powers, Rose, Cornegy, Brannan, Levine, Rivera, Constantinides, Miller, Ayala, Koo, Williams, Rodriguez, Dromm, Cabrera, Salamanca, Grodenchik, Yeger, Torres, Richards, Van Bramer, Gibson, Reynoso, Vallone, Deutsch, Treyger, Lancman, Perkins, Lander, Ampy-Samuel, Eugene, Adams, Levin, Chin, Menchaca, Maisel, Barron, Espinal, Cumbo and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to lead reference/action levels and standards relating to lead-based paint hazards

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 Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York is REPEALED and a new subchapter 1 is added to such chapter to read as follows: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

Lead Reference/Action Levels

§ 17-910 Definitions. As used in this subchapter:

Child of applicable age. The term “child of applicable age” shall have the meaning ascribed to such term by section 27-2056.18 of the housing maintenance code.

Lead-based paint hazard. The term “lead-based paint hazard” shall have the meaning ascribed to such term by section 27-2056.2 of the housing maintenance code.

§ 17-911 Reserved.

§ 17-912 Lead reference levels and action levels. a. For the purposes of this subchapter, section 27-2056.14 of the housing maintenance code and any local law referring to a blood lead reference level except as otherwise provided in such local law, the blood lead reference level shall be five micrograms per deciliter, except that, if the United States centers for disease control and prevention or a successor agency adopts a lower blood lead reference level, the department shall (i) by rule adopt such lower level as the blood lead reference level for the purposes of this subchapter and section 27-2056.14 of the housing maintenance code or (ii) submit a report to the mayor and the speaker of the council detailing the reasons why such lower blood lead reference level should not be adopted for the city.

b. For the purposes of this subchapter and any local law referring to a soil lead reference level except as

otherwise provided in such local law, the soil lead reference level is 400 parts per million (ppm) for areas where children of applicable age are likely to frequently encounter bare soil and 1,200 ppm for other areas, except that, if the United States environmental protection agency or a successor agency adopts lower soil reference levels for the purposes of defining a soil-lead hazard in section 745.227 of title 40 of the code of federal regulations or a successor rule, the department shall (i) by rule adopt such lower levels as the soil lead reference level for the purposes of this subchapter or (ii) submit a report to the mayor and the speaker of the council detailing the reasons why such lower levels should not be adopted for the city.

c. For the purposes of this subchapter and any local law relating to a water lead reference level except as otherwise provided in such local law, the water lead action level is 15 parts per billion (ppb), except that, if the United States environmental protection agency or a successor agency adopts a lower action level, the department shall (i) by rule adopt such lower level as the water lead action level for the purposes of this subchapter or (ii) submit a report to the mayor and the speaker of the council detailing the reasons why such lower level should not be adopted for the city.

§ 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 Facilities

§ 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:

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 give 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.

§ 4. Paragraph 6 of section 27-2056.2 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:

Lead-based paint. The term "lead-based paint" means paint or other similar surface coating material containing [1.0] 0.3 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" [(June 1995, revised 1997)] (July 2012) or any successor guidelines published by the United States department of housing and urban development and the performance characteristic sheets released by the United States environmental protection

agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than [0.5%] 0.06% by weight of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

§ 5. Paragraph 8 of section 27-2056.2 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:

(8) “Lead-contaminated dust” shall mean dust containing lead at a mass per area concentration of [40] 2.5 or more micrograms per square foot on a floor, [250] 25 or more micrograms per square foot on window sills, and [400] 50 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

§ 6. Section 27-2056.14 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:

§ 27-2056.14 Inspections by Department of Health and Mental Hygiene and Removal of Health Code Violations by Department of Housing Preservation and Development. 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 [of fifteen micrograms per deciliter or higher] that is at or above the blood lead reference level established under section 17-912 of the code 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.

§ 7. This local law takes effect 120 days after it becomes law, except that the commissioner of health and mental hygiene and the commissioner of housing preservation and development 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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