



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, Ampry-Samuel, Eugene, Adams, Levin, Chin, Menchaca, Maisel, Barron, Espinal, Cumbo, Rosenthal, Koslowitz 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. Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York, as amended by a local law for the year 2019, relating to investigation by the department of health and mental hygiene of places in which children identified with elevated blood lead levels routinely visit and the regulation of lead-based paint hazards in facilities providing day care services, as proposed in introduction number 464-b, is amended by adding a new section 17-912 to read as follows:

§ 17-912 Lead reference levels and action levels. a. For the purposes of this subchapter, section 27-2056.14 and any local law referring to a blood lead reference level except as otherwise provided by such local law, the blood lead reference level shall be five micrograms per deciliter, except that, if the federal centers for disease control and prevention or a successor agency defines a lower blood lead reference level the department shall (i) by rule define such lower level as the blood lead reference level for the purposes of this subchapter, section 27-2056.14 and any local law referring to a blood lead reference level except as otherwise provided by such local law 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 or should result in alternative public health

actions other than those provided for in this subchapter.

b. Notwithstanding subdivision a of this section, for the purposes of this subchapter, section 27-2056.14 and any local law referring to a blood lead reference level except as otherwise provided by such local law, the board of health may define in the health code a lower blood lead reference level than that defined by the federal centers for disease control and prevention or a successor agency that shall apply to this subchapter, section 27-2056.14, and any local law referring to a blood lead reference level except as otherwise provided by such local law, if the board determines that defining such a lower blood lead reference level is in the interest of public health.

§ 2. Subdivisions (7) and (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, are amended to read as follows:

(7)(a) “Lead-based paint” means paint or other similar surface coating material containing 1.0 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) 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%] 0.5 percent of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(b) Notwithstanding paragraph (a) of this subdivision, no less than 10 months after the effective date of this section and upon the promulgation of a rule by the department stating that the federal department of housing and urban development has provided at least one performance characteristic sheet or other sufficient written technical guidance approving a commercially available x-ray fluorescence analyzer tested at the level of 0.5 milligrams of lead per square centimeter, “lead-based paint” shall mean paint or other similar surface coating material containing 0.5 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. X-ray fluorescence readings shall be classified as positive or negative in accordance with such performance characteristic sheet or other guidance. 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 0.25 percent of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(c) Before and until the effective date of the rule described in paragraph (b) of this subdivision, for the purposes of the department of health and mental hygiene finding unsafe lead paint in a dwelling unit and issuing an order to abate a condition in a dwelling unit where a child of applicable age with an elevated blood lead level resides, pursuant to section 173.13 of the health code, nothing in this article shall prevent the board of health from determining that unsafe lead paint may include paint with a concentration of lead content that is less than the concentration of lead content in paint set forth in paragraph (a) of this subdivision. Such a

determination of unsafe lead paint may include paint with a concentration of lead content no less than 0.5 milligrams of lead per square centimeter, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. X-ray fluorescence readings shall be classified as positive or negative in accordance with the manufacturer's instructions. 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. For such purposes, such concentration determined by the board of health pursuant to this paragraph shall be no less than 0.25 percent of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(8)(a) “Lead-contaminated dust” shall mean dust containing lead at a mass per area concentration of [40] 10 or more micrograms per square foot on a floor, [250] 50 or more micrograms per square foot on window sills, and [400] 100 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by rule of the department of health and mental hygiene, provided that, if the federal environmental protection agency or a successor agency, or the federal department of housing and urban development or a successor agency, adopts lower definitions of lead-contaminated dust, the board of health shall define in the health code such lower levels for the purposes of this subchapter.

(b) Notwithstanding subdivision (a) of this section, on and after June 1, 2021, “lead-contaminated dust” shall mean dust containing lead at a mass per area concentration of 5 or more micrograms per square foot on a floor, 40 or more micrograms per square foot on window sills, and 100 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the board of health, provided that, if the federal environmental protection agency or a successor agency, or the federal department of housing and urban development or a successor agency, adopts lower definitions of lead-contaminated dust, the board of health shall define in the health code such lower levels for the purposes of this subchapter.

§ 3. Section 27-2056.5 of the administrative code of the city of New York is amended by adding a new

subdivision c to read as follows:

c. Any exemption for a dwelling unit granted pursuant to this section prior to the effective date of this subdivision shall remain in effect until: (i) the turnover of such unit on or after the effective date of the rule promulgated by the department pursuant to paragraph (b) of subdivision (7) of section 27-2056.2, (ii) issuance of a denial of a rebuttal of a lead-based paint violation based upon the presumption of lead paint for such dwelling unit filed pursuant to subdivision a of section 27-2056.5, (iii) issuance of a lead-based paint violation based upon testing by the department for such dwelling unit, or (iv) issuance of an order to abate lead-based paint hazards or unsafe lead paint by the department of health and mental hygiene, or upon issuance of a denial of an objection to such a commissioner's order to abate filed pursuant to section 173.13 of the health code. Upon the expiration of an exemption pursuant to this subdivision, such exemption shall no longer apply and such dwelling unit shall be subject to all applicable provisions of this article. The owner of such a dwelling unit that was previously exempted may apply for a new exemption pursuant to subdivision b of section 27-2056.5. The department shall establish requirements for the owner of a dwelling unit that has been granted an exemption by the department prior to the effective date of this subdivision to notify the department of the turnover of the dwelling unit.

§ 4. Subdivision a of section 27-2056.7 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:

a. When the department of health and mental hygiene issues a commissioner's order to abate pursuant to section 173.13 of the New York city health code or a successor rule that addresses lead-based paint hazards or unsafe lead paint in a specific dwelling unit in a multiple dwelling, the department, within fifteen days of such order, shall notify the owner of the multiple dwelling where the dwelling unit is located that the owner shall, within forty-five days of the department's notice, provide to the department all records required to be maintained under this article. Upon the department's receipt of those records and a determination that there may

exist uncorrected lead-based paint hazards in dwelling units where a child of applicable age resides, the department within ten days shall attempt to inspect such units to determine whether there are any violations of section 27-2056.6 of this article.

§ 5. Paragraph (1) of subdivision a of section 27-2056.11 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:

(1) where an owner is performing work in order to comply with a notice of violation or order to correct issued by the department pursuant to this article, which shall be no less stringent than the safety standards required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards or unsafe lead paint pursuant to section 173.13 of the health code or a successor rule. Such rules shall provide for temporary relocation provided by the owner of the occupants of a dwelling or dwelling unit to appropriate housing when work cannot be performed safely. Such rules shall provide that all such work be performed only by firms which have received certification to perform lead abatement under the regulations issued by the United States environmental protection agency at subpart L of part 745 of title 40 of the code of federal regulations, or any successor regulations.

§ 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 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.

§ 7. This local law takes effect on the same day as a local law amending the administrative code of the city of New York, relating to investigation by the department of health and mental hygiene of places in which children identified with elevated blood lead levels routinely visit and the regulation of lead-based paint hazards in facilities providing day care services, as proposed in introduction number 464-b for the year 2018, takes effect, except that:

(i) subdivisions (7) and (8) of section 27-2056.2 of the administrative code of the city of New York, as amended by section three of this local law, subdivision a of section 27-2056.7 of such administrative code, as amended by section five of this local law, and paragraph (1) of subdivision a of section 27-2056.11 of such administrative code, as amended by section six of this local law, take effect 60 days after they become law; and

(ii) 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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