



## Legislation Text

---

**File #:** Int 0561-2003, **Version:** \*

---

Int. No. 561

By Council Members Oddo, Gallagher and Lanza

A Local Law to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, and to repeal subdivision h of section 27-2013 of such code.

Be it enacted by the Council as follows:

Section 1. Subdivision h of section 27-2013 of the administrative code of the city of New York is REPEALED.

§2. Statement of findings and purposes. The council finds that lead poisoning from paint containing lead is a preventable childhood disease. The council further finds that the goal of local law number 1 for the year 1982, which was to eliminate hazardous housing conditions before a child becomes lead poisoned, is not best served by the removal of intact paint containing lead, which local law number 1 has been interpreted to require. Instead, the council by enacting this article recognizes that the best way to prevent poisoning from paint containing lead is to ensure that such paint is kept in good repair or, if it is peeling or located on a deteriorated subsurface, that it is repaired using safe work practices.

The council further finds that the hazard in multiple dwellings that may occur from paint containing lead is subject to many factors, such as the age of a building and its maintenance. The council therefore recognizes that it cannot legislate a single maintenance standard for all multiple dwellings to eliminate this hazard. Instead, the council by enacting this article makes it the duty of every owner of a multiple dwelling to inspect dwellings units occupied by a child under six years of age for lead-based paint hazards, and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions that are necessary to prevent a child from becoming lead poisoned. Having established this duty, the council

finds that sufficient information exists to guide owners in making determinations about the existence of lead-based paint hazards.

The council further finds that in any dwelling unit where a child under the age of six resides, the existence of lead-based paint constitutes an immediately hazardous condition when it is peeling or located on a deteriorated subsurface. In order that the department of housing preservation and development may secure the appropriate correction of lead-based paint hazards, this article makes any such hazard a class C immediately hazardous violation under the code. The council declares that it is reasonable and necessary to set forth timeframes for owners and for the department to diligently perform their duties so that lead-based paint hazards shall be controlled in all applicable housing to the maximum extent possible.

§3. Title 17 of the administrative code of the city of New York is amended by adding a new section 17-179 to read as follow:

§17-179 Department, Screening, Diagnosis and Treatment. a. The department shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening.

b. The department shall develop a pamphlet explaining the hazards associated with lead-based paint and describing the procedures to be used in order for a violation of subdivision a of section 27-2056.5 of the administrative code to be corrected. The pamphlet shall include appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information and to report unsafe lead-based paint work practices. Such pamphlet shall be made available for use in accordance with subdivision c of section 27-2056.7 of the administrative code. Such pamphlet shall also be made available to any member of the public upon request.

§4. Title 17 of the administrative code of the city of New York is amended by adding a new

section 17-181 to read as follows:

§17-181 Lead-based paint; dry scraping and dry sanding prohibited. The dry scraping or dry sanding of lead-based paint or paint of unknown lead content in any dwelling unit is hereby declared to constitute a public nuisance and a condition dangerous to life and health. For the purpose of this section, dry scraping and dry sanding shall mean the removal of paint or similar surface-coating material by scraping or sanding without using water misting or other method approved by the department to reduce dust levels. The department may promulgate such additional rules as necessary for the enforcement of this section.

§5. Subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new article 14 to read as follows:

Article 14

Lead Poisoning Prevention and Control

- §27-2056.1 Definitions.
- §27-2056.2 Owner's Duty to Correct.
- §27-2056.3 Owner's Duty to Notify, Inspect and Correct.
- §27-2056.4 Presumption.
- §27-2056.5 Violation in a Dwelling Unit.
- §27-2056.6 Owner's Duty Upon Vacancy.
- §27-2056.7 Department Inspections.
- §27-2056.8 Waiver of Benefit Void.
- §27-2056.9 Compliance by the Department and Remedies.
- §27-2056.10 Reporting.

§27-2056.1 Definitions. a. Whenever used in this article:

(1) "Deteriorated subsurface" shall mean an unstable or unsound subsurface, an indication of

which can be readily observed by visual inspection, including but not limited to wood or plaster that has been subject to moisture or disturbance, and which is covered by lead-based paint or paint that is presumed to be lead-based paint.

(2) "Lead-based paint hazard" shall mean (i) paint that is lead-based paint that is peeling on any surface in a dwelling unit in a multiple dwelling, in which dwelling unit a child under six years of age resides or (ii) paint that is presumed to be lead-based paint pursuant to section 27-2056.4 of this article that is peeling on any surface in a dwelling unit in a multiple dwelling, in which dwelling unit a child under six years of age resides or (iii) paint that is either lead-based paint or presumed to be lead-based paint pursuant to section 27-2056.4 of this article and is on a deteriorated subsurface in a dwelling unit in a multiple dwelling in which dwelling unit a child under six years of age resides.

(3) "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligram of lead per square centimeter (mg/cm<sup>2</sup>) or greater, as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer. If an XRF analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets (PCS) published by the United States environmental protection agency (EPA) for the specific XRF instrument used. XRF readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995), or successor HUD guidelines, and the PCS published by the EPA and HUD for the specific XRF instrument used. XRF readings that fall within the inconclusive zone, as determined by the PCS, shall be confirmed by laboratory analysis of paint chips, results shall be reported in mg/cm<sup>2</sup> and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in mg/cm<sup>2</sup>. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, 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% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material. In the absence of a PCS for a specific XRF instrument or a particular function of such instrument, substrate correction, classification of XRF readings, and determinations of inconclusive readings shall be performed in accordance with the manufacturer's instructions for the specific XRF instrument used.

(4) "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(5) "Rule" or "rules" shall mean a rule or rules promulgated pursuant to section 1043 of the New York city charter.

(6) "Surface dust test" shall mean a test for the lead content of dust in a dwelling unit.

b. Nothing in this title shall be deemed to affect or diminish the authority of the board of health to adopt or amend provisions of the health code of the city of New York defining or determining the presence of a lead-based paint hazard for purposes of such health code, the applicable methods and procedures to be used in the abatement of such hazard for purposes of such health code, or the timetable for complying with orders issued by the commissioner of health to abate such lead-based paint hazards for purposes of such health code in any dwelling unit of a child with a blood lead level as may be provided in section 173.13 of the health code, or successor section.

§27-2056.2 Owner's Duty to Correct. a. An owner shall correct all lead-based paint hazards. Notwithstanding any other provision of law except subdivision b of this section, when no violation has been issued pursuant to section 27-2056.5 of this article, an owner shall correct all such hazards using the following exclusive interim controls:

(1) where practicable and not otherwise prohibited, seal off the work area to restrict access or entry to such work area by occupant until all work and clean-up are achieved;

(2) prepare the work area by either (i) covering all moveable objects in and adjacent to the work

area and covering the floor adjacent to the work area with polyethylene, plastic or equivalent sheeting or (ii) removing all moveable objects in and adjacent to the work the area and HEPA-vacuuming all such objects prior to removing such objects and covering the floor with polyethylene, plastic or equivalent sheeting;

(3) provide that any polyethylene, plastic or equivalent sheeting, drop cloths and other supplies, materials, equipment or disposable clothing used in the work area that may contain peeling paint, paint chips, dust and other work-related debris shall remain in the work area or be stored or removed from the work area in a safe manner to minimize exposure of occupants to such sheeting, cloths, and other supplies during the period that the job is being performed;

(4) wet scrape all peeling paint using a scraper and water misting to reduce dust and other work-related debris and repair all deteriorated subsurfaces where such subsurfaces are covered with paint,;

(5) HEPA-vacuum all affected surfaces and the floors in the work area or wash all surfaces in the work area with a detergent prior to repainting to remove any dust that may have accumulated and provide for the disposal of any peeling paint or materials that may contain peeling paint, paint chips, dust and other work-related debris in accordance with all applicable laws, rules and regulations;

(6) repaint all areas affected and provide that all paints, thinners, solvents, primers, chemical strippers or other such flammable materials in the work area shall be kept in their original containers;

(7) thoroughly wet-mop or HEPA-vacuum the work area and conduct a visual examination at the end of each workday to ensure that no peeling paint, paint chips, dust or other work-related debris have been released from such area;

(8) arrange and supervise the work area so as to minimize the dispersion of peeling paint, paint chips, dust and other work related debris from the work area and advise occupants not to enter the work area until the work has been completed in such work area;

(9) upon the completion of work, provide that any remaining polyethylene, plastic or equivalent sheeting, drop cloths or other materials shall be removed in a safe manner, and all surfaces exposed to peeling

paint, paint chips, dust or other work-related debris during the course of work shall be HEPA-vacuumed or detergent washed beginning with ceilings, then down the walls and across the floors;

(10) adjust all doors, including cabinet doors, to ensure that they are properly hung, so that no painted surfaces bind;

(11) adjust all windows to ensure that they are properly hung, so that no painted surfaces bind; and

(12) the owner shall maintain or transfer to subsequent owners records of any work performed pursuant to this section. Such records shall be maintained for three years and made available to the department upon request.

b. An owner may, at such owner's discretion, correct a lead-based paint hazard by using measures specified in section 173.14 of the health code of the city of New York as the exclusive alternative to using the interim controls specified in subdivision a of this section.

§27-2056.3 Owner's Duty to Notify, Inspect and Correct. a. The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall provide to an occupant of a dwelling unit in such multiple dwelling at the signing of the lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice inquiring as to whether a child under six years of age resides or will reside therein. The occupant shall have the duty to complete such notice at the time of such signing or agreement or at the commencement of such occupancy. Such notice must be printed on a single form and in a manner approved by the department, the content of which shall be in English and Spanish at a minimum. The pamphlet developed by the department of health pursuant to section 17-179 of the administrative code shall be delivered by the owner to the occupant of a dwelling unit in a multiple dwelling at the time the occupant signs a lease to reside in such multiple dwelling unit, or if there is no lease, at the commencement of occupancy.

b. (1) Except as provided by item iii of paragraph two of this subdivision, each year the owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall cause to be delivered to each

residential unit no earlier than January first and no later than January sixteenth a notice inquiring as to whether a child under six years of age resides therein and advising the occupant of his or her duty pursuant to this subdivision. Such notice must be printed on a single form and in a manner approved by the department, the content of which shall be in English and Spanish at a minimum.

(2) The owner shall satisfy the requirements of paragraph one of this subdivision by delivering said notice by any one of the following methods:

(i) by first class mail addressed to the occupant of the dwelling unit;

(ii) by hand delivery to the occupant of the dwelling unit;

(iii) by enclosure with the January rent bill, if such rent bill is delivered after December fifteenth but no later than January sixteenth; or

(iv) by delivering said notice in conjunction with the annual notice required pursuant to section 17-123 of the administrative code and the regulations of the department of health pertaining to the installation of window guards.

(3) Upon receipt of such notice the occupant shall have the duty to deliver a written response to the owner indicating whether a child under six years of age resides therein.

(4) If by March first of the year in which the notice was sent an owner has not received a written communication by the occupant, the owner shall be deemed to have complied with this section unless such owner subsequently receives actual knowledge or subsequent written communication that a child under six years of age resides therein.

c. (1) Where an occupant has responded to the notice provided by the owner pursuant to subdivision a of this section by indicating that no child under six years of age resides therein, in the interim period between the date of such response and the delivery of the notice provided by the owner pursuant to paragraph one of subdivision b of this section during the immediately following year, the occupant shall have the duty to inform the owner in writing of any new child under six years of age that comes to reside therein



during such interim period.

(2) Where an occupant either has responded to the notice provided by the owner pursuant to paragraph one of subdivision b of this section by indicating that no child under six years of age resides therein or has not responded to such notice by March first, in the interim period between (a) either the date of such response or March first, whichever occurs first, and (b) the delivery of the notice by the owner pursuant to paragraph one of subdivision b of this section during the immediately following year, the occupant shall have the duty to inform the owner in writing of any new child under six years of age that comes to reside therein during such interim period.

d. In any dwelling unit for which the occupant has responded to the notice provided by the owner pursuant to subdivision a of this section or to the notice provided by the owner pursuant to paragraph one of subdivision b of this section and informed the owner that a child under six years of age resides therein, or in any dwelling unit for which the occupant has not responded to such notice but for which the owner has actual knowledge that a child under six years of age resides therein, including written communication provided pursuant to subdivision c of this section, the owner shall perform or cause to be performed an annual visual inspection for lead-based paint hazards. Nothing in this provision shall preclude an owner from conducting any additional types of inspections for lead-based paint hazards if such owner so chooses.

e. An owner shall correct, pursuant to section 27-2056.2 of this article, all lead-based paint hazards identified pursuant to the visual inspection and, if applicable, any additional inspections conducted pursuant to subdivision d of this section.

f. In the event of any action for civil penalties arising from a violation of this section or in the event of any claim by or on behalf of the occupant of the dwelling unit or a child under six years of age who resides therein, such owner may in defense or mitigation of such owner's liability show that (1) the owner did not receive a written communication from the occupant responding to the notice given by the owner pursuant to subdivision a of this section or to the notice given by the owner pursuant to paragraph one of subdivision b of

this section and the owner did not have actual knowledge that a child under six years of age resided therein, (2) the owner did receive a written communication from the occupant responding to the notice given by the owner pursuant to subdivision a of this section or to the notice given by the owner pursuant to paragraph one of subdivision b of this section which stated that a child under six years of age did not reside therein, (3) the occupant failed to provide access to the owner at a reasonable time to any part of the premises for the purposes of inspection and repair of lead-based paint hazards, or (4) the owner visually inspected the dwelling unit but the lead-based paint hazard arose subsequent to such inspection and the occupant did not provide notice to the owner of such hazard. An owner shall have no obligation to perform or cause to be performed an annual visual inspection for lead-based paint hazards unless the occupant has complied with the provisions of subdivision a of this section or the provisions of paragraph three of subdivision b of this section or the occupant has otherwise provided written notice to the owner that a child under six years of age resides therein, or where the owner has actual knowledge that a child under six years of age resides therein.

g. The owner shall maintain or transfer to a subsequent owner a record of any visual inspections conducted pursuant to subdivision d of this section and a record of any work performed pursuant to subdivision e of this section. Such records shall be maintained for a period of three years and made available to the department upon request.

§27-2056.4 Presumption. a. In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty in which a child under six years of age resides, it shall be presumed that the paint or other similar surface-coating material in the interior of the dwelling unit is lead-based paint solely for the purposes of this article. The presumption established in this section may be rebutted by the owner of such multiple dwelling by submitting to the department a sworn written statement, supported by 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 owner, and such other proof that the department may require. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the

department.

b. The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty may apply to the department to have such multiple dwelling exempted from the presumption contained in this section when substantial alterations have been made to such multiple dwelling and such alterations have resulted in the removal or containment of lead-based paint in the dwelling units of such multiple dwelling. The department shall by rule determine the requirements needed to qualify for such an exemption. Sections 27-2056.2, 27-2056.3, 27-2056.6 and 27-2056.7 of this article shall not apply to any multiple dwelling that has been determined by the department to qualify for such an exemption.

§27-2056.5 Violation in a Dwelling Unit. a. The existence of a lead-based paint hazard shall constitute a class C immediately hazardous violation.

b. Notwithstanding any other provision of law, except subdivisions c and d of this section, upon the issuance of a violation issued pursuant to subdivision a of this section, an owner shall correct such violation using the following exclusive interim controls:

(1) where practicable and not otherwise prohibited, seal off the work area to restrict access or entry to such work area by occupant until all work and clean-up are achieved;

(2) prepare the work area by either (i) covering all moveable objects in and adjacent to the work area and covering the floor adjacent to the work area with polyethylene, plastic or equivalent sheeting or (ii) removing all movable objects in and adjacent to the work area and HEPA-vacuuming all such objects prior to removing such objects and covering the floor with polyethylene, plastic or equivalent sheeting;

(3) provide that any polyethylene, plastic or equivalent sheeting, drop cloths and other supplies, materials, equipment or disposable clothing used in the work area that may contain peeling paint, paint chips, dust and other work-related debris shall remain in the work area or be stored or removed from the work area in a safe manner to minimize exposure of occupants to such sheeting, cloths, and other supplies during the period that the violation is being corrected;

(4) wet scrape all peeling paint using a scraper and water misting to reduce dust and other work-related debris and repair all deteriorated subsurfaces where such subsurfaces are covered with paint;

(5) HEPA-vacuum all affected surfaces and the floors in the work area or wash all surfaces in the work area with a detergent prior to repainting to remove any dust that may have accumulated and provide for the disposal of any peeling paint or materials that may contain peeling paint, paint chips, dust and other work-related debris in accordance with all applicable laws, rules and regulations;

(6) repaint all areas affected and provide that all paints, thinners, solvents, primers, chemical strippers or other such flammable materials in the work area shall be kept in their original containers;

(7) thoroughly wet-mop or HEPA-vacuum the work area and conduct a visual examination at the end of each workday to ensure that no peeling paint, paint chips, dust or other work-related debris have been released;

(8) arrange and supervise the work area so as to minimize the dispersion of peeling paint, paint chips, dust and other work-related debris from the work area and advise occupants not to enter the work area until the work has been completed in such work area;

(9) upon the completion of work, provide that any remaining polyethylene, plastic or equivalent sheeting, drop cloths or other materials shall be removed in a safe manner, and all surfaces exposed to peeling paint, paint chips, dust or other work-related debris during the course of work shall be HEPA-vacuumed or detergent washed beginning with ceilings, then down the walls and across the floors;

(10) adjust all doors, including cabinet doors, to ensure that they are properly hung, so that no painted surfaces bind;

(11) adjust all windows to ensure that they are properly hung, so that no painted surfaces bind;

(12) when lead-based paint hazards have been corrected on any interior wood trim or door, a surface dust test shall be conducted on the floor immediately adjacent to the work area. In addition, when lead-based paint hazards have been corrected on any interior wood trim or door on, near or immediately adjacent to

a window, a surface dust test shall be conducted on the window sill and window well immediately adjacent to the work area. In addition, when lead-based paint hazards have been corrected on any window, a surface dust test shall be conducted on the floor, window sill and window well immediately adjacent to the work area. Any surface dust tests required pursuant to this subdivision shall be conducted after final clean-up, and after any repainting, if necessary, has been completed. All such surface dust tests shall be completed by an individual who has passed a course approved by the department of health on how to conduct a surface dust wipe test. All such surface dust test samples shall be forwarded to an independent state certified laboratory for analysis; and

(13) the owner shall maintain or transfer to a subsequent owner records of any work performed pursuant to this subdivision. Such records shall be maintained for three years and made available to the department upon request.

c. Notwithstanding the provisions of any other section of this article except subdivision d of this section, an owner may, at such owner's discretion, correct a lead-based paint hazard by using measures specified in section 173.14 of the health code of the city of New York as the exclusive alternative to the interim controls specified in subdivision b of this section.

d. Where an owner who receives a notice of violation of subdivision a of this section does not comply with the provisions for the timely correction of a violation pursuant to paragraph one of subdivision l of section 27-2115 of this code, the correction of the violation specified in subdivision a of this section shall be performed in accordance with section 173.14 of the health code of the city of New York.

e. Where the department issues a notice of violation for a lead-based paint hazard and the department also finds a condition or conditions that cause paint to peel and which are readily observable and identifiable as to source, the department shall also issue a notice of violation for such other condition or conditions and such other condition or conditions shall be corrected in accordance with all applicable laws, rules and regulations.

§27-2056.6 Owner's Duty Upon Vacancy. a. When any dwelling unit becomes vacant in a

multiple dwelling erected prior to January first, nineteen hundred sixty, the owner of such multiple dwelling shall have the duty to perform the following measures:

(1) where practicable and not otherwise prohibited, seal off the work area to restrict access or entry to such work area until all work and clean-up are achieved;

(2) wet scrape all peeling paint using a scraper and water misting to reduce dust and other work-related debris and repair all deteriorated subsurfaces where such subsurfaces are covered with paint;

(3) HEPA-vacuum all affected surfaces and the floors in the work area or wash all surfaces in the work area with a detergent prior to repainting to remove any dust that may have accumulated and provide for the disposal of any peeling paint or materials that may contain peeling paint, paint chips, dust and other work-related debris in accordance with all applicable laws, rules and regulations;

(4) repaint all areas affected and provide that all paints, thinners, solvents, primers, chemical strippers or other such flammable materials in the work area shall be kept in their original containers;

(5) make all bare floors in the dwelling unit smooth enough so that dust can be removed by normal cleaning without special equipment;

(6) adjust all doors, including cabinet doors, to ensure that they are properly hung, so that no painted surfaces bind;

(7) adjust all windows to ensure that they are properly hung, so that no painted surfaces bind; and

(8) provide that any supplies, materials, equipment or disposable clothing used in the work area that may contain peeling paint, paint chips, dust and other work-related debris shall be stored and disposed of in a safe and workmanlike manner to minimize exposure of the occupants of the multiple dwelling to such supplies, materials, equipment or disposable clothing during the course of work.

b. Any owner who fails to comply with the provisions of this section in accordance with the rules of the department shall be liable for a class C immediately hazardous violation.

§27-2056.7 Department Inspections. a. When a complaint is made with regard to the existence of peeling paint in a dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty in which a child under the age of six resides, the department shall attempt to gain access to such dwelling unit to conduct an inspection not later than ten days after the department's receipt of such complaint, provided, however, that during the time period from October first of each year through May thirty-first of the following year, the department shall attempt to gain access to such dwelling unit to conduct an inspection not later than fifteen days after receipt of such complaint. If, after conducting such inspection, the department determines the existence of a condition constituting a violation of this chapter, the department shall serve a notice of violation upon the owner of such multiple dwelling.

b. The time periods in subdivision a of this section for an attempt by the department to gain access to conduct an inspection shall not apply where the department has attempted and is unable to gain access to the dwelling unit that is the subject of such complaint.

c. The pamphlet developed by the department of health pursuant to section 17-179 of the administrative code shall be left at the premises of the dwelling unit at the time of an inspection made by the department pursuant to this section.

d. The department shall develop a pamphlet listing the interim controls set forth in both subdivision a of section 27-2056.2 and subdivision b of section 27-2056.5 of this article and the work practices specified in section 173.14 of the health code of the city of New York. Such pamphlet shall be delivered by the department in conjunction with all notices of violation issued pursuant to paragraph one of subdivision 1 of section 27-2115 of this code. Failure to include such pamphlet with such notices of violation shall not render null and void the service of such notices of violation. Such pamphlet shall also be made available to any member of the public upon request.

e. The department shall develop a notice which shall be addressed to the unit in the multiple dwelling for which such violation was issued. Such notice shall include a telephone number for the department

of health. The department shall also refer to the department of health the address of the unit in the multiple dwelling for which such violation was issued, the name of the complainant, if any, and the complainant's telephone number, if available. The department of health, pursuant to section 17-179 of the administrative code, shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening.

§27-2056.8 Waiver of Benefit Void. Any agreement by the occupant of a dwelling unit purporting to waive the benefit or protection of any provision of this article is void. Any owner who violates this section, or the rules promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any owner who violates this section shall be liable for a civil penalty of not more than five hundred dollars per violation. Notwithstanding any provision hereof to the contrary, nothing herein shall be construed to alter existing or future agreements which allocate responsibility for obligations under this article between a tenant shareholder and a cooperative corporation or between the owner of a condominium unit and the board of managers of such condominium.

§27-2056.9 Compliance by Departments and Remedies. Notwithstanding any provision of law to the contrary, the sole remedy against the city of New York, the department, or the department of health, or any officer or employee of such city or departments, by any person for the failure to perform any regulatory duty related to a lead-based paint hazard pursuant to this chapter shall be a proceeding pursuant to article seventy-eight of the civil practice law and rules to compel compliance with such chapter. An action or proceeding may be brought against the department or the department of health to compel compliance by such departments with this article and the rules and procedures promulgated pursuant thereto. Nothing in this section shall be deemed to prevent any tenant or group of tenants from bringing a proceeding authorized by subdivisions h and i of section 27-2115 of the administrative code.



§27-2056.10 Reporting. Within four months after the close of the first full fiscal year after which this article takes effect and for every fiscal year thereafter, the commissioner shall provide to the council a written report on the department's implementation of this article during the preceding year. Such report shall include, at a minimum, an analysis of the department's program, a detailed statement of revenue and expenditures and statistical section designed to provide a detailed explanation of the department's enforcement including, but not limited to, the following:

(1) the number of complaints for peeling paint in pre-1960 dwelling units where a child under six years of age resides, disaggregated by city or non-city ownership of the building which is the subject of the complaint;

(2) the number of inspections by the department pursuant to this article, disaggregated by city or non-city ownership of the building where the inspection occurred;

(3) the number of violations issued by the department pursuant to this article;

(4) the number of violations issued pursuant to this article that were certified as corrected by the owner, the number of such certifications that did not result in the removal of such violations, and the number of civil actions brought by the department against such owners; and

(5) the number of jobs performed in which violations issued pursuant to this article were corrected by the department, the total amount spent by the department to correct the conditions that resulted in the violations, and the average amount spent per dwelling unit to correct such conditions.

§6. Section 27-2115 of the administrative code of the city of New York, as amended by local law number 65 for the year 1987, is amended by adding a new subdivision l to read as follows:

(l)(1) Notwithstanding any other provision of law, when the department shall serve a notice of violation to correct and certify a condition that constitutes a violation of article fourteen of subchapter two of this chapter, the notice of violation shall be served within twenty days of inspection and shall specify the date by which the violation shall be corrected, which shall be twenty-one days after service of the notice of

violation, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. Notwithstanding the foregoing, an owner who does not correct a condition that constitutes a violation specified in subdivision a of section 27-2056.5 of this code within twenty-one days in accordance with subdivisions b or c of such section shall correct such condition within the succeeding fifteen day period in accordance with the provisions of subdivision d of such section. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the city as the owner or agent, or, by registered or certified mail, return receipt requested, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided, that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice of violation shall be deemed completed three days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent by regular mail to the complainant at the dwelling unit that is the subject of such notice of violation. The department may postpone the date by which a violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists or such other part of the building as may be necessary to make the required repair. Such postponement shall not exceed forty-five days from the date set for correction in the notice of violation and may not be extended by the department. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set by the postponement. The department shall provide to the owner and the complainant a written statement signed and dated by the person making the decision regarding the availability of postponement provided for in this paragraph. Such written statement shall set forth the reasons for the postponement of the date by which a violation shall be corrected or the reason for the denial of such application for postponement. Such written statement shall be part of the record of the department.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with section 27-2056.5 of this code. Where an owner corrects a violation in accordance with the provisions of subdivisions c or d of section 27-2056.5 of this code, such certification shall include a statement that the work standards used to correct each violation complied with section 173.14 of the health code. All certifications shall be delivered to the department and acknowledgment of receipt therefor obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement by the person who performed the work if performed by an employee or agent of the owner. A copy of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Notwithstanding any other provision of law, when an owner has failed to correct a violation issued pursuant to subdivision a of section 27-2056.5 of this code in accordance with the provisions of subdivision d of section 27-2056.5 of this code, the department shall correct such violation within sixty days of the date of failure by such owner to certify correction of such violation pursuant to paragraph two of this subdivision, or within sixty days of the date that the department mails a notice of invalidated certification to such owner pursuant to paragraph four of this subdivision.

(4) The department shall reinspect each violation issued pursuant to subdivision a of section 27-2056.5 of this code which has been certified as corrected in accordance with paragraph two of this subdivision within thirty days of receipt of such certification. Such violation shall be deemed corrected seventy days from

the date of receipt of such certification by the department unless the department has determined by reinspection pursuant to this paragraph that the violation still has not been corrected. The department shall record such determination upon its records, and shall provide a notice of invalidated certification by registered or certified mail to the registered address or to the address of the person who executed such certification to the address stated in the certification that it has been set aside and the reasons therefore, within thirty days of such determination. The department may commence an action for false certification against such owner at any time following mailing of such notice of determination.

(5) The time periods provided in paragraphs three and four of this subdivision for correction of a violation by the department and for reinspection of a violation which has been certified as corrected shall not apply where the department has attempted and is unable to gain access to the dwelling unit, which is the subject of such violation.

(6) Notwithstanding any other provision of law, a person making a false certification of correction with regard to a notice of violation issued pursuant to article fourteen of subchapter two of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than ten thousand dollars nor more than twenty-five thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner than such owner shall be responsible for such civil penalty. In addition, any such person making a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(7) Notwithstanding any other provision of law, a person who violates article fourteen of subchapter two of this chapter by failing to correct such violation in accordance with subdivisions b or c of section 27-2056.5 of this code and fails to correct such violation in accordance with subdivision d of such section, shall be subject to a civil penalty of two hundred fifty dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for correction in the notice of violation until the date the

violation is corrected and certified to the department, and in addition to any civil penalty shall, whenever appropriate, be punished under the provisions of article three of subchapter five of this code. There shall be a presumption that the condition constituting a violation continues after the service of the notice of violation. The owner shall be responsible for the correction of all violations noticed pursuant to article fourteen of subchapter two of this chapter, but in an action for civil penalties pursuant to this subdivision may in defense or mitigation of such owner's liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was noticed; or

(ii) That such owner began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation occurred, or such other portion of the building as might be necessary to make the repair, provided that a postponement was obtained in accordance with paragraph one of this subdivision; or

(iii) That such owner was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefor; or

(iv) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises.

Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require.

If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any

penalties arising from the violation, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(8) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in article fourteen of subchapter two of this chapter relating to responsibilities of the department, or with any such time period provided in this subdivision, shall not render null and void any notice of violation issued by the department pursuant to such article or such subdivision, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for a violation of such article.

§7. Subdivision b of section 27-2126 of the administrative code of the city of New York is amended to read as follows:

§27-2126 Registration of lead paint violations; enforcement. a. The department shall maintain a register in each borough of all certifications of lead paint violations made to it by the department of health and such register shall also be open to the public. The department of health shall maintain a register in each borough for recording all complaints, inspections, examinations and laboratory tests with respect to lead paint levels in housing accommodations which are determined to be violations. Such register shall indicate the date of the complaint, the address of the dwelling premises, the action taken pursuant thereto and shall be open for inspection to the public.

b. [Whenever a complaint has been made with respect to lead paint levels in housing accommodations which would constitute a violation or such condition has been otherwise determined to be possibly present, the department of health shall make an inspection to determine if the condition is at a level which constitutes a danger to life, health or safety.] If the owner of a multiple dwelling fails to comply with an order of the department of health to correct lead-paint hazards [the violation], the department of health shall certify such conditions to the department. The procedure of certification shall be completed within sixteen days from receipt of complaint or inspection or examination, whichever occurs first. The conditions so certified shall be corrected within eighteen days of certification to the department. If such conditions are not corrected

within the eighteen days after certification by the department of health to the department and continue to exist in excess of seventy-two hours thereafter and are also the subject of an article seventy-eight proceeding commenced by the tenants, the supreme court, after a hearing which shall be held under subdivision (h) of section seven thousand eight hundred four of the civil practice law and rules, shall order and direct the department to correct such conditions within a period fixed by the court which shall not exceed the minimum time reasonably required to remedy such conditions.

§8. Section 27-2126 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

d. Notwithstanding any provision of law to the contrary, the sole remedy against the city of New York, the department, or the department of health, or any officer or employee of such city or departments, by any person for the failure to perform any regulatory duty pursuant to this section shall be a proceeding pursuant to article seventy-eight of the civil practice law and rules to compel compliance with such section. Nothing in this section shall be deemed to prevent any tenant or group of tenants from bringing a proceeding authorized by subdivisions h and i of section 27-2115 of the administrative code.

§9. This local law shall take effect immediately upon enactment.

08/26/03  
LS# 3015