



Legislation Text

File #: Int 0101-2002, Version: A

Int. No. 101-A

By Council Members Perkins, Lopez, Quinn, Reed, Boyland, Rivera, Brewer, Jackson, Liu, Yassky, Barron, Reyna, Clarke, Sanders, Recchia, Vann, Katz, Gerson, Gioia, Baez, DeBlasio, Serrano, Foster, Monserrate, Jennings, Seabrook, Addabbo, Moskowitz, Koppell, Martinez, Gonzalez, Espada, Gentile, Avella, Comrie, Weprin, Nelson, James, the Speaker (Council Member Miller) and the Public Advocate (Ms. Gotbaum).

A Local Law to amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, including the avoidance and remediation of lead-based paint hazards in housing and day care facilities, the repeal of local law number 38 for the year 1999 and the repeal of subdivision h of section 27-2013 and section 27-2126 of such code.

Be it enacted by the Council as follows:

Section 1. This local law shall be known and may be cited as the New York City Childhood Lead Poisoning Prevention Act of 2003.

§2. Local law number 38 for the year 1999 is hereby REPEALED.

§3. Local Law number 1 for the year 1982 is hereby REPEALED.

§4. Local law number 50 for the year 1972 is hereby REPEALED.

§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 Statement of Findings and Purposes.

§27-2056.2 Definitions.

§27-2056.3 Owners' Responsibility to Remediate.

§27-2056.4 Owners' Responsibility to Notify Occupants and Investigate.

§27-2056.5 Presumption.

§27-2056.6 Violation in a Dwelling Unit.

§27-2056.7 Audit and Inspection by Department following Commissioner's order to abate.

§27-2056.8 Violation in a Dwelling Unit Upon Turnover.

§27-2056.9 Department Inspections.

§27-2056.10 Department Implementation and Enforcement.

§27-2056.11 Work Practices.

§27-2056.12 Reporting.

§27-2056.13 Transmittal of Violations to the Department of Health and Mental Hygiene.

§27-2056.14 Request to the Department from the Department of Health and Mental Hygiene to Execute an Order Pursuant to § 17-147 of the Administrative Code.

§27-2056.15 Waiver of Benefit Void.

§27-2056.16 Exemption for Emergency Conditions.

§27-2056.17 Record Keeping Requirements.

§ 27-2056.18 Application of this article based on age of child.

§27-2056.1 Statement of findings and purposes. The council finds that lead poisoning from paint containing lead is a preventable childhood disease and a public health crisis. The council further finds that the hazard in 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 also finds and declares that City government must focus on primary prevention as the essential tool to combat childhood lead poisoning and to achieve the goal of preventing children from suffering the adverse health and other effects of exposure to lead-based paint. The pursuit of primary prevention, which means eliminating lead hazards before children are exposed, has been recommended by the United States Centers for Disease Control and Prevention and promoted by leading experts in the field as

a critical course of action to protect the health of young children. The Council, therefore, declares that resources must be directed to primary prevention, including identifying children who are most at risk.

The council recognizes that it cannot legislate a single maintenance standard for all dwellings to eliminate this hazard. Instead, the council by enacting this article makes it the responsibility of every owner of a multiple dwelling to investigate dwelling units for lead-based paint hazards and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions as are necessary to prevent a child from becoming lead poisoned. Having established this responsibility, the council finds that sufficient information exists to guide owners in making determinations about the existence of lead-based paint hazards. See, e.g., United States environmental protection agency, "Identification of Dangerous Levels of Lead; Final Rule" Federal Register, Vol. 66, No. 4 (January 5, 2001); 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).

The New York city department of health and mental hygiene has reported for the year 2001 that among children tested, 5,638 were newly identified with elevated blood lead levels of 10 micrograms per deciliter or above. The New York city department of health and mental hygiene has reported for the year 2001 that among children tested, 653 were newly identified at or above the department's environmental intervention blood lead level, which is a blood lead level equal to or exceeding 20 micrograms per deciliter in a single test or two reported blood lead levels between 15 and 19 micrograms per deciliter at least three months apart, and has also reported an overall incidence of 931 children tested with blood lead levels equal to or exceeding 20 micrograms per deciliter. When a child is identified with environmental intervention blood lead levels, the city is obligated to investigate potential sources of the lead poisoning, incurring the expense of an environmental investigation and often times also incurring the expense of medical treatment and remedial education, if necessary. The council finds that these blood lead levels among New York city children constitute a severe health crisis and has established as its goal the elimination of childhood lead poisoning by the year 2010.

In addition, the department of health and mental hygiene has reported for the year 2001 that only 29% of children in New York city are tested both at age one and age two for the disease of lead poisoning even though the testing of all children at age one and age two is mandatory under state law. The council finds that improved screening among these children is critical since children at these ages are at greatest risk for lead poisoning. The council declares that it is reasonable and necessary to increase the rate of blood-lead testing. This local law requires the department of health and mental hygiene to report to the council on progress toward increasing screening rates and reducing the incidence rates of children newly identified with elevated blood lead levels.

The council further finds that the administration and enforcement of the City's lead poisoning prevention programs can be better coordinated. While it is intended that the department of housing preservation and development remain the agency responsible for the implementation and enforcement of this article, it is also intended that the department of health and mental hygiene shall have a significant role in the promulgation and interpretation of rules and in the development of necessary procedures pursuant to this article.

§27-2056.2 Definitions. Whenever used in this article the following terms shall have the following meanings:

(1) "Chewable surface" shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(2) "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(3) “Deteriorated subsurface” shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

(4) “Friction Surface” shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(5) “Impact Surface” shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(6) “Lead-based paint hazard” shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(7) “Lead-based paint” shall mean 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) 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% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(8) “Lead-contaminated dust” shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 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.

(9) “Lead-contaminated dust clearance test” shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with section 27-2056.11 of this article.

(10) “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.

(11) “Remediation” or “Remediate” shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of health and mental hygiene.

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

(13) “Turnover” shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit.

(14) “Underlying defect” shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(15) “Window” shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

§27-2056.3 Owners' Responsibility to Remediate. The existence of a lead-based paint hazard in any multiple dwelling where a child of applicable age resides is hereby declared to constitute a condition dangerous to life and health. An owner shall take action to prevent the reasonably foreseeable occurrence of such a condition and shall expeditiously remediate such condition and any underlying defect, when such underlying defect exists, consistent with the work practices established pursuant to section 27-2056.11 of this article, except where lead-contaminated dust is present in such multiple dwelling and the department of health and mental hygiene has made a determination pursuant to paragraph six of subdivision c of section 27-2056.10 of this article.

§27-2056.4. Owners' Responsibility to Notify Occupants and to Investigate. a. In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause an investigation to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. Such investigation shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint

concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard. The owner shall ascertain whether a child resides therein pursuant to the requirements of this section.

b. No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

c. All leases offered to tenants or prospective tenants in such multiple dwellings must contain a notice, conspicuously set forth therein, which advises tenants of the obligations of the owner and tenant as set forth in this section. Such notice must be in a manner approved by the department, the content of which shall, at a minimum, be in English and Spanish. The owner of such multiple dwelling shall provide the occupant of such multiple dwelling with the pamphlet described in subdivision b of section 17-179 of this code.

d. (1) The owner of such a multiple dwelling shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish, the form and content of which shall be approved by the department of health and mental hygiene, inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice shall be included in such lease or be attached as a rider to such lease. Such notice shall be completed by the occupant at the time of such signing of a lease, including a renewal lease, if any, or such agreement to lease, or at such commencement of occupancy.

(2) Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of subdivision d of this section by indicating that no child of applicable age resides therein, during the period between the date of such response and the delivery of the notice provided by the owner pursuant to subdivision e of this section during the immediately following year the occupant shall have the responsibility to inform the

owner of any child of applicable age that comes to reside therein during such period. In the event such occupant fails to inform the owner of such child as required by this paragraph, and the owner does not otherwise have actual knowledge that such child is residing in the dwelling unit, the presumption provided for in section 27-2056.5 of this article shall not apply in any action to recover damages for personal injury caused by contact with or exposure to lead-based paint or lead-contaminated dust.

e. (1) Each year, an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall, no earlier than January first and no later than January sixteenth, except as provided for in subparagraph iii of paragraph two of this subdivision, present to the occupant of each dwelling unit in such multiple dwelling a notice inquiring as to whether a child of applicable age resides therein. Such notice, the form and content of which shall be approved by the department of health and mental hygiene, shall be presented as provided for in paragraph two of this subdivision, and shall be in English and Spanish.

(2) The owner may present the notice required by 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 this code and the rules of the department of health and mental hygiene pertaining to the installation of window guards.

(3) (i) Upon receipt of such notice the occupant shall have the responsibility to deliver by February fifteenth of that year, a written response to the owner indicating whether or not a child of applicable age resides therein. If, subsequent to delivery of such notice, the owner does not receive such written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age

resides therein, then the owner shall at reasonable times and upon reasonable notice inspect that occupant's dwelling unit to ascertain the residency of a child of applicable age and, when necessary, conduct an investigation in order to make that determination. Where, between February sixteenth and March first of that year, the owner has made reasonable attempts to gain access to a dwelling unit to determine if a child of applicable age resides in that dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance.

(ii) Where an occupant has responded to the notice provided by the owner pursuant to subparagraph (i) of this paragraph by indicating that no child of applicable age resides therein, during the period between the date of such response and the delivery of the notice provided by the owner pursuant to this subdivision during the immediately following year the occupant shall have the responsibility to inform the owner of any child of applicable age that comes to reside therein during such period. In the event such occupant fails to inform the owner of such child as required by this paragraph, and the owner does not otherwise have actual knowledge that such child is residing in the dwelling unit, the presumption provided for in section 27-2056.5 of this article shall not apply in any action to recover damages for personal injury caused by contact with or exposure to lead-based paint or lead contaminated dust.

(4) For calendar year two thousand four, an owner shall be deemed to have satisfied the provisions of paragraphs one through three of this subdivision if such owner delivers or has already delivered to each dwelling unit where a child under six years of age resides a notice identical or substantially similar to that required to have been delivered in calendar year two thousand three, (i) in the same manner as was required in calendar year two thousand three, and (ii) during the same periods of time in calendar year two thousand four as such notice was required to have been delivered during calendar year two thousand three.

f. The owner shall inform the occupant in writing of the results of an investigation undertaken pursuant to this section and shall provide a copy of any such report received or generated by an investigation. The owner shall retain a copy of each investigation report, for ten years from the date of such report and such report shall

be made available to the department on request and shall be transferred by the owner to the owner's successor in title.

g. Any owner who violates the provisions of 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 violation of this section shall subject the owner to a civil penalty of not more than one thousand five hundred dollars per violation.

h. The department may, at its discretion, perform sample audits to determine compliance with the requirements of this section.

§27-2056.5 Presumption. a. In any multiple dwelling erected prior to January 1, 1960, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas is lead-based paint. The presumption established by this section may be rebutted by the owner of the dwelling or dwelling unit by submitting to the department a sworn written statement by the owner 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 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 any 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.

b. The owner of a dwelling or a dwelling unit may apply to the department to have such dwelling or dwelling unit exempted from the presumption contained in subdivision a of this section when either (i) an inspection for lead-based paint in such dwelling or dwelling unit, performed in accordance with section 745.227 of title 40 of the code of federal regulations, or any successor regulation, has determined that there is no lead-based paint present in such dwelling or dwelling unit, or (ii) substantial alterations have been made to such dwelling or dwelling unit and such alterations have resulted in the removal or permanent covering of all

lead-based paint in that dwelling or dwelling unit. The department shall by rule determine the requirements needed to qualify for such an exemption. Sections 27-2056.4, 27-2056.8 and 27-2056.9 of this article shall not apply to any dwelling or dwelling unit that has been granted an exemption by the department.

§27-2056.6 Violation in a Dwelling Unit. The existence of lead-based paint in any dwelling unit in a multiple dwelling where a child of applicable age resides shall constitute a class C immediately hazardous violation if such paint is peeling or is on a deteriorated subsurface.

§27-2056.7 Audit and inspection by department following commissioner's order to abate. 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 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.

b. If the owner does not provide to the department the records as mandated by subdivision a of this section, the department shall within forty-five days of such failure attempt to inspect dwelling units where a child of applicable age resides to determine whether there are any violations of section 27-2056.6 of this article in such units.

c. The department is not required to undertake the procedures specified in this section in a particular multiple dwelling if it has done so in such building during the prior twelve month period.

d. 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, and a civil penalty in an amount not to exceed one thousand dollars.

§27-2056.8 Violation in a Dwelling Unit Upon Turnover a. Upon turnover of any dwelling unit in a multiple dwelling erected prior to January 1, 1960 or a dwelling unit in a private dwelling erected prior to January 1, 1960 where each dwelling unit is to be occupied by persons other than the owner or the owner's family, the owner shall within such dwelling unit have the responsibility to:

(1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;

(2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;

(3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and

(4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

b. All work performed pursuant to this section shall be performed pursuant to the safe work practices promulgated pursuant to section 27-2056.11(a)(3) of this article.

c. Any owner who fails to comply with the provisions of subdivision a of this section, or the rules of the department of health and mental hygiene or the department promulgated pursuant to section 27-2056.11(a)(3) shall be liable for a class C immediately hazardous violation.

§27-2056.9 Department Inspections. a. When entering a dwelling unit in a multiple dwelling constructed prior to January 1, 1960 for the purpose of investigating the existence of any violation of this code, the department shall make diligent efforts to ascertain whether a child of applicable age resides therein and shall request from the occupant an acknowledgement as to whether such a child resides in the dwelling unit. Whenever a child of applicable age resides in a dwelling unit, the department shall immediately perform a room-by-room inspection of the dwelling unit and record for each room in a report of such inspection whether the paint or other similar surface-coating material in each room is peeling or intact. For each room where peeling

paint is found, the department shall also inspect for evidence of an underlying defect and shall indicate on the inspection report the peeling paint's location within the room, the condition of the subsurface below it, and the location of any underlying defect. When performing such inspection, the department need only inspect those portions of the dwelling unit where furniture or other furnishings do not obstruct the view of a surface, except when there is visible evidence that causes the department to believe that the obstructed surface has peeling paint. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days.

b. In any dwelling unit in a multiple dwelling erected prior to January 1, 1960 where a child of applicable age resides, the department shall conduct an inspection pursuant to subdivision a of this section no later than ten days after the department's receipt of a complaint describing peeling paint, or a deteriorated subsurface or underlying defect in the dwelling unit. The department shall make diligent efforts to ascertain whether a child of applicable age resides therein. Where the department attempts to perform an inspection of a dwelling unit within the time period required by this subdivision but is unable to gain access, the department shall be required to make a reasonable attempt to gain access to such dwelling unit within five days of such attempt. If the department is unable to gain access to that dwelling unit during this additional time period, the department shall provide written notice to the occupant of such dwelling unit that no further attempts at access shall be made unless a new complaint is submitted.

c. Each inspector who performs an inspection pursuant to subdivision b of this section shall use an x-ray fluorescence analyzer during the course of that inspection to determine whether lead-based paint is present in such dwelling unit except that, for reasons beyond the control of the department, such x-ray fluorescence analysis is unable to be performed during such inspection, the department shall rely on the presumption set forth in subdivision a of section 27-2056.5 of this article. Where peeling paint is found during an inspection of a dwelling unit performed pursuant to subdivision a of this section, the department shall within ten days thereafter

perform another inspection of such dwelling unit using an x-ray fluorescence analyzer to determine whether lead-based paint is present in such dwelling unit. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days.

d. The pamphlet developed by the department of health and mental hygiene pursuant to section 17-179 of this 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.

e. The department shall develop a pamphlet listing the work practices to be established pursuant to section 27-2056.11 of this article. 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.

f. Notwithstanding any other provision of law, failure by the department or the department of health and mental hygiene to comply with any time period provided in this article or section 27-2115 of this chapter relating to responsibilities of the department and the department of health and mental hygiene, shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article.

§27-2056.10 Department Implementation and Enforcement. a. The department shall provide appropriate training for lead-based paint inspection and supervisory personnel. Department personnel who conduct a visual inspection pursuant to this article shall receive training which at a minimum, shall be the training approved by the United States department of housing and urban development for performance of visual inspections. Department personnel who perform lead-based paint inspections using XRF machines shall receive training required by the United States environmental protection agency pursuant to section 745.226(b)

of title 40 of the code of federal regulations or successor regulations. Training of all inspection and supervisory personnel shall also include background information pertaining to applicable state and local lead-based paint laws and guidance on identifying violations in a multiple dwelling, and require that the individual has successfully demonstrated knowledge of the requirements of this article. The department shall provide for the continuing education of inspection and supervisory personnel.

b. The department, with the approval of the department of health and mental hygiene, shall promulgate a comprehensive written procedure to guide department personnel in implementing and enforcing this article. Where feasible, such procedures shall establish a uniform method for the department of health and mental hygiene and the department, following the method implemented by the department of health and mental hygiene, to describe violations and identify their location in a dwelling or dwelling unit. Such procedures shall include a methodology and a form to be used by department personnel when conducting an inspection to carry out and record an inspection pursuant to section 27-2056.9 of this article.

c. The department shall promulgate rules for the implementation and enforcement of this article and to effect compliance with all applicable provisions of this article, rules promulgated thereunder, and all applicable city, state or federal laws, rules or regulations. Such rules shall be subject to the approval of the department of health and mental hygiene prior to their promulgation and shall include, but not be limited to, establishing:

(1) uniform specifications and procedures to govern testing, including a standardized format for reporting such testing results, whenever paint or a similar surface-coating material is tested for its lead content, whether by or on behalf of an owner or an agency of the city of New York;

(2) procedures by which an owner shall comply with section 27-2056.4 of this article, including the form and content of the annual notice;

(3) procedures by which an owner shall submit rebuttal documentation to the department pursuant to 27-2056.5 of this article;

(4) procedures by which an owner may apply to the department to postpone the date by which a

violation shall be corrected pursuant to subdivision 1 of section 27-2115 of this code, including, but not limited to, the stabilization of the paint which is the subject of the violation where an owner requests a second postponement of time to correct a violation in accordance with subdivision 1 of section 27-2115 of this code; and

(5) procedures to implement and to enforce compliance with paragraph two of subdivision 1 of section 27-2115 of this code, which shall include, but not be limited to, the requirement that an owner certify to:

(i) the correction of a violation of this article of the code, and

(ii) compliance with the rules promulgated by the department pursuant to section 27-2056.11 of this code; and

(6) procedures to be established by the department of health and mental hygiene to order or provide for the expeditious cleanup and removal of lead-contaminated dust when the department of health and mental hygiene determines that there is lead-contaminated dust in a dwelling unit where a child of applicable age resides, such child has an elevated blood level, and the department of health and mental hygiene determines that the source of that lead-contaminated dust is not a condition of the dwelling in which such dwelling unit is located.

§27-2056.11 Work Practices.

a. The department shall promulgate rules, with the approval of the department of health and mental hygiene, establishing work practices to which an owner shall be subject in each of the following circumstances:

(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 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.

(2) where an owner, other than in response to an order to correct or notice of violation issued by the department or the department of health and mental hygiene, is performing work that will disturb lead-based paint or paint of unknown lead content in a dwelling unit where a child of applicable age resides or in the common area of the multiple dwelling in which such dwelling unit is located, where such multiple dwelling was erected prior to January first, nineteen hundred sixty, or where the owner has actual knowledge of the presence of lead-based paint and such multiple dwelling was erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight.

(i) Except as provided in subparagraph (ii) of this paragraph, such rules shall incorporate work practices that are no less protective of public health than those set forth in subdivisions d and e of section 173.14 of the health code and those parts of subdivision b of such section 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 require temporary relocation provided by the owner of the occupants of a dwelling or dwelling unit to appropriate housing when work cannot be performed safely.

(ii) Where such work will disturb more than one hundred square feet of lead-based paint or paint of unknown lead content in a room in a multiple dwelling, or will involve the removal of two or more windows with lead-based paint or paint of unknown lead content, such rules shall incorporate work practices that are no less protective of public health than those set forth in subdivisions d and e of section 173.14 of the health code

and those parts of subdivision b of such section 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 also require 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 require, in addition, 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 for the abatement of lead hazards, or any successor regulations. Such rules shall also provide that not less than ten days prior to the commencement of such work the owner of the premises, or the firm, shall file with the department of health and mental hygiene a notice of commencement so that the department of health and mental hygiene may, at its discretion, perform sample audits of such notices to determine that the firms performing the work are properly certified. Such notice shall be signed by the owner or by a representative of the firm , and shall be in a form satisfactory to or prescribed by the department of health and mental hygiene, and shall set forth at a minimum the following information:

(a) The address of the multiple dwelling and the specific location of the work within the multiple dwelling.

(b) The name, address and telephone number of the owner of the multiple dwelling in which the work is to be performed.

(c) The name, address and telephone number of the firm which will be responsible for performing the work.

(d) The date and time of commencement of the work, working or shift hours, and the expected date of completion; and

(e) Identification of the surfaces and structures, and surface area, subject to the work.

The rules shall also provide that any changes in the information contained in the notice shall be filed with the department of health and mental hygiene prior to commencement of work, or if work has already commenced,

within twenty-four hours of any change. The rules shall provide that a copy of the notice of commencement shall be posted at the work site.

(iii) The provisions of this paragraph shall not apply where such work disturbs surfaces of less than (a) two square feet of peeling lead-based paint per room or (b) 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.

(3) where an owner is performing work on turnover pursuant to 27-2056.8 of this article. Such rules shall include, but not be limited to, requiring lead-contaminated dust clearance tests at the completion of such work.

b. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work, and has successfully completed a course approved or administered by the department of health and mental hygiene or by the United States environmental protection agency or the United States department of housing and urban development and obtained a certificate or other document issued by or acceptable to the department of health and mental hygiene.

c. The department, with the approval of the department of health and mental hygiene, shall promulgate rules requiring that all lead-contaminated dust clearance tests submitted to a laboratory for analysis include a sworn certification that such test was performed in compliance with all applicable rules and regulations and shall include any additional information that the department shall determine is necessary for the administration and enforcement of this section.

d. Where an owner is performing work pursuant to paragraph (1) of subdivision a of this section, all lead-contaminated dust clearance test results shall be filed with the department, and a copy shall be provided by the owner to the occupant of the dwelling unit. Where an owner is performing work pursuant to paragraphs (2) and (3) of subdivision a of this section, a copy of all lead-contaminated dust clearance test results shall be provided to the occupant of the dwelling unit. Copies of lead-contaminated dust clearance test results provided

to the occupant of the dwelling unit pursuant to this subparagraph shall be in a form satisfactory to or prescribed by the department of health and mental hygiene that provides a sufficiently clear explanation of the meaning of such results.

§27-2056.12 Reporting. a. Within four months after the close of the first 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 of applicable 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 the 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; and

(6) a statistical profile with geographic indexing, such as by community district, council district, and/or zip code, of multiple dwellings in which violations are placed, indicating the ages of the multiple dwellings and other factors relevant to the prevalence of lead-based paint hazards, which may include the prior lead poisoning of a child in the multiple dwelling, outstanding violations, and emergency repair charges.

b. The department of health and mental hygiene shall prepare a report on progress toward increasing screening rates and reducing the incidence rates of children newly identified with elevated blood lead levels. This report shall be utilized by the department in its implementation of this article. Such report shall be submitted to the council within nine months after the close of each calendar year.

c. The department shall maintain a central register of all department orders to correct a violation under this article. Such register shall indicate, if applicable, the date of the complaint, address of the premises, and the date of each inspection and reinspection.

§27-2056.13 Transmittal of Violations to the Department of Health and Mental Hygiene. The department shall send a notice which shall be addressed to the dwelling unit in the multiple dwelling, when a dwelling unit is identified, for which a violation of this article was issued. Such notice shall include a telephone number for the department of health and mental hygiene. The department shall also refer to the department of health and mental hygiene 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 and mental hygiene, pursuant to section 17-179 of this 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.

§27-2056.14 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 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.

§27-2056.15 Waiver of Benefit Void. a. No owner may seek to have an occupant of a dwelling unit waive the benefit or protection of any provision of this article. 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.

b. Notwithstanding any other provision of this article, nothing herein shall be construed to alter existing or future agreements which allocate responsibility for compliance with the provisions of 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.

c. The provisions of this article, other than section 27-2056.14, shall not apply to a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family.

§27-2056.16 Exemption for Emergency Conditions. For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety or to protect property from further major damage, such as when a property has been damaged by a natural disaster, fire, structural collapse, cascading water, lack of utilities or other emergency conditions, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable and the requirements of this article shall not apply. This exemption applies only to repairs immediately necessary to respond to the emergency. The requirements of this article shall apply to any work undertaken subsequent to or above and beyond such emergency actions.

§27-2056.17 Record Keeping Requirements. The owner of any multiple dwelling or dwelling that performs any work pursuant to this article shall retain all records relating to such work for a period of no less than ten years from the completion date of such work. The owner shall make any such records required to be retained by this section available to the department upon the department's request, and shall transfer such records to the owner's successor in title.

§27-2056.18 Application of this article based on age of child. For the purposes of this article, the term "applicable age" shall mean "under seven years of age" for at least one calendar year from the effective date of this section. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of this article should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of this article to mean "under six years of age," but no lower.

§6. Section 27-2115 of the administrative code of the city of New York is amended by adding a new subdivision l to read as follows:

(l)(1) Notwithstanding any other provision of law, when the department serves 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 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. The notice of violation shall further specify that the violation shall be corrected in accordance with the work practices established in accordance with section 27-2056.11 of this code. 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 department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, 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 simultaneously by regular mail to the occupant 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 portion of the building as may be necessary to make the required repair. Such postponement shall not exceed fourteen days from the date of correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set for the postponement. The department may grant one additional postponement of no more than fourteen days for the reasons authorized by this section so long as the paint or other condition which is the subject of the violation has been stabilized. The department is also authorized to promulgate rules establishing criteria for a postponement of the time to correct for a longer period of time where such postponement is requested because of one or more substantial capital improvements will be made that will, when completed, significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling

unit including, but not limited to, a requirement that the paint which is the subject of the violation is stabilized. The department shall provide to the owner and the occupant a written statement signed and dated by the person making such decision setting forth the reasons for each postponement of the date by which a violation shall be corrected or the reason for the denial of such application for a postponement. Said written statement shall be part of the records 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 paragraph one of subdivision a of section 27-2056.11 of this code and shall include a copy of the lead-contaminated dust clearance test results. 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) Whenever the department shall issue a notice of violation to correct a condition that constitutes a violation of section 27-2056.6 of article fourteen of subchapter two of this chapter, the department shall within fourteen days after the date set for the correction of such violation conduct a final inspection to verify that the violation has been corrected. Where, upon conducting an inspection, the department determines that a violation has not been corrected, the department shall correct such violation within forty-five additional days of such inspection or in such shorter time as is practicable.

(4) Notwithstanding any other provision of law, the department shall not remove a violation from its records nor shall it be deemed that such violation has been corrected unless the records of the department contain written verification that the department has conducted a final inspection of the premises and that such inspection verifies that the violation has been corrected, and copies of lead-contaminated dust clearance test results whenever such tests are required by applicable law, rule or regulation. A copy of the report of the final inspection of a dwelling unit and the status of the violation shall be mailed or delivered to the occupant and the owner.

(5) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article 14 of subchapter 2 of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than one thousand dollars nor more than three 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 then 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.

(6) 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 paragraph one of subdivision a of section 27-2056.11 of this code 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 placed;

or

(ii) That he or she 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 exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iii) That he or she 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 violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(7) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil

penalties for violation of such article

§7. Title 17 of the administrative code of the city of New York is amended by adding new sections 17-179, 17-180, 17-181, 17-185, and 17-186, to read as follows:

§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 sections 27-2056.6 and 27-2056.7 of this 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 in accordance with section 27-2056.9 of this code. Such pamphlet shall also be made available to any member of the public upon request.

§17-180 Training of Department Personnel. The department, in conjunction with the department of housing preservation and development, shall provide training for lead-based paint inspection and supervisory personnel. No department personnel shall conduct an inspection for lead-based paint pursuant to the health code unless that individual has received such training. At a minimum, such training shall (1) be equivalent to the training required under regulations issued by the United States environmental protection agency for the certification of lead-based paint inspectors and supervisors, (2) include background information pertaining to applicable state and local lead-based paint laws and guidance on identifying violations in a multiple dwelling, and (3) require that the individual has successfully demonstrated knowledge of the responsibilities of a certified inspector or certified supervisor, as the case may be, and the requirements of sections 173.13 and 173.14 of the health code or successor rules. The department shall provide for the continuing education of inspection and

supervisory personnel.

§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, day care center or school 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 to reduce dust levels or other method approved by the department. The department shall promulgate such additional rules as necessary for the enforcement of this section.

§17-185 Inspection by the Department of Unsafe Work Practices. The department shall promulgate rules requiring the department to respond to complaints regarding unsafe lead-based paint work practices.

§17-186 Lead poisoning prevention in children. a. The department shall develop a brochure which, at a minimum, advises all appropriate medical providers of their obligations to screen and test children for lead poisoning according to all relevant federal, state and local laws, rules and regulations. Such pamphlet shall be distributed to all appropriate medical providers on an annual basis, starting on September 15, 2004.

b. The department shall develop a pamphlet regarding lead poisoning prevention in children. Such pamphlet shall, at a minimum, be printed in English and Spanish and shall include, at a minimum: (i) the manner in which children are most likely poisoned by lead; (ii) the effects of lead poisoning on a child's health; (iii) the intervals at which a child is required by New York state law to be tested for blood lead levels; (iv) the appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information; (v) the steps a parent or guardian may take to protect his or her child from lead poisoning; and (vi) the requirement of landlords to inspect and repair lead-based paint hazards.

c. At a minimum, the department shall distribute the pamphlet produced pursuant to paragraph b of this section with each birth certificate furnished to the parent or guardian of a child pursuant to section 17-168 of this title. Such pamphlet shall also be made available to any member of the public upon request.

§8. Subdivision 1 of subsection a of section § 11-243 of the administrative code of the city of New

York is amended to read as follows:

1. “Alteration” and “improvement”: a physical change in an existing dwelling other than painting, ordinary repairs, normal replacement of maintenance items, [except that painting or repairs designated to eliminate the lead-based paint poisoning hazard shall be eligible for tax exemption and tax abatement under this section and] provided, however, that ordinary repairs and normal replacement of maintenance items, as defined by [regulations] rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, shall be eligible for tax exemption and tax abatement under this section provided that repairs and maintenance items:

- (1) were started and completed within a twelve-month period,
- (2) were made to any common area of the dwelling premises concurrently with a major capital improvement thereto, as defined by [regulations] rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, and
- (3) require the issuance of a permit for at least one item thereof by any city agency, and
- (4) the amount of money expended thereon shall not exceed two times the amount expended on the major capital improvement performed concurrently therewith.

“Alteration” and “improvement” shall also mean “an abatement” of lead-based paint hazards, as defined in part 745 of title forty of the code of federal regulations or any successor regulations, and shall include an “inspection” and “risk assessment” for lead-based paint hazards, as defined in such part, in a dwelling unit occupied by a child of applicable age, as established in accordance with section 27-2056.18 of this code, regardless of whether a child is or has been lead poisoned but shall not include any work performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter .

§9. Title 17 of the administrative code of the city of New York is amended by adding a new chapter nine to read as follows:

Chapter 9

Lead-Based Paint in Day Care Facilities

Subchapter 1

Definitions

§17-900 Definitions.

Subchapter 2

Remediation of Lead-Based Paint Hazards in Day Care Facilities

§17-910 Presumption.

§17-911 Remediation.

§17-912 Department Rules.

§17-913 Annual Inspection.

Subchapter 1

Definitions

§17-900 Definitions. For the purpose of this chapter the following terms shall have the following meanings:

1. “Chewable surface” shall mean a protruding interior window sill in a day care facility that is readily accessible to a child of applicable age. “Chewable surface” shall also mean any other type of interior edge or protrusion in a day care facility, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where the operator of such day care facility has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

2. “Day care facility” shall mean any facility used to provide day care service.

3. “Day care service” shall mean any service which, during all or part of the day, regularly gives care to seven or more children under six years of 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.

4. “Deteriorated subsurface” shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

5. “Friction Surface” shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion, and abrade, scrape or bind when in motion. Friction surfaces shall include, but not be limited

to, window frames and jambs, doors, and hinges.

6. “Impact Surface” shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

7. “Lead-based paint” shall mean 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) and the PCS 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, 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.

8. “Lead-based paint hazard” shall mean any condition that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

9. “Lead-contaminated dust” shall mean dust containing lead at 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the New York City board of health.

10. “Operator of such day care facility” shall mean any person who provides day care service and the owner of the premises where such day care facility is located. “Person” shall mean an individual, corporation, partnership, association or other for-profit or not-for-profit entity.

11. “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.

12. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead based paint, or other method approved by the commissioner of health and mental hygiene.

Subchapter 2

Remediation of Lead-Based Paint Hazards in Day Care Facilities

§17-910 Presumption. a. All paint or similar surface-coating material on the interior of any day care facility in a structure erected prior to 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 by submitting to the department a sworn written statement by the operator or owner of the day care facility 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 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 Remediation. a. There shall be no peeling lead-based paint in any portion of any day care facility.

b. 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 to remediate the condition. In the event such order is not complied with within forty-five days of 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 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 of this subchapter.

§17-912 Department rules. The department shall promulgate such rules as may be necessary for the implementation of this chapter. Such rules shall incorporate work practices that are no less protective of public health than those set forth in section 173.14 (d) and (e) and those parts of subdivision b 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) two square feet of peeling lead-based paint per room or (b) 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 Annual Survey. 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.

§10. All actions taken by the departments of housing preservation and development and health and mental hygiene pursuant to local law 38 of 1999 and local law 1 of 1982 shall be deemed valid to the extent that all violations written, and fines or penalties assessed, as well as any costs for repairs of such violations shall remain valid and enforceable, provided, however, that any such violations which remain uncorrected on the effective date of this local law shall be repaired using the work practices established pursuant to section 27-2056.11(a)(1) as added by section 5 of this local law, and the rules promulgated thereunder, and certified to the department of housing preservation and development in accordance with section 27-2056.10(c)(5) and subdivision (l) of section 27-2115 of the administrative code of the city of New York, as added by section five of this local law, and the rules promulgated thereunder pursuant to this local law.

§11. If any sentence, paragraph, section or part of this local law shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part.

§12. Paragraph 4 of subdivision e of section 27-2056.4 of the administrative code of the city of New York, as added by section 5 of this local law, shall take effect immediately, and all other provisions of this local law shall take effect one hundred eighty days after its enactment, except that the commissioners of health and mental hygiene and housing preservation and development shall promulgate all rules and take all other actions necessary to implement this local law, other than paragraph 4 of subdivision e of section 27-2056.4, on or before the date upon which it shall take effect.

JH
H:/Ints/Lead-12-5-03 (Council Final).doc
12-5-03 10:40 pm