

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2019**

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**No. 64**

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Introduced by Council Members Dromm, Cumbo, Kallos, Lander, Ayala, Rosenthal, Perkins, Chin, Levin and Rivera.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to investigation by the department of health and mental hygiene of places in which children identified with elevated blood lead levels routinely visit and the regulation of lead-based paint hazards in facilities providing day care services, and to repeal subchapter 1 of chapter 9 of title 17, relating to definitions regarding lead-based paint in day care facilities**

*Be it enacted by the Council as follows:*

Section 1. The heading of chapter 9 of title 17 of the administrative code of the city of New York, as added by local law number 1 for the year 2004, is amended to read as follows:

Chapter 9

[Lead-Based Paint in Day Care Facilities] *Lead*

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 Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York is REPEALED and a new subchapter 1 is added to such chapter to read as follows:

*Subchapter 1*

*Lead Testing Requirements and Standards*

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

*Child of applicable age. The term “child of applicable age” has the same meaning as the term “applicable age” as defined in section 27-2056.18.*

*Covered agency. The term “covered agency” means the following agencies that provide services for or relating to children of applicable age: the department, the department of social services/human resources administration, the department of education, the administration for children’s services, the department of youth and community development, the department of homeless services, the department of parks and recreation and any other agencies the mayor may designate that provide services for or relating to children.*

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

*§ 17-911 Required investigation. In addition to or as part of any investigation required pursuant to section 27-2056.14, whenever a report has been made to the department of a person under 18 years of age with an elevated blood lead level that is at or above the blood lead reference level established pursuant to this subchapter, the department shall conduct such investigation as may be necessary to identify potential sources of such elevated blood lead level, including, but not limited to, an inspection of any dwelling unit in which the department determines such person is routinely present for 10 or more hours per week.*

§ 3. Subchapter 2 of chapter 9 of title 17 of the administrative code of the city of New York, as added by local law number 1 for the year 2004, is amended to read as follows:

#### Subchapter 2

#### Remediation of Lead-Based Paint Hazards in [Day Care] Facilities *Providing Day Care Services*

*§ 17-920 Definitions. As used in this subchapter, the following terms have the following meanings:*

*Chewable surface. The term “chewable surface” means a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides, or a covered facility*

*where services for or relating to a child of applicable age are provided, and which is readily accessible to such child. “Chewable surface” also means 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 dwelling unit has mouthed or chewed such edge or protrusion.*

*Covered facility. The term “covered facility” means the interior and exterior of a building, structure, area or premises where day care services are provided, except that for programs regulated by article 43 of the New York city health code, “covered facility” means the rooms and areas of a school facility used to provide such day care services.*

*Day care service. The term “day care service” means a program or service regulated by articles 43 or 47 of the New York city health code.*

*Deteriorated subsurface. The term “deteriorated subsurface” has the same meaning as such term is defined in section 27-2056.2.*

*Friction surface. The term “friction surface” has the same meaning as such term is defined in section 27-2056.2.*

*Impact surface. The term “impact surface” has the same meaning as such term is defined in section 27-2056.2.*

*Lead-based paint. The term “lead-based paint” has the same meaning as such term is defined in section 27-2056.2.*

*Lead-based paint hazard. The term “lead-based paint hazard” means any condition in a dwelling or dwelling unit, or in a covered facility, 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.*

*Lead-contaminated dust. The term “lead-contaminated dust” has the same meaning as such term is defined in section 27-2056.2.*

*Peeling. The term “peeling” has the same meaning as such term is defined in section 27-2056.2.*

*Remediation. The term “remediation” has the same meaning as such term is defined in section 27-2056.2.*

§ [17-910 Presumption] 17-921 *Lead-based paint presumption* a. All paint or similar surface-coating material on the interior of any [day care facility] *covered facility* in a structure erected [prior to] *before* January 1, 1978, shall be presumed to be lead-based paint.

b. The presumption established by this section may be rebutted by the operator [or owner] of the [day care facility] *covered facility or by the owner of the premises where such facility is located* by submitting to the department a sworn written statement by [the] *such* operator or owner [of the day care facility] supported 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] such operator or owner [of the day care facility,] and such other proof as the department may require. Testing performed to rebut the presumption may only be performed by a person who has been certified as an inspector or risk assessor in accordance with subparts L and Q of part 745 of title 40 of the code of federal regulations or successor regulations. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the department.

§ [17-911] 17-922 Remediation of lead-based paint hazards. a. There shall be no peeling lead-based paint in any portion of any [day care] covered facility.

b. [Lead based] *Lead-based* paint or paint of unknown lead content that is peeling, or which is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces shall be immediately remediated in a manner authorized by the department.

c. Any equipment that is painted shall be painted with lead-free paint.

d. Whenever a condition prohibited by this section is found to exist, the department shall immediately serve an order on the operator [or owner] of such [day care] facility to remediate the condition. *After such order has been served, the operator shall post such notices near the entrance of such facility as required by the rules provided for in section 17-923 of this subchapter.* In the event such order is not complied with within [forty-five] 21 days [of] *after* service thereof, the department shall immediately request an agency of the city of New York to execute such order pursuant to the provisions of section 17-147 of this code. The agency shall execute the order within [forty-five] 21 days of the department's request. *Where compliance with the time requirements of this subdivision would cause undue hardship, and where the operator demonstrates a good faith effort to comply timely and shows that it is maintaining interim controls to protect children from a lead-based paint hazard, the department may extend the time for compliance for an additional 24 days. The department may extend the time for compliance beyond such additional 24 days, in accordance with rules promulgated by the department.* The city of New York shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, including as credits toward lease payments.

e. When lead-based paint hazards are remediated pursuant to this section such work shall be performed in compliance with work practices established by the department pursuant to section [17-912] 17-923 of this subchapter.

§ [17-912] 17-923 Department rules. The department shall promulgate such rules as may be necessary for the implementation of this [chapter] *subchapter*. Such rules shall incorporate work practices that are no less protective of public health than those set forth in *subdivisions d and e of section 173.14 [(d) and (e)] of the health code* and those parts of subdivision b *of such section* of the health code applicable thereto or a successor rule, and shall include a requirement that lead-contaminated dust clearance testing be performed at the completion of such work. Such rules shall require that such work be performed by a person who has, at a minimum, successfully completed a course on lead-safe work practices given by or on behalf of the department or, by the United States environmental protection agency or an entity authorized by it to give such course, or by the United States department of housing and urban development or an entity authorized by it to give such course. Such rules shall not apply where such work disturbs surfaces of less than [(a)] (i) two square feet of peeling lead-based paint per room or [(b)] (ii) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

§ 4. Subdivisions (12), (13), (14) and (15) of section 27-2056.2 of the administrative code of the city of New York, as added by local law number 1 for the year 2004, are renumbered as subdivisions (13), (14), (15) and (16) respectively, and a new subdivision (12) is added to such section to read as follows:

(12) “*Resides*” shall mean to routinely spend 10 or more hours per week within a dwelling unit.

§ 5. This local law takes effect 120 days after it becomes law, except that (i) section four of this local law takes effect January 1, 2020, provided that no violation of section 27-2056.6 of the administrative code of the city of New York shall be issued based on the definition of “resides” in subdivision (12) of section 27-2056.2 of such administrative code, as added by such section four, before July 1, 2020 and (ii) the commissioner of housing preservation and development and the commissioner of health and mental hygiene may take such actions as are necessary for implementation of this local law, including the promulgation of rules, before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 13, 2019 and returned unsigned by the Mayor on April 17, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 64 of 2019, Council Int. No. 464-B of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.