Staff: Committee on Public Housing

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 Jose Conde, Senior Policy Analyst

Ricky Chawla, Policy Analyst

Sarah Gastelum, Principal Financial Analyst



**The New York City Council**

Jeffrey Baker, Legislative Director

**Committee Report of the Infrastructure Division**
Terzah Nasser, Deputy Director, Infrastructure Division

**Committee on Public Housing**

Hon. Alicka Ampry-Samuel, Chair

**October 7, 2020**

**Oversight:** An Update on NYCHA’s Plan to Address Chronic Mold Conditions at NYCHA Developments

**INT. NO. 1911:** By Council Members Torres, Ampry-Samuel, Ayala and Gibson

**TITLE:** A Local Law in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson

**Introduction**

On October 7, 2020, the Committee on Public Housing, chaired by Council Member Alicka Ampry-Samuel, will hold an oversight hearing entitled “Oversight: An Update on NYCHA’s Plan to Address Chronic Mold Conditions at NYCHA Developments” and will also hear Int. No. 1911, in relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson. The Committee expects to hear testimony from representatives of the New York City Housing Authority (“NYCHA”) and interested members of the public, including public housing advocates and residents.

**Background on Mold**

*Mold and the Indoor Environment*

 Mold spores are ubiquitous in the environment, and can enter homes via a number of routes, including from open doors and windows, poorly insulated structures, and heating and ventilation systems.[[1]](#footnote-1) They can also be carried in from outdoors on the bodies and clothing of residents or pets.[[2]](#footnote-2) Spores are continuously deposited and removed over time, via gravitational settling, ventilation, and other means of dispersal.[[3]](#footnote-3) Larger particles settle faster due to the effects of gravity, while smaller mold spores may remain in suspension in the air for long periods.[[4]](#footnote-4) Once settled, some mold particles may be removed by cleaning, though all activities within a given space also have the potential to re-suspend mold particles into the air.[[5]](#footnote-5)

Barring the presence of an existing infestation, the density of mold spores in the indoor environment is generally lower than—albeitcorrelated with—outdoor levels, with seasonal variability in the amount and species of spores present.[[6]](#footnote-6) Spores can remain viable in a dormant state for long periods, and only begin active growth when presented with favorable conditions.[[7]](#footnote-7) As such, prevention and remediation strategies must be focused on addressing the underlying issues that create a favorable environment for the growth and proliferation of mold.[[8]](#footnote-8)

 The primary environmental condition that must be met for the proliferation of mold indoors is the presence of excess moisture.[[9]](#footnote-9) While excess moisture in a building does not necessarily guarantee the presence of a mold infestation, even those species of mold known to be most tolerant of dry conditions require a relative humidity above 70% to successfully grow and spread.[[10]](#footnote-10) It is important to note that relative humidity can vary greatly within the home depending on specific conditions, and that relative humidity in locations close to a source of persistent moisture such as those provided by leaky building envelopes and roofs, in cold or poorly ventilated corners, or along poorly insulated exterior walls, particularly during seasons when outdoor temperatures are much lower than indoors, can have a relative humidity much higher than the average humidity in a given room.[[11]](#footnote-11)

In addition to moisture, mold also requires the presence of available nutrients to fuel growth and reproduction.[[12]](#footnote-12) These nutrients can take the form of carbohydrates, proteins, lipids, starches, or cellulose, which can be found in common building and household materials such as wood, drywall, wallpaper, furniture, carpeting, and construction adhesives.[[13]](#footnote-13) Nutrients from household dust can also build up in sufficient quantities on non-biodegradable surfaces like ceramic tile and concrete to support the growth and spread of mold.[[14]](#footnote-14) Average temperature and lighting levels likely to be found indoors are generally within the range of habitability for microbial growth, and the specific growing conditions that foster mold growth are also advantageous for the growth of many other bacteria and yeast species.[[15]](#footnote-15)

In order to successfully remediate a mold infestation, the underlying causes of excess moisture must first be addressed.[[16]](#footnote-16) Moldy items can treated with a biocide such as bleach in order to kill existing colonies.[[17]](#footnote-17) In sufficiently heavy infestations, building materials may need to be removed and replaced, with porous household items that resist thorough disinfection discarded entirely.[[18]](#footnote-18) Because dead mold can also cause irritation and allergic reactions, it is not sufficient only to kill existing mold, but also to thoroughly remove as many particles as possible from the affected areas via manual cleaning.[[19]](#footnote-19) If the excess moisture condition persists, however, infestations may remain despite repeated attempts at remediation.[[20]](#footnote-20)

*Indoor Mold and Human Health*

 Indoor mold has been linked to a number of human illnesses, including asthma, allergic reactions, fungal lung infections (allergic bronchopulmonary aspergillosis), sinusitis, and hypersensitivity pneumonitis, a condition characterized by inflammation of lung tissues that can lead to permanent scarring.[[21]](#footnote-21) Known mechanisms by which mold exposure can lead to negative health outcomes include the generation of harmful immune response in exposed parties, direct infection by fungal organism, and toxic effects from exposure to mold byproducts.[[22]](#footnote-22)

The effects of mold exposure can be particularly deleterious during early life, with infant and childhood mold exposure linked to higher rates of lower respiratory tract infections, [[23]](#footnote-23) and three times the risk of developing asthma by age seven, when compared with children who did not experience significant indoor mold exposure during early life.[[24]](#footnote-24) In addition to increasing the likelihood of developing asthma, mold exposure can worsen symptoms in those already suffering from asthma,[[25]](#footnote-25) and in some instances, directly induce asthma attacks.[[26]](#footnote-26)

Certain common household molds are capable of producing toxic compounds, known as mycotoxins,[[27]](#footnote-27) although the potency and even presence of these toxins can vary significantly across colonies and under different conditions.[[28]](#footnote-28) Hundreds of different mycotoxins have been identified in commonly found molds, but the vast majority have not been sufficiently studied to identify potential effects on human health.[[29]](#footnote-29) The genus aspergillus is commonly found in indoor environments,[[30]](#footnote-30) and is known to produce mycotoxins that have been found to have carcinogenic and immunosuppressive effects in humans.[[31]](#footnote-31) Some aspergillus species can also directly infect human lung tissue, leading to a condition known as aspergillosis, which can cause symptoms such as wheezing, coughing, shortness of breath, as well as severe chronic infections in immunocompromised individuals.[[32]](#footnote-32) Stachybotrys chartarum, colloquially referred to as black mold or toxic black mold, is another common indoor mold known to produce mycotoxins, and suspected to be a factor in certain cancers, neurological, and pulmonary conditions, though definitive links have not yet been established.[[33]](#footnote-33)

*Mold Exposure and COVID-19*

 The COVID-19 crisis in New York City exposed serious disparities in health outcomes along racial and economic divides. In the Bronx and Brooklyn, zip codes containing public housing showed higher rates of COVID-19-related hospitalizations than surrounding zip codes without public housing facilities.[[34]](#footnote-34) While high rates of asthma and mold exposure in these zip codes was initially posited as a contributing factor in this discrepancy,[[35]](#footnote-35) subsequent statistical analysis has not found that those suffering from asthma are hospitalized for COVID-19 at higher rates than the general population.[[36]](#footnote-36) Early research suggests however, that fungal co-infections and exposure to inflammation causing mold spores and particles may play a role in a significant portion of severe COVID-19 cases.[[37]](#footnote-37) Studies of severe cases in Europe found COVID-19 associated pulmonary aspergillosis in 20-35 percent of mechanically ventilated patients.[[38]](#footnote-38) It has been posited that the corticosteroids used to treat COVID-19 infection may leave patients at greater risk of developing COVID-19 associated pulmonary aspergillosis (CAPA),[[39]](#footnote-39) which may present a serious risk for individuals suffering from COVID-19 who must quarantine in homes with high rates of mold infestation.

**A History of Mold Issues at NYCHA**

NYCHA has 302 developments, 2,252 buildings, and 169,820 public housing units in its portfolio.[[40]](#footnote-40) Mold conditions at NYCHA have been the subject of several investigations and reports in recent years. While mold has been an ongoing problem at NYCHA, the issue was worsened by Superstorm Sandy (“Sandy”).[[41]](#footnote-41) In 2014, several community-based organizations surveyed residents in NYCHA buildings located in Coney Island, Lower East Side, Far Rockaway, Red Hook, and Gowanus. The survey found that Sandy had exacerbated existing repair needs in NYCHA buildings, and that mold conditions had worsened and were having an impact on the health of residents.[[42]](#footnote-42) The report indicated that 34% of survey respondents had visible mold in their apartments prior to Sandy, and 45% had visible mold in their apartments after Sandy.[[43]](#footnote-43) Additionally, 29% of residents without mold prior to Sandy reported finding mold in their apartments afterwards.[[44]](#footnote-44)

In 2015, New York City Department of Investigation (“DOI”) conducted a follow up investigation to a 2014 investigation concerning NYCHA’s response to mold complaints.[[45]](#footnote-45) During a four-month period, NYCHA generated 11,135 unique work orders pursuant to mold complaints, with over 200 new mold-related work orders created every day.[[46]](#footnote-46) A common theme during the investigation was that after tenants submitted complaints about mold, the mold condition would reoccur even after NYCHA conducted remedial work. DOI claimed that NYCHA’s mold remediation operations were severely impacted due to insufficient funds in the operating and capital budget.[[47]](#footnote-47)

In an April 2016 report, the New York City Comptroller found that 7.1% of NYCHA households—more than 12,600 units—reported musty or moldy smells on a daily basis inside their apartments, and 13.3% reported that condition a few times in a year.[[48]](#footnote-48)

**Recent Mold Issues**

*COVID-19*

The COVID-19 pandemic has affected NYCHA’s ability to clean toxic mold at its developments. According to a recent news report, it was found that NYCHA does not have enough carpenters, plumbers, and plasterers to address complex mold related work, nor does NYCHA plan to hire additional staff until the pandemic passes.[[49]](#footnote-49) NYCHA claims that it has been limiting the number of repairs in apartments to reduce the spread of COVID-19.[[50]](#footnote-50)

It has additionally been reported that residents have been reluctant to allow workers to enter apartments during the COVID-19 pandemic, limiting NYCHA’s ability to respond to mold and leak conditions.[[51]](#footnote-51) A study of 850 cases from March 23, 2020 to June 8, 2020 found that NYCHA conducted initial mold inspections within five business days 73.7% of the time, simple repairs (within seven days) 54.5% of the time and remediated mold in complex cases (within 15 days) 18.2% of the time.[[52]](#footnote-52)

Because of the Governor’s stay-at-home orders, many NYCHA residents have remained indoors, increasing their exposure to unaddressed mold-laden conditions in their apartments.[[53]](#footnote-53) This is especially problematic given that mold has the potential to trigger and exacerbate asthma and other respiratory conditions, which in turn can increase the risk of severe illness or death from COVID-19.[[54]](#footnote-54)

*Issues with Air Circulation and Ventilation*

Poor air circulation within NYCHA buildings has also contributed to the persistent mold problem. The poor air circulation can be attributed to aging and broken equipment and vents clogged with dust, contributing to the formation and growth of dangerous mold.[[55]](#footnote-55) While NYCHA has also laid out plans to improve air circulation, these plans have been delayed. NYCHA has planned to replace aging or broken roof fans as a way to bring fresher air into thousands of poorly ventilated apartments, with a stated goal of replacing 10,000 roof fans by June 2021 at hundreds of buildings.[[56]](#footnote-56) This project was originally intended to be completed by May 2019, but was delayed.[[57]](#footnote-57) As of August 2020, only three fans have been installed,[[58]](#footnote-58) and the Monitor does not expect the roof fan upgrade to be completed until 2021. Additionally, NYCHA had pledged to clean and upgrade 25 to 50 vents and vent covers per day. These plans have also been placed on hold during the COVID-19 pandemic because the work would require access to tenants’ apartments.[[59]](#footnote-59)

**Litigation, Settlement, and Ongoing Efforts to Monitor**

*The Baez Lawsuit*

In 2013, the Natural Resources Defense Council and the National Center for Law and Economic Justice filed a class action lawsuit against NYCHA on behalf of NYCHA residents and nonprofit community organizations.[[60]](#footnote-60) The lawsuit asserted that NYCHA violated various state and federal laws and regulations when it failed to “make reasonable accommodations and modifications in its policies, practices, and procedures to effectively abate mold and excessive moisture in [plaintiffs’] apartments which exacerbate their asthma symptoms.”[[61]](#footnote-61) The plaintiffs’ asthma qualified them as “individual[s] with a disability” under the Americans with Disabilities Act (“ADA”). The plaintiffs alleged that, by not affording the tenants with asthma the same type of housing as other tenants (*i.e.*, housing that does not exacerbate health problems), NYCHA had violated the ADA,[[62]](#footnote-62) Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its implementing regulations—which are administered by the U.S. Department of Housing and Urban Development (“HUD”)[[63]](#footnote-63)—the Fair Housing Amendments Act of 1988 (“FHAA”),[[64]](#footnote-64) and Article 15 of New York State Executive Law (the “Human Rights Law”).[[65]](#footnote-65)

Prior to the lawsuit, the three plaintiffs—Maribel Baez, Felipa Cruz, and an unnamed plaintiff on behalf of her minor child—had submitted a written request to NYCHA for reasonable accommodations under the ADA, Section 504, and the FHAA, and for the agency to correct the underlying causes of the mold and moisture conditions. The plaintiffs alleged in a subsequent letter to NYCHA that the remedial work the authority had conducted failed to correct the underlying causes of the mold and moisture conditions, and commenced the lawsuit thereafter. Among their factual allegations, the plaintiffs asserted that NYCHA distinguished ADA reasonable accommodations and modifications requests from “maintenance complaints,” without accounting for maintenance requests that might be needed “for a reason related to a disability,” such as asthma.[[66]](#footnote-66)

On April 17, 2014, the court approved a Stipulation and Order of Settlement (“Consent Decree”), which established a new mold and moisture abatement program for NYCHA. It provided that, among other requirements, NYCHA must abate mold and excessive moisture by completing “simple” repairs within seven days and “complex” repairs within 15 days; process “to completion” at least 95% of the work orders for “simple” or “complex” repairs within seven or 15 days, on average, respectively; follow up with tenants to determine whether their mold or excessive moisture problems were remediated; and produce quarterly reports to plaintiffs' counsel setting forth the number of tenants contacted and the percentage of complaints left unresolved.[[67]](#footnote-67)

Despite the terms of the Consent Decree, NYCHA’s mold problems persisted. On December 15, 2015 the Court determined that NYCHA “ha[d] been out of compliance with the Consent Decree from the day” NYCHA signed the agreement.[[68]](#footnote-68) The Court acknowledged the plaintiffs’ “unrebutted and compelling statistics” regarding inadequate mold remediation: “After repairs have been completed, mold and excessive moisture *reoccurrence* rates for the five quarters through July 2015 remain high: 34% reoccurrence in the first quarter, 41% reoccurrence in the second quarter, 27% reoccurrence in the third quarter, 22% reoccurrence in the fourth quarter, and 27% reoccurrence in the fifth quarter.”[[69]](#footnote-69) The Court further observed that “the failure to remediate mold and excessive moisture jeopardizes the health and public welfare of hundreds of thousands of New Yorkers.” The Court granted the plaintiffs’ motion to appoint a Special Master to monitor NYCHA’s compliance with the Consent Decree.[[70]](#footnote-70) Oversight was set to end in April 2017, but in March 2017, the court extended monitoring into April 2018.[[71]](#footnote-71) In November 2018, the Court approved a revised settlement agreement,[[72]](#footnote-72) extending the terms of the original Consent Decree, requiring the appointment of an ombudsperson, and removing the Consent Decree’s sunset provision.[[73]](#footnote-73)

*HUD Agreement*

On January 31, 2019, HUD entered into a new agreement with the United State Attorney’s office of the Southern District of New York (“SDNY”), NYCHA, and the City (“HUD Agreement”).[[74]](#footnote-74) The purpose of the HUD Agreement is to remedy NYCHA’s physical conditions, ensure that NYCHA complies with its obligations under federal law, reform NYCHA’s management structure, and facilitate cooperation and coordination among HUD, NYCHA, and the City.[[75]](#footnote-75) It requires NYCHA to prepare “Action Plans” setting forth policies and practices to meet its obligations. The HUD Agreement additionally requires that an independent monitor review the specific needs of each building and development as they relate to mold, lead, heat and pests, establishing an outline of what type of plans NYCHA needs to make in the future.

Pursuant to the HUD Agreement, HUD selected former prosecutor Bart Schwartz as NYCHA’s new federal monitor (“Monitor”). According to news reports, Bart Schwartz is a former trial lawyer who once served as the chief of the SDNY criminal division where he prosecuted cases involving financial and business fraud, organized crime, narcotics and other criminal activities.[[76]](#footnote-76)

The HUD Agreement contains two exhibits (“Exhibit A” and “Exhibit B”) which establish physical conditions standards and deadlines for NYCHA, as well as the policies, practices, and specific actions that NYCHA must implement in order to meet those standards. The requirements in Exhibits A and B are binding on NYCHA, and the Monitor must submit Quarterly Reports that include data showing NYCHA’s progress toward achieving the requirements.[[77]](#footnote-77) If the Monitor finds that NYCHA has failed to substantially comply with the Agreement, including the procedural and substantive requirements in Exhibits A and B, the Monitor may take steps to remedy noncompliance, including allocating or reallocating personnel and resources.[[78]](#footnote-78)

Exhibit B lays out NYCHA’s requirements with respect to mold and excessive moisture conditions. Within two years of the effective date of the HUD Agreement, (January 31, 2021), Exhibit B requires that:

(1) For 95% of instances in which a resident reports a mold complaint, NYCHA shall prepare and provide a written plan for addressing the root cause to the resident. Alternatively, NYCHA may remediate the mold and its underlying root cause within 15 days; and

(2) For 95% of reports to NYCHA of floods, leaks from above, and other conditions that cause sustained or recurrent moisture to flow into a resident’s unit or the walls of the unit, NYCHA shall abate the condition within 24 hours of a report of the condition to NYCHA, and NYCHA shall remove any standing water that resulted from such condition within 48 hours of the report.[[79]](#footnote-79)

Within five years of the effective date of the HUD Agreement (January 31, 2024), Exhibit B requires that:

(1) For 85% of verified mold complaints, there shall not be a second verified mold complaint in the same unit or the same common area room or hallway within a 12-month period;

(2) No more than 15% of verified mold complaints shall be for mold covering 10 or more square feet in a unit or common area; and

(3) Mold shall not appear more than three times in a year in any single unit.[[80]](#footnote-80)

Additionally, Exhibit B states that NYCHA shall comply with the terms of orders in *Baez v. NYCHA*, as they may be entered or revised by the Court.[[81]](#footnote-81)

*Mold Action Plan*

On March 9, 2020, the Monitor approved phase one of the Mold Action Plan. The plan requires NYCHA to follow the terms set in the *Baez v. NYCHA* and schedule milestones and requirements in regards to NYCHA’s response to mold and moisture conditions.[[82]](#footnote-82) The key features of the plan are to: a) eliminate the backlog of long-term pending mold remediation work order tickets, b) increase the number of skilled trade workers and maintenance workers, c) lower mold remediation response times by automatically scheduling repairs, d) upgrade the ventilation systems and e) work with resident to mitigate and prevent mold.[[83]](#footnote-83) By January 31, 2021, NYCHA must meet the following goals:

* For 95% of instances when a resident reports a mold complaint that is verified, NYCHA will provide a remediation plan within five days, remediate simple cases within seven days and complex cases within 15 days.[[84]](#footnote-84)
* For 95% of flood, leak and moisture cases, NYCHA will stop the recurrent moisture that has been flowing into the resident’s unit.[[85]](#footnote-85) NYCHA is required to abate the condition within 24 hours of when it was reported and NYCHA will remove any standing water that resulted from such condition within 48 hours.[[86]](#footnote-86)

**Remediation**

*Mold Busters: NYCHA’s Program to Remove Mold*

Mold work orders are created when a resident calls the Customer Contact Center to complain about mold, reports a mold condition via the MY NYCHA APP or a NYCHA employee notices the condition in an apartment.[[87]](#footnote-87) During the inspection, the inspector identifies the probable root cause, determines the next steps to correct the mold condition, notes related conditions that could have contributed to the mold, and shares this information with the tenants. [[88]](#footnote-88)

At the remediation stage, NYCHA completes the work to remediate the mold. “Simple repairs” are repairs that can be completed by development staff (maintenance workers and caretakers).[[89]](#footnote-89) Complex repairs require NYCHA’s skilled trade workers (painters, plasterers and plumbers). When the work is completed, NYCHA performs a quality assurance inspection to ensure that the mold remediation work was done correctly and it will not become a reoccurring condition.

During the mold remediation process, NYCHA uses the Right to Entry policy to fix environmental hazards as soon as possible. The policy allows a NYCHA worker to enter a resident’s apartment to make repairs whether the resident is home or away.[[90]](#footnote-90) The resident receives 48 hours’ notice before the work commences.[[91]](#footnote-91) If repairs are completed when the tenant is not home, the NYCHA worker will leave a tag on the door noting that the repairs are complete. If the door lock was changed due to a repair, the resident could pick up a new set of keys at the property management office up until 4:30PM.[[92]](#footnote-92) After that time, the keys will be with the local New York City Police Department Police Service Area. [[93]](#footnote-93)

**Conclusion**

At today’s hearing, the Committee plans to examine NYCHA’s obligations with respect to inspecting and remediating mold and excessive moisture conditions within its developments. The Committee also expects to learn more about the mold ombudsperson’s role in ensuring NYCHA residents’ mold-related issues are adequately addressed.

**Summary of Int. No. 1911**

Int. No. 1911 would require an office or agency designated by the Mayor to mail to each tenant of NYCHA a pamphlet that contains information about the court-appointed mold ombudsperson, the mold ombudsperson’s call center, and how to make a complaint to the mold ombudsperson. The office would also be required to mail such pamphlet to local elected officials and certain community representatives and hold a public briefing at least once a year to provide information about the mold ombudsperson.

Int. No.

By Council Member Torres, Ampry-Samuel, Ayala and Gibson

A LOCAL LAW

In relation to the provision of information to tenants of the New York city housing authority regarding the mold ombudsperson

Be it enacted by the Council as follows:

Section 1. Definitions. For purposes of this local law, the following terms have the following meanings:

Call center. The term “call center” means the ombudsperson’s call center established pursuant to the court order.

City. The term “city” means the city of New York.

Court order. The term “court order” means the court order issued on September 20, 2019 in the case Baez et al v. New York City Housing Authority by the United States district court in the southern district of New York.

Mold ombudsperson. The term “mold ombudsperson” means the ombudsperson appointed pursuant to the court order or any subsequently appointed person with similar duties.

Office. The term “office” means an office or agency designated by the mayor.

Tenant. The term “tenant” means a tenant of the New York city housing authority.

§ 2. Provision of information about the mold ombudsperson. The office shall mail to each tenant a pamphlet containing information about the mold ombudsperson and the right of such tenant to contact the mold ombudsperson. Such pamphlet shall include information about how to contact the mold ombudsperson, including through the call center, with a complaint about mold and what information to include in such complaint. Such pamphlet shall be provided to each person who is a tenant as of the effective date of this local law no later than 60 days after the effective date of this local law, and to each person who becomes a tenant after the effective date of this local law no later than 60 days after such person becomes a tenant.

§ 3. Effective date. This local law takes effect immediately and expires and is deemed repealed on the date that the mold ombudsperson ceases to be appointed.

NAB

LS #12389

10/29/19

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28. *Supra* note 19. [↑](#footnote-ref-28)
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