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Title: A Local Law to amend the administrative code of the city of New York, in relation to mercury poisoning prevention, including the remediation of elemental mercury from contaminated properties adjacent to schools, child care facilities and facilities providing day care services

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Attachments: 1. Summary of Int. No. 1873, 2. Int. No. 1873, 3. February 11, 2020 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 2-11-20, 5. Minutes of the Stated Meeting - February 11, 2020

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Int. No. 1873

By Council Members Chin, Louis, Kallos and Gibson

A Local Law to amend the administrative code of the city of New York, in relation to mercury poisoning prevention, including the remediation of elemental mercury from contaminated properties adjacent to schools, child care facilities and facilities providing day care services

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 24 of the administrative code of the city of New York is amended by adding a new subchapter 10 to read as follows:

SUBCHAPTER 10

MERCURY EXPOSURE AND REMEDIATION

§ 24-191 Legislative purpose; applicability. The purpose of this subchapter is to protect public health

and safety by minimizing the emission of mercury vapor into the air of the city when properties that contain quantities of all forms of elemental mercury which are located adjacent to a school, child care facility or facility providing day care services are remediated of elemental mercury contamination.

§ 24-192 Definitions. Whenever used in this subchapter, the following terms have the following meanings:

Adjacent. The term “adjacent” means neighboring, adjoining, abutting or located directly or indirectly across a street or passageway of any kind.

Child. The term “child” means any person under 18 years of age.

Child care facility. The term “child care facility” means a building, structure, area or premises where a child care program is provided. Where a program is regulated by article 43 of the New York city health code, “child care facility” means a school facility used to provide such program.

Child care program. The term “child care program” means any program providing child care for five or more hours per week, for more than 30 days in a 12-month period, to three or more children under six years of age, except that such term does not include:

1. Any state-regulated informal child care program, group family or family day care home, school-age child care program, or foster care program;

2. Any kindergarten or pre-kindergarten class operated as part of or located within any elementary school, except that school programs that provide care to children younger than three years of age shall be deemed child care programs subject to article 47 of the New York city health code. “Operated as part of an elementary school” means that there is identical ownership, operation, management and control of kindergarten or pre-kindergarten classes and elementary school classes;

3. Any “Mommy and me” or equivalent program in which each child is accompanied by a parent or another adult escorting the child, who is not employed by the child care program;

4. Any children’s camp operating seasonally at any time between June and September that is required to

have a permit pursuant to article 48 of the New York city health code;

5. Any adult physical fitness, spa or other recreational facility, or retail establishment, or other business providing supervision for children of patrons or employees of the facility, establishment or business while parents are on the premises, unless children are registered or enrolled and individual children are spending more than eight hours per week in the program; or

6. Any church or religious organization where children are supervised by employees or members of the congregation while parents or guardians attend services.

Covered property. The term “covered property” means any property (i) that is adjacent to a school, child care facility or facility providing day care services and (ii) for which an application for a foundation or earthwork permit pursuant to section 28-105.2.1 is filed with the department of buildings.

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

School. The term “school” means a public, non-public, charter or other school or school facility recognized under the education law or that has been determined by the state education department or the New York city department of education, or successor agency, as providing a compulsory education for children in grades one through 12, and where more than six children ages three through five are provided instruction.

§ 24-193 Exposure limit; penalties; enforcement; rulemaking. a. Where elemental mercury is discovered on a covered property:

1. No person on such property or an adjacent school, child care facility or facility providing day care services shall be exposed to a level of mercury vapor exposure in excess of 750 nanograms per cubic meter of air averaged over an eight-hour work shift of a 40-hour work week.

2. No child on such property or an adjacent school, child care facility or facility providing day care services shall be exposed to a level of mercury vapor exposure in excess of 750 nanograms per cubic meter of air during 16 hours or less per week averaged over the school year.

b. The owner of such covered property shall be responsible for maintaining compliance with the requirements of this subdivision.

c. The commissioner shall promulgate rules establishing a civil penalty of not less than \$1,000 nor more than \$25,000 for a property owner's failure to comply with the requirements of subdivision a of this section.

d. The commissioner shall be responsible for enforcing the requirements of this section.

e. The commissioner shall promulgate such rules as may be necessary for the implementation of this section. Such rules shall include an inspection or audit procedure to secure compliance with the requirements of subdivision a of this section.

§ 24-194 Remediation of mercury. a. Determining presence of mercury. Before the commencement of any foundation work or earthwork requiring the filing of an application pursuant to section 28-105.2.1, the owner of the covered property that will undergo such work shall analyze available public records to determine whether any industrial or commercial activity involving a use of elemental mercury has ever taken place on the property. Such owner shall submit this determination about the likely presence of mercury in writing to the department and to the department of buildings. The department of buildings shall not issue any permit granted pursuant to section 28-105.2.1 until such determination has been made and submitted to such department, and, when required, elemental mercury remediation of the property has been completed pursuant to this section.

b. Testing. When the owner of a covered property has determined that industrial or commercial activity involving a use of elemental mercury has taken place on the property and has determined the likely presence of mercury on the property pursuant to subdivision a of this section, such owner shall test for the actual presence of elemental mercury on the property.

c. Remediation plan. Where the actual presence of elemental mercury on the covered property is determined through testing conducted pursuant to subdivision b of this section, the owner shall submit simultaneously with such determination an elemental mercury remediation plan and an application to the commissioner for approval of such plan.

d. Contents of remediation plan. 1. A remediation plan pursuant to this section shall comply with the rules of the department. The commissioner may approve such a plan only upon a satisfactory showing that it will effect compliance with all applicable provisions of this subchapter, rules promulgated thereunder, and applicable federal or state laws or regulations. Where a remediation plan is required by this section, the commissioner of buildings shall not issue any permit for foundation work or earthwork requiring the filing of an application pursuant to section 28-105.2.1 until after such remediation has been completed.

2. The commissioner, in consultation with the commissioner of buildings and the commissioner of health and mental hygiene, shall promulgate rules:

(a) Specifying the types of work that are exempt from the requirement to submit a remediation plan pursuant to subdivision b of this section;

(b) Setting standards for the remediation of all forms of elemental mercury, including but not limited to mercury vapor, from properties located adjacent to schools, child care facilities and facilities providing day care services;

(c) Establishing procedures for safeguarding the health and safety of the public and all persons present at or near properties where elemental mercury is present that are located adjacent to schools, child care facilities and facilities providing day care services;

(d) Specifying the form and manner for submission of a remediation plan; and

(e) Establishing a fee to be submitted with such remediation plan.

e. Consideration of remediation plan. 1. No later than 60 days after the submission of an application for approval of an elemental mercury remediation plan, the commissioner shall notify the applicant, in writing, of the approval or disapproval of such application. If an application is disapproved, the commissioner shall set forth a list of objections in the notice of disapproval. Within 60 days after service on the applicant of the notice of disapproval, the applicant may request that the commissioner reconsider the application by responding in writing to the stated objections. The commissioner shall consider the applicant's responses to the objections,

and, within 60 days after submission of such responses, shall notify the applicant, in writing, of the approval or denial of the application. Where an applicant fails to respond to the commissioner's stated objections or to request an extension of time within 60 days after service of the notice of disapproval, denial of the application shall be deemed final, without prejudice to filing a new remediation plan and application for approval.

2. Following a denial of such application, the department of buildings shall deny any permit for work that requires the filing of an application pursuant to section 28-105.2.1. Denial of such permit for work shall be without prejudice to the approval of any subsequent application that satisfies the requirements of this subchapter.

f. Stop work order. Where (i) elemental mercury is discovered on a covered property after the commencement of any foundation work or earthwork requiring the filing of an application pursuant to section 28-105.2.1 or (ii) work is being performed in violation of the provisions of this subchapter or any rules promulgated thereunder and poses a threat to human safety, health or well-being, the commissioner of buildings may issue a notice or order to stop work. Such notice or order may be given orally or in writing to the owner of the property involved, the owner's agent or the persons performing the work and may require all persons in or about the building or premises to vacate the same immediately, and also may require such work to be done as, in the opinion of the commissioner, may be necessary to remove the danger therefrom.

g. Variance. The commissioner may grant an individual variance from a requirement of this subchapter or rules promulgated thereunder, or from an order of the commissioner related to remediation of elemental mercury, upon presentation of adequate proof that compliance with such requirement or order would cause unreasonable hardship. In granting a variance, the commissioner may impose reasonable conditions in furtherance of the policies of this subchapter. No later than seven days after granting such a variance, the commissioner shall publish online and in the City Record a statement of the reasons the variance was granted.

h. Information sharing. The commissioner, in consultation with the commissioner of buildings, shall establish a procedure for sharing information about violations issued pursuant to this section, in accordance

with the requirements of section 28-103.7.1.

i. Rules for non-remediation projects. The commissioner may promulgate any rules the commissioner deems necessary to protect the health and safety of the public in connection with work not constituting an elemental mercury remediation project in which elemental mercury is or is likely to be disturbed.

§ 24-195 Publication of best practices. The commissioner, in consultation with the commissioner of health and mental hygiene, shall develop, publish and make publicly available online recommendations and best practices for the protection of children attending schools, child care facilities and facilities providing day care services when adjacent properties undergo elemental mercury remediation.

§ 2. This local law takes effect 120 days after it becomes law, except that the commissioner of environmental protection, the commissioner of buildings and the commissioner of health and mental hygiene shall take any actions necessary for the implementation of this local law, including the promulgation of rules, before such date.

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