



## Legislation Text

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Int. No. 864

By The Speaker (Council Member Johnson) and Council Members Holden, Cumbo, Kallos, Powers, Rose, Brannan, Levine, Rivera, Constantinides, Miller, Ayala, Koo, the Public Advocate (Mr. Williams), Rodriguez, Dromm, Cabrera, Salamanca, Grodenchik, Yeger, Van Bramer, Gibson, Reynoso, Vallone, Rosenthal, Moya, Koslowitz, Deutsch, Treyger, Lander, Ampy-Samuel, Eugene, Adams, Levin, Chin, Menchaca, Maisel, Barron, Cornegy, Louis, Perkins and Ulrich

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 in connection with lead poisoning incidents

Be it enacted by the Council as follows:

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 Subchapter 1 of chapter 9 of title 17 of the administrative code of the city of New York is REPEALED and a new subchapter 1 is added to such chapter to read as follows: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

##### Investigations Based on Elevated Blood Lead Level Findings

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

Child of applicable age. The term “child of applicable age” shall have the meaning ascribed to such term by section 27-2056.18 of the housing maintenance code.

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

§ 17-911 Required investigation. In addition to or as part of any investigation required pursuant to

section 27-2056.14 of the housing maintenance code, 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 by department rule, 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 the following areas, provided that this section shall not be construed to require inspection by the department of an area more than once in any three-month period:

1. The dwelling unit in which the person with such elevated blood lead level resides;
2. Each dwelling unit that is in the same building as the dwelling unit in which such person resides and occupied by a child of applicable age, provided that these inspections are only required if the department determines that, in the dwelling unit in which the person with such elevated blood lead level resides, (i) the lead level in water supplied for drinking or cooking purposes exceeds the water lead action level established by department rule or (ii) a lead-based paint hazard exists;
3. Each daycare facility, preschool, nursery school and school that is attended by the person with such elevated blood lead level; and
4. Each park, playground or other area that is partially or wholly covered in bare soil where the department's investigation indicates that the person with such elevated blood level visits or is likely to visit such area.

§ 17-912 Reserved.

§ 17-913 Scope of required inspections. Whenever the department is required to conduct an inspection of real property or part thereof under section 17-911 to identify potential sources of elevated blood lead levels in a person under 18 years of age or a pregnant woman, such inspection shall include:

1. An inspection of such property or part thereof for lead-based paint hazards;
2. A lead test of a sample of water from each fixture within such property or part thereof that supplies water for drinking or cooking purposes; and

3. A lead test of a sample of soil from each area on the premises of such property that is (i) partially or wholly covered in bare soil and (ii) accessible to persons other than those employed to maintain such property.

§ 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

§ 17-920 Definitions. As used in this subchapter, the terms “chewable surface,” “deteriorated subsurface,” “friction surface,” “impact surface,” “lead-based paint,” “lead-based paint hazard,” “lead-contaminated dust,” “peeling” and “remediation” shall have the meanings ascribed to such terms in section 27-2056.2 of the housing maintenance code and:

Day care facility. The term “day care facility” means a facility used to provide day care service.

Day care service. The term “day care service” means a service which, during all or part of the day, regularly gives care to seven or more children of applicable 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.

§ [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 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 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 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 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 or the owner of the premises where such facility is located to remediate the condition. In the event such order is not complied with within [forty-five] 45 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] 45 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] 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 subdivision d and e of section 173.14 [(d) and (e)] 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 gives 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.

§ [17-913] 17-924 Annual [Survey] survey for lead-based paint hazards. 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.

§ 4. This local law takes effect 120 days after it becomes law, except that 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 effective date.

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