

**NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Adoption of Amendments
to Article 173 of the New York City Health Code**

At the April 13, 2021 meeting of the New York City Board of Health (“Board”), the Department presented a notice of intention (“NOI”) to amend Article 173 of the New York City Health Code (“the Health Code”). The Board approved the NOI as presented for publication. In compliance with section 1043(b) of the New York City Charter (“the Charter”) and pursuant to the authority granted to the Board by section 558 of the Charter, the NOI was published in the New York City Record on April 20, 2021. A public hearing was held on May 21, 2021. No one testified at the hearing and no written comments were received. After consideration of the comments made by the Board, changes have been made to improve clarity of the amendments and provide the City’s children further protection against the dangers of lead-based and unsafe lead paint. At its meeting on September 17, 2021, the Board of Health adopted the following resolutions.

Statement of Basis and Purpose

New York City has been on the forefront of action to protect its residents from lead paint hazards since 1960. Most recently, in 2019, the Board amended Article 173 of the Health Code with significant new safeguards for children by, among other things, lowering both the childhood blood lead level triggering mandatory Department investigations and the lead dust action level for paint that is not intact in the homes of children with elevated blood lead levels (EBLL).¹

On August 20, 2020, the Board received a petition, submitted pursuant to Health Code Article 9, to amend Article 173 with respect to lead-based paint. The petition proposed (1) to make explicit that the Department’s investigations of places where a child spends five or more hours per week be conducted for children with a blood lead level at or above five mcg/dL, rather than 15 mcg/dL, and (2) to clarify in the Health Code that the Department has the authority to order abatement or remediation of lead-based paint and dust in locations frequented by children under age six other than their homes. Both proposals would bring the Health Code into alignment with Department practice. Indeed, for over 25 years, it has been Department practice to investigate all locations frequented by children with known EBLLs to identify and order remediation of lead-based paint hazards. And for many years, these investigations have included locations where children spend more five or more hours per week.

In addition, the City Council recently adopted new lead poisoning prevention provisions that become effective in October of 2022. Pursuant to these changes, Administrative Code § 27-2056.2(7)(c) will provide that the more protective unsafe lead paint standard of 0.5 milligram per square centimeter applies to any location regulated under Health Code Article 43 or 47 where a child under the age of six with an elevated blood lead level spends 10 or more hours per week.

¹ New York City Record, June 19, 2019, at 3049 *et seq.*

At its April 30, 2021 meeting, members of the Board commented on the use of different age thresholds for Department investigation proposed in sections 173.13(a) and 173.13(d)(1) of the Health Code; the former used the age of 18 years while the latter used the age of six years. Similarly, the Board commented on the use of the phrase “primarily used or occupied by children under the age of six years” twice in section 173.13(d)(1) as unnecessarily limiting the Department’s scope of authority to investigate locations where lead-based paint might be present. After consideration of these comments and to provide greater protection to New York City’s children, the phrase in section 173.13(d)(1) is changed to “used or occupied by children under the age of 18” in both instances.

In addition, to align the Health Code with the recent change to the Local Law, as well as with Department practice for investigations as requested by the petition, the Board is adding a new definition of “supplemental address” to mean locations where a child with an EBLL spends five or more hours, and amending the definition of “unsafe lead paint hazard” as of October 17, 2022, to include such hazards in supplemental addresses regulated by Articles 43 and 47 of the Health Code. The Board is also removing provisions regarding lead dust action levels that will no longer be applicable as of June 1, 2021. The new, more protective lead dust action levels were already added to the Health Code in 2019 with a June 1, 2021 effective date.

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Section 558 empowers the Board to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 1043 grants the Department rulemaking authority.

The proposal is as follows:

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivision (a) of section 173.13 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to add a new paragraph as follows:

(4) Investigations. Whenever a report has been made to the Department of a child under 18 years of age with a blood lead level of five (5) micrograms per deciliter or higher, the Department 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 child resides and any supplemental address of that child.

RESOLVED, that paragraphs (1) and (2) of subdivision (d) of section 173.13 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

- (1) *Generally.* When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in § 173.14(e) of this Code, on the interior of any dwelling, supplemental address, or other premises, such premises including but not limited to, child care services, schools, and recreational facilities used or occupied by children under the age of 18, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises, including but not limited to, child care services, schools, and recreational facilities [primarily] used or occupied by children under the age of [six years] 18 when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.
- (2) *In [a] the dwelling [where] of a child with a blood lead level of five (5) micrograms per deciliter or greater[resides].* When the Department finds that [there is] the interior of any dwelling of a child under 18 years of age with a blood lead level of five (5) micrograms per deciliter or higher [residing in any dwelling and further finds that the interior of such dwelling] has a lead-based paint hazard because of its condition, location or accessibility to children, the Department shall order the abatement of any such condition in a manner and under such safety conditions as it may specify; in addition, until HPD adopts regulations described by paragraph (b) of subdivision (7) of section 27-2056.2 of the Administrative Code, the Department is authorized to order abatement when an unsafe lead paint hazard is present in such dwelling.

RESOLVED, that the definitions of “dwelling” and “unsafe lead paint hazard” in subdivision b of section 173.14 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, and a definition of “supplemental address” be added in alphabetical order, to read as follows:

Dwelling. "Dwelling" shall mean any building or structure or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. For the purpose of investigations and orders issued by the Commissioner pursuant to § 173.13 of this Code, dwelling shall include exteriors, yards or other areas of the building[, and shall also include any structure in which a child with a blood lead level equal to or in excess of 15 micrograms per deciliter spends more than five hours per week].

...

Supplemental address. "Supplemental address" shall mean any location where a child with a blood lead level equal to or in excess of five (5) micrograms per deciliter spends five (5) or more hours per week.

...

Unsafe lead paint hazard. "Unsafe lead paint hazard" shall mean any condition in a dwelling, [or] dwelling unit, or, on or after October 17, 2022, any supplemental address of a child of applicable age that is regulated by Article 43 or 47 of this Code, that causes exposure to lead from unsafe lead paint that is peeling or present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that could result in adverse human health effects.

RESOLVED, that subdivision e of section 173.14 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

(e) *Occupant protection.* All requirements of this subdivision that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.

(1) *Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a child care service or kindergarten pursuant to § 47.63 or § 43.23 of this Code or § 17-911 of the Administrative Code, or work ordered by HPD in accordance with § 27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to § 27-2056.11 (a)(2)(ii) of the Administrative Code:*

...

(l) *Clean-up and lead-contaminated dust clearance testing procedures.*

...

(iv) *Clearance for permanent re-occupancy after completion of work.* Dust lead levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. [Until May 31, 2021, areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	10 micrograms of lead per square foot.
Window Sills:	50 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

On and after June 1, 2021, areas] Areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	5 micrograms of lead per square foot.
Window Sills:	40 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

Provided that, if EPA or HUD adopts lower definitions of lead-contaminated dust, those definitions shall apply for purposes of this subdivision. Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed, and dust test samples have been collected, in compliance with §173.14(e)(1)(i),(ii) and (iii). The owner shall provide a copy of all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit. Copies of lead-contaminated dust wipe clearance test results shall be submitted to the Department whenever abatement or remediation of lead-based paint hazards has been ordered by the Department or Commissioner.