



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

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

In compliance with section 1043(b) of the New York City Charter (“the Charter”) and pursuant to the authority granted to the New York City Board of Health (“the Board”) by section 558 of the Charter, a notice of intention (“NOI”) to amend Article 173 of the New York City Health Code (“Health Code”) was published in the New York City Record on May 29, 2026. The NOI proposed that the Board amend Article 173 of the Health Code to update the definition of “lead-contaminated dust” based on recent changes made by the U.S. Environmental Protection Agency (“EPA”) to its rules.

A public hearing was held on July 1, 2026, and no one testified at the hearing. Six written comments were received. At its meeting on September 17, 2026, the Board adopted the following resolution.

Statement of Basis and Purpose

Background

On the forefront of protecting New Yorkers from lead paint hazards since 1960, the Board of Health has updated the Health Code multiple times over the years to ensure public protections remain current with legislative mandates as well as scientific advancements. One area that has continued to evolve is the ability of laboratories to test for lead content in dust, which is significant because children can easily absorb lead from dust on items that they touch as they explore the world through hand-to-mouth activity. Lead dust can also affect older children and adults when it coats food and other items in the home.

In 2019, following changes in the New York City Administrative Code,¹ the Board adopted Health Code thresholds for lead-contaminated dust that are the lowest in the nation. The thresholds, found in Health Code § 173.14(e)(3)(i)(iv), are five or more micrograms of lead per square foot ($\mu\text{g}/\text{ft}^2$) on a floor, 40 or more $\mu\text{g}/\text{ft}^2$ on window sills, and 100 or more $\mu\text{g}/\text{ft}^2$ on window wells.² NYC Administrative Code § 27-2056.2(8) allows the Board of Health to adopt stricter standards and requires it to lower threshold levels when the EPA or the U.S. Department of Housing and Development does so.

¹ Local Law 66 of 2019, codified at NYC Administrative Code § 27-2056.2(8).

² Area concentration is used to describe settled leaded dust levels in micrograms of lead per square foot of surface area. Appendix 1, Units of Measure, of the U.S. Department of Housing and Urban Development’s *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition)*, ($\mu\text{g}/\text{ft}^2$). See, <https://www.hud.gov/sites/documents/lbph-22.pdf> (last accessed 3/18/26).

EPA Changes to Dust Thresholds

In response to a 2021 court mandate,³ the EPA lowered its dust-lead standards effective January 2026. In this 2024 rulemaking, the EPA separated its pre-abatement standard for dust lead hazards (now called the “dust-lead reportable level” or “DLRL”) from its post-abatement standard for clearance (known as the “dust-lead action level” or “DLAL”). Prior to this rulemaking, both standards had been the same: 10 µg/ft² or greater for floors and 100 µg/ft² for windowsills, with no pre-abatement hazard standard for window wells but with a post-abatement clearance level of 400 µg/ft².

Under the new rule, the dust-lead reportable level is defined as “surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of any reportable level of lead for floors or for interior window sills based on wipe samples analyzed by an NLLAP-recognized laboratory” (codified at 40 CFR § 745.63).⁴ This means that at the pre-abatement stage – *i.e.*, the usual inspection stage – “any reportable level” of lead is a dust-lead hazard. The 2024 rule also lowered the maximum threshold for the dust lead action level measured post-abatement to 5 µg/ft² for floors, 40 or less µg/ft² for windowsills, and 100 or less µg/ft² for window wells (codified at 40 CFR § 745.227(e)(8)(vii)). As noted in the EPA rulemaking, the DLALs are the current abatement/clearance levels required by the NYC Health Code.

Only certain laboratories are qualified to test for lead in dust, paint and other materials. The National Lead Laboratory Accreditation Program (NLLAP) is the EPA program that sets the minimum requirements and abilities that a laboratory must achieve and maintain to be recognized and accredited for lead testing. These criteria are established in the EPA’s Laboratory Quality Standards for Recognition (“LQSR”) guidelines. The most recent version of these standards, LQSR 4.0, was adopted while the EPA was considering the 2024 amendments to the dust lead rules.⁵ According to LQSR 4.0’s Section 5.3 Test and Sampling Methods, NLLAP-recognized laboratories must be able to analyze dust wipe samples for lead a quantitation limit “equal to or less than . . . 80% of the lowest [dust lead] action level.”⁶ A quantitation limit is the lowest concentration that can be reliably measured with acceptable precision and accuracy. Based on the post-abatement dust-lead action level standards that were updated in the 2024 rule, for laboratory testing purposes, the EPA’s “lowest action level” is 5 µg/ft². This means that NLLAP-accredited laboratories must be able to reliably detect lead in dust at 80% of that level, or at 4 µg/ft².

³ *A Community Voice et al. v. EPA*, 997 F.3d 983 (Ninth Circuit 2021).

⁴ U.S. EPA (2024). Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels (89 FR 8914), amending 40 CFR Part 45. Retrieved from <https://www.federalregister.gov/documents/2024/11/12/2024-25070/reconsideration-of-the-dust-lead-hazard-standards-and-dust-lead-post-abatement-clearance-levels>.

⁵ See <https://www.federalregister.gov/documents/2024/10/23/2024-24558/final-revisions-to-the-national-lead-laboratory-accreditation-program-nllap-notice-of-availability>.

⁶ Available online at https://www.epa.gov/system/files/documents/2024-10/final-lqsr-4.0_document_10.10.2024.pdf (last accessed 8/18/2026).

In summary, effective January 2026, EPA rules establish two different standards for lead-contaminated dust: one for pre-abatement hazards (“any reportable level”) and one for post-abatement clearance (“dust-lead action levels” that mirror those of Health Code § 173.14(e)(3)(I)(iv)). In addition, NLLAP-certified laboratories must be able to detect lead in dust at 4 µg/ft², which is 80% of the lowest action level.

Changes to the Health Code in Response to EPA Rulemaking

The Board is amending Article 173 of the Health Code to adopt more stringent standards for lead-contaminated dust based on changes in EPA rules, as authorized by NYC Administrative Code § 27-2056.2(8). The Department proposed adopting a single standard rather than a double standard like that used by the EPA. Two comments advocated against this approach; one of these expressed concern that different city and federal standards would create confusion for property owners because a result that would not be defined as a “lead-contaminated dust” under the Health Code could still require various notices and inspections, and potential remediation, pursuant to EPA rules (40 C.F.R. Part 745). The Board has determined that this is not a reason to adopt a different approach because it is not unusual for federal and local requirements for property owners to differ. Moreover, a single standard rather than a double standard like that used by the EPA can be more uniformly and reliably implemented by property owners and laboratories and also protects the health of New Yorkers. A third comment noted that this is the third update to lead standard in 10 years. That is correct: the Board seeks to apply the most current scientific processes to protect the health of New Yorkers. For these reasons, the Board is adopting a single standard for “lead-contaminated dust”.

The Board adopts the NLLAP testing standard (80% of the lowest action level) as the unified standard for defining “lead-contaminated dust” in the Health Code. The new lower standards will apply to testing for lead dust hazards on floors and windowsills during inspections of homes under Health Code § 173.13(d)(1) as well as to lead-contaminated dust clearance testing of floors, windowsills, and window wells after abatement pursuant to Health Code § 173.14(e)(3)(I)(iv). The new thresholds are:

Floors 4 µg/ft²;
Windowsills 32 µg/ft²; and
Window Wells 80 µg/ft².

These are 20% below the current thresholds set in Health Code § 173.14(e)(3)(I)(iv) for clearance after abatement and lower than the action levels set in EPA rules. One comment suggested that laboratories be required to note on all lead dust reports that “both the New York City Board of Health and the federal Environmental Protection Agency consider any measurable level of lead in dust to be a hazard.” The Board does not have statutory authority to impose this requirement and therefore cannot adopt this suggestion.

The Board is also amending Article 173 to require that laboratories eligible to test and report dust-lead levels be accredited by NLLAP in addition to the current requirement for accreditation by the New York State Department of Health Wadsworth Laboratory's Environmental Laboratory Approval Program (ELAP). ELAP was established pursuant to NYS Public Health Law § 502 and is responsible for the certification of laboratories performing environmental analyses on samples originating from New York State, thus ensuring the accuracy and reliability of these analyses. Accreditation in the field of Solid and Chemical Materials (Solid Waste and Soils) is required by ELAP for purposes of lead paint chip, soil, and dust testing. Pursuant to ELAP's Required Detection Limits in its Certification Manual, laboratories must be able to detect lead at one microgram per liter ("ug/L").⁷

One commentor noted that these amendments may increase the cost of compliance with the Health Code, which may indeed be true; there may be some additional costs associated with achieving lower lead levels as mandated by federal requirements. The remaining comments were either neutral or asked operational questions that the Department will address when implementing these changes.

In summary, the amendments:

- Delete the maximum dust-lead clearance levels from Health Code § 173.14(e)(3)(i)(iv) because the requirement is captured by the new definition of "lead-contaminated dust".
- Add a new definition for "lead-contaminated dust" to Health Code § 173.14(b) with a new lower and more protective threshold than what is currently set forth in Health Code § 173.14(e)(3)(i)(iv).
- Require that testing of lead-contaminated dust be conducted by a laboratory that is both NLLAP- and ELAP-certified.
- Add a new definition for "lead-contaminated dust clearance testing" to Health Code § 173.14(b) to clarify that dual certification is required by laboratories that test dust following abatement and standardize the term "lead-contaminated dust clearance testing" throughout the section.
- Add definitions for ELAP and NLLAP.

In addition, the Department is adjusting the formatting of the definition of "chewable surface" in Health Code § 173.14(b) to clarify the definition without making a substantive change.

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.

⁷ Available online at https://www.wadsworth.org/sites/default/files/WebDoc/I280_11.pdf (last accessed 3/18/26),

The proposal is as follows:

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

“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 paragraph (1) 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, is amended to read as follows:

- (1) *Generally*. When the Department finds that there is lead-based paint, or lead-contaminated dust [with a lead content in excess of the clearance levels specified in 24 RCNY Health Code § 173.14(e),] 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 used or occupied by children under the age of 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.

RESOLVED, that the definition of the term “chewable surface” set forth 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, is amended to read as follows:

Chewable surface. “Chewable surface” shall mean:

- (1) a protruding interior [window sill] window sill
 - (i) in a dwelling unit in a multiple dwelling where a child under six years of age resides, which is readily accessible to such child, or
 - (ii) such surface in a day care service, or kindergarten in an elementary school, that is readily accessible to a child under six years of age[.]; and
- (2) [“Chewable surface” shall also mean] any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair[.]

- (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under six years of age resides in that multiple dwelling, or
- (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

RESOLVED, that 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, is amended to REPEAL the definition of the term “lead-contaminated clearance dust test” and add definitions of the terms “ELAP”, “lead-contaminated dust”, lead-contaminated dust clearance test” and “NLLAP”, in alphabetical order, to read as follows:

ELAP. “ELAP” shall mean the Environmental Laboratory Approval Program certification(s) bestowed upon laboratories by the Wadsworth Center pursuant to New York State Public Health Law § 502. For the purpose of this code, laboratories must be accredited in the Solid and Chemical Materials (Solid Waste and Soils) field by ELAP.

Lead-contaminated dust. “Lead-contaminated dust” shall mean dust collected on floors or windowsills during an investigation of a location or during a lead-contaminated dust clearance test that contains lead at or above the following levels in testing conducted by a laboratory certified by NLLAP and ELAP:

Floors 4 micrograms of lead per square foot.

Windowsills 32 micrograms of lead per square foot.

“Lead-contaminated dust” shall also mean dust collected from window wells during a lead-contaminated dust clearance test that contains lead at or above 80 micrograms of lead per square foot in testing conducted by a laboratory certified by NLLAP and ELAP.

Lead-contaminated dust clearance test. “Lead-contaminated dust clearance test” shall mean testing conducted by an NLLAP and ELAP-certified laboratory for lead in dust collected on floors, window wells, and windowsills in a dwelling following abatement in accordance with this Code or § 27-2056.11 of the Administrative Code.

NLLAP. “NLLAP” shall mean the US EPA National Lead Laboratory Accreditation Program that defines the minimum requirements and abilities that a laboratory must meet to be recognized by the EPA as an accredited lead testing laboratory.

RESOLVED, that subparagraph (B) of paragraph (2) of subdivision (c) 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, is amended to read as follows:

(B) *Other than abatement work.*

- (i) *Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint.* All work ordered by the Department, or by the HPD in accordance with § 27-2056.11(a)(1) of the Administrative

- Code, or work that disturbs over 100 square feet per room conducted in accordance with § 17-911 of the Administrative Code, or 24 RCNY Health Code § 43.23 or 24 RCNY Health Code § 47.63, or § 27-2056.11(a)(2)(ii) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements:
- (aa) *Firm requirements.* Firms conducting such work shall be certified to perform lead abatement by the EPA in accordance with subpart L of 40 C.F.R. Part 745, or successor rule, for the abatement of lead hazards.
 - (bb) *Worker requirements.* Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by HUD at 24 C.F.R. § 35.1330(a)(4), or successor rule.
 - (cc) *[Clearance] Lead-contaminated dust clearance testing requirements.* No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a [third-party] third party, who is independent of the owner and any individual or firm that performs the work. All personnel performing lead-contaminated dust clearance [dust] testing upon completion of work shall be trained, at a minimum, in accordance with regulations issued by HUD at 24 C.F.R. § 35.1340(b)(1), or successor rule.
- (ii) *Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling or in a child care facility or a kindergarten.* Work which is not ordered by the Department and disturbs between two and 100 square feet per room, which is performed in accordance with § [17-911](#) or § [27-2056.11](#)(a)(2)(i) of the Administrative Code, or 24 RCNY Health Code § [43.23](#) or 24 RCNY Health Code § [47.63](#), shall be performed by workers trained in accordance with the following requirements:
- (aa) *Worker requirements.* Workers conducting such work shall be trained under regulations issued by HUD at 24 C.F.R. § 35.1330(a)(4), or successor rule.
 - (bb) *[Clearance] Lead-contaminated dust clearance testing requirements.* No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a [third-party] third party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated dust clearance [dust] testing after completion of work performed in accordance with § 27-2056.11(a)(2)(i) of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 C.F.R. § 35.1340(b)(1), or successor rule.
- (iii) *Work not ordered by the Department or HPD, which is performed in a dwelling unit upon turnover.* No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a [third-party] third party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated dust clearance [dust] testing after completion of work performed on turnover in accordance with § 27-2056.8 of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 C.F.R. § 35.1340(b)(1), or successor rule.

RESOLVED, that paragraph (3) of subdivision (c) 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, is amended to read as follows:

(3) *Recordkeeping.*

(A) *Records to be kept.* An owner shall keep a record of the following information for all lead-based paint remediation work subject to the provisions of this Code or Title 27 of the Administrative Code:

- (i) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work.
- (ii) A copy of all training certificates, required pursuant to subsection (c)(2) of this section, for the firms and personnel who performed work and clearance dust testing.
- (iii) The location of the work performed in each room including a description of such work and invoices for payment for such work.
- (iv) Results of lead-contaminated dust clearance tests [analyzed by an independent laboratory certified by the state of New York].
- (v) Checklists completed pursuant to 24 RCNY Health Code § 173.14(e)(1)(J) and (e)(2)(F) when occupants are allowed temporary access to a work area.

(B) *Time to maintain records.* Such records shall be maintained by an owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period[,] and made available to the Department upon request.

RESOLVED, that subdivision (iv) of subparagraph (I) of paragraph (3) of 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, is amended to read as follows:

(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. 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 clearance dust, those definitions shall apply for purposes of this subdivision. Only upon receipt of ELAP and NLLAP-accredited laboratory] The work area may not be cleared for permanent re-occupancy until test results from a laboratory accredited by ELAP and NLLAP showing that [the above dust lead levels are not exceeded] there is no lead-contaminated dust in the dwelling [may the work area be cleared for permanent re-occupancy] have been received.

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 24 RCNY Health Code § 173.14(e)(1)(I)(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.