

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF INTENTION TO REPEAL AND REENACT ARTICLE 131
AND REPEAL ARTICLE 135 OF THE NEW YORK CITY HEALTH CODE**

NOTICE OF PUBLIC HEARING

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed repeal of Article 131 (Buildings Generally) and Article 135 (Commercial Premises), to be reenacted as Article 131 (Buildings) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A .M. TO 12:00 P.M. ON WEDNESDAY, APRIL 29, 2009 IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. TUESDAY, APRIL 28, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY WEDNESDAY, APRIL 15, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P .M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PRE-REGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED BY MAIL TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., WEDNESDAY, APRIL 29, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>

STATUTORY AUTHORITY

These amendments to the New York City Health Code (the "Health Code") are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the "Charter"). Section 556 of the Charter provides the Department of Health and Mental Hygiene ("DOHMH" or the "Department") with jurisdiction to regulate all matters affecting the health in the City of New York. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the DOHMH's authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposes that the Board of Health update various provisions of the Health Code to provide adequate legal tools for the Board and the DOHMH to effectively address the City's current and future public health needs. The Department proposes, as part of this broad revision of the Health Code, that the Board repeal and reenact Article 131 (Buildings Generally), repeal Article 135 (Commercial Premises), and incorporate surviving provisions of both articles as a new Article 131 (Buildings). The new Article 131 would eliminate outdated and obsolete provisions of both current articles, revise provisions that have been retained, and add new provisions consistent with the Department's current priorities and concerns.

§131.01 Scope.

This section is new and clarifies the purpose and applicability of this Article. As indicated in the introductory notes, the provisions of this Article are not intended to duplicate authority exercised by other City agencies.

§131.03 Definitions.

This section is new and defines terms used in the Article.

§131.05 Duty; responsibility for violations.

This section is derived in part from both current §131.01 (Violations; responsibility) and §135.13 (Responsibility for compliance).

§131.07 Heating.

The provisions of former §131.03 have been modified and updated, and incorporated in this section. The 1968 Building Code, Administrative Code §§27-740ff, and the 2008 New York City Building Code §1204 specify minimum heating system capacities for various building use categories but do not require that minimum temperatures be maintained during times buildings are occupied. The New York City Department of Housing Preservation and Development ("HPD") enforces Housing Maintenance Code §27-2029, which establishes minimum heating requirements for dwellings. The Health Code temperature requirements are therefore currently only enforced in buildings not subject to the Housing Maintenance Code requirements. The Department is proposing that the minimum seasonal (between October 1 and May 31) temperature to be maintained for occupied buildings not used as dwellings (with the exception of those buildings otherwise regulated, such as child day care, school, or health care facilities, or buildings whose heating arrangements are subject to lease or contract) be lowered from 68 degrees F to 65 degrees F. The change in minimum temperature is based on city-wide sustainability and energy saving efforts and is consistent with PlaNYC of 2007, as well as World Health Organization (WHO) recommendations for indoor temperatures of 64.4 to 69.8 degrees F

(18-21 degrees C) for the general population, which was issued in 1985. WHO reviewed these recommendations again in 2007 and determined that there is little scientific evidence correlating indoor air temperatures with public health and that more research is needed in this subject area.

§131.09 Commercial buildings.

This section retains provisions of current Article 135 that remain applicable to such buildings with respect to lighting (current §135.05); ventilation (§135.07); plumbing (§135.09); water, wash basins and utility sinks (§135.11); floors (§135.13); walls and ceilings (§135.15); and cleanliness and repair (§135.17). Provisions of current §135.19 (control of offensive or annoying conditions) have been incorporated in a new §131.13, as noted below.

§131.11 Posting signs.

This section amends current §131.09 (Posting of signs on residential buildings). Subdivision (a) of the section would require signage intended to reinforce current provisions in the Health Code, Administrative Code and Department rules (Chapter 12 of RCNY Title 24) that require owners to notify occupants of multiple dwelling units of their obligation to return, to owners of such properties, notices intended to facilitate lead paint inspections and window guard installation. Provisions of current §131.09, which requires posting of ownership information at certain residential buildings, largely duplicates rules of HPD, and have therefore been deleted. Current HPD rules require that owners of multiple dwellings consisting of six or more apartments, or those who are otherwise required to post certificates of inspections in these buildings, maintain on those certificates “complete and correct information ... as the premises’ address, registration number, name and address of owner or managing agent registered with the [HPD] Office of Code Enforcement, and a telephone number which tenants may call for service and repairs.” *See* 28 RCNY §25-241(i). Because such information is important to persons residing in other rental properties who may not otherwise have access to ownership information, subdivision (b) of this section would preserve a requirement that minimum ownership information be posted in rental residential buildings not subject to HPD’s rules.

§131.13 Control of unsafe conditions.

Proposed §131.13 is derived from current §135.19 (Control of offensive or annoying conditions) and has been updated to reflect current regulatory practice.

§131.15 Window guards.

This section retains all the provisions in current §131.15, but has been amended to incorporate references to the rules of the Department set forth in 24 RCNY Chapter 12, containing specifications for window guards and their installation, and for notices to tenants.

§131.17 Dry cleaning facilities.

This section is new and prohibits contamination of residential and child occupied buildings by perchloroethylene vapors from dry cleaning facilities located in the same or adjacent buildings. This section reflects current Department regulatory practice, and requires operators of dry cleaning facilities to provide for proper exhaust ventilation of percholoroethylene vapors. The standard for residential perchloroethylene contamination is based on research by the New York State Department of Health (<http://www.health.state.ny.us/environmental/chemicals/tetrachloroethene>). The City Department of Environmental Protection regulates and issues permits to dry cleaners using perchloroethylene in the City pursuant to 15 RCNY Chapter 12. The State Environmental Conservation Law regulates the equipment used in such facilities. However, no law currently establishes permissible limits for emissions from dry cleaning facilities into child-occupied or residential facilities.

§131.19 Modification by Commissioner.

This section contains the provisions set forth in current §131.17.

It is proposed that the following provisions be repealed because they are either obsolete or are duplicative of laws and regulations covering matters comprehensively regulated by other City agencies:

Obsolete provisions proposed for repeal:

- §131.04 Gas fired refrigerators; certain prohibited; sealing of defective
- §131.042 Approved space and water heaters to be provided in certain one- and two- family residential buildings
- §131.05 Self inspection of gas appliances
- §131.07 Cellar and basement occupancy;
- §131.13 Flexible gas tubing
- §135.21 Location of certain trades
- §135.23 Cooperation with other governmental and private agencies

Provisions proposed for repeal because of duplicative enforcement authority:

- §131.042 (l) Rules for venting of gas appliances are enforced by the Department of Buildings ("DOB") (1 RCNY §§41 and 40-39) and, in multiple dwellings, are enforced by HPD (28 RCNY §25-29).
- §131.041 Refrigerators, discarded; removal of locking devices. This provision duplicates Department of Sanitation rules. *See, e.g.*, 15 RCNY §31-110.
- §131.11 Receptacles for removal of waste materials duplicates Administrative Code §16-120.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that Article 131 and the list of section headings in Article 131 of the New York City Health Code be and the same hereby are repealed and reenacted, to be printed together with introductory and explanatory notes to read as follows:

Article 131

Buildings

§131.01 Scope.

§131.03 Definitions.

§131.05 Duty; responsibility for violations.

§131.07 Heating.

§131.09 Commercial buildings.

§131.11 Posting signs.

§131.13 Control of unsafe conditions.

§131.15 Window guards.

§131.17 Dry cleaning facilities.

§131.19 Modification by Commissioner.

Introductory Notes:

As part of a comprehensive review and revision of the Health Code, a resolution was adopted by the Board of Health on XXXX, repealing Article 131 and Article 135, and reenacting Article 131. The new Article 131 retains some provisions of both articles, adds new provisions, and eliminates provisions that are obsolete or that duplicate provisions of law enforced by the City's Department of Buildings ("DOB"), Department of Housing Preservation and Development ("HPD"), Department of Environmental Protection ("DEP") and the Fire Department ("FDNY"), where such law comprehensively regulates various aspects of commercial and residential buildings' structure and occupancy. *See e.g.*, the State Multiple Dwelling Law and the City Building, Housing Maintenance, Electrical, Plumbing and Fire Prevention codes in Titles 27 and 28 of the Administrative Code of the City of New York ("Administrative Code"). Provisions that do not duplicate current law, and those related to window guards and nuisance control and abatement, have been retained. New provisions regulate fugitive perchloroethylene emissions from dry cleaning facilities into certain co-located or adjacent occupied buildings, and establish signage requirements for multiple dwellings and other buildings.

§131.01 Scope and applicability. This Article shall apply to all occupied commercial and residential buildings unless otherwise specified.

§131.03 Definitions

When used in this Article, the following terms shall have the following meanings.

(a) *Child-occupied premises* shall mean a building or part of a building used as a residence for persons under 18 years of age, or in which child care or educational services are provided to such persons.

(b) *Commercial building* shall mean any building or part thereof in which a business, occupation, or trade is conducted but shall not mean a building that is registered with HPD in accordance with §§27-2097ff of the Administrative Code.

(c) *Dry cleaning facility* shall mean any building or part of a building in which dry cleaning equipment using perchloroethylene is used.

(d) Dust shall mean the solid particles generated by means such as handling, crushing, grinding, and rapid impact of materials such as rock, metal, and wood.

(e) Fumes shall mean the airborne particles formed from the condensation of a volatilized solid.

(f) Gas shall mean the state of a substance in which it can expand indefinitely and completely fill its container.

(g) Lead-based paint shall have the same meaning as the definition set forth in §173.14 of this Code or its successor provision.

(h) Multiple dwelling shall mean a residential building consisting of three or more dwelling units, rooms or apartments.

(i) Nuisance shall mean any condition dangerous to life or health, as defined in §17-142 of the Administrative Code or its successor provision.

(j) Vapor shall mean the gaseous form of a substance that is normally in a solid or liquid state at room temperature and pressure.

§131.05 Duty; responsibility for violations.

(a) Duty. The owner, manager, agent, lessee, tenant, occupant or other person who manages or controls all or part of a building shall operate such building or part thereof in a safe condition and in a manner that maintains the structural integrity, prevents infestation by pests, and provides heat, ventilation and lighting in accordance with this Code and other applicable law, and shall not create or allow to exist in such building any nuisance or other condition dangerous to the life or health of occupants, invitees or members of the public who are within such building or in or on premises adjacent to such building.

(b) Violations. The owner, manager, agent, lessee, tenant, and occupants of a building shall be jointly and severally liable for the existence in such building of a nuisance, or condition dangerous to life or health, or a violation of any provision of this article, insofar as they have the power to prevent or abate such condition or violation. Such persons shall comply with an order of the Commissioner or the Department, or of HPD, DOB, DEP or the Department of Sanitation, to remove any nuisance, or dangerous or unsanitary condition.

§ 131.07 Heating.

(a) Any person who contracts to supply heat to a building or any part thereof shall furnish heat to every occupied portion of such building so that the minimum temperatures prescribed by subdivision (c) of this section are maintained during the times specified therein. The provisions of this section shall not apply to a building used for trades, businesses or occupations in which a

lower temperature is essential and unavoidable.

(b) Any owner, agent, lessee, superintendent or janitor of a building who has under her or his control a furnace, boiler or other heating device or equipment in such building, shall be deemed to have contracted to supply heat pursuant to subdivision (a) of this section unless otherwise provided by written contract or lease. An owner, agent, lessee, superintendent or janitor who is required by this section to provide heat shall be liable for failure to comply with this section.

(c) Unless otherwise provided by written contract or lease, or as provided by applicable law, including this Code, the minimum temperatures required by subdivision (a) of this section shall be maintained as follows:

(1) In a dwelling, during the months between October first and May thirty-first between the hours of six a.m. and ten p.m.: a temperature of at least 68 degrees F when the outside temperature falls below 55 degrees F and during the hours between 10 p.m. and 6 a.m. a temperature of at least 55 degrees F whenever the outside temperature falls below 40 degrees F; and

(2) In any other building, during the usual working hours of the occupants, a temperature of at least 65 degrees F, when the outside temperature falls below 50 degrees F.

(3) The Commissioner shall have the authority to modify the requirements of paragraph (2) of this subdivision in accordance with §131.17 of this Article.

(d) The owner, agent, lessee, superintendent or janitor of (1) a one- or two- family home which is occupied in whole or in part by a tenant or tenants and in which there was within the previous year a violation of subdivision (a), (b) or (c) of this section due to a breakdown in the heating system; or (2) a multiple dwelling shall ensure that the furnace, boiler or other heating equipment under her or his control in such building is inspected by a qualified person between May first and October first of each year. In addition to testing the efficiency of the heating system to produce the heat required by this section, the central heating system or water heating appliance and its flues, vents and dampers shall be inspected for escape of carbon monoxide gas. The findings on inspection shall be recorded on forms approved by DOB within 15 days following the inspection and shall be kept on file by the owner for a period of one year. Such inspection reports shall be made available upon request to authorized employees or agents of DOB, HPD and the Department. All defects found upon inspection shall be corrected prior to the fifteenth day of October of the year in which the inspection was conducted.

§131.09 Commercial buildings. Any person whose duty it is to maintain a commercial building in a safe condition shall equip such building as follows and provide the following services:

(a) Lighting. All parts of such building shall be adequately lighted by natural or artificial means so as to enable any activity in such building to be carried on safely and to permit effective inspection and cleaning.

(b) Ventilation. All parts of such building shall be adequately ventilated by natural or artificial means so as to be free from harmful heat, dust, fumes, vapors or gases and, except in refrigerators and hardening rooms, condensate.

(c) Plumbing. Plumbing and plumbing fixtures, including the water supply system, fixture traps, soil, waste, storm water drainage and vent pipes, drains, sewers, and all devices connected thereto within or adjacent to the building shall be properly connected, vented, drained, installed and maintained in good repair, and shall not contaminate the building's potable water supply. Water supply outlets and connections to water supply fixtures or appliances shall be protected from back-flow into the water system.

(d) Water; toilets, hand wash and utility sinks.

(1) Potable water shall be supplied under adequate pressure in quantities sufficient for drinking and sanitary needs of occupants.

(2) A sufficient number of hand wash sinks with running hot and cold water, liquid soap and individual disposable towels or mechanical drying devices shall be provided.

(3) A sufficient number of utility sinks of adequate size, with running water, shall be provided and shall be readily accessible to the areas where they are required for the washing of equipment or the building. Running hot water required for cleaning and sanitation, and when otherwise required by the Department, shall be provided.

(4) A sufficient number of toilet facilities shall be provided for the use of employees. Toilet facilities shall be equipped with the minimum number of water closets, urinals and other plumbing fixtures required by Chapter 4 of the New York City Plumbing Code, Administrative Code §28-PC 403, or successor law. Such toilets shall be properly flushed and trapped, conveniently located, adequately lighted and ventilated, and kept in a sanitary manner and in good repair.

(e) Floors. Floors shall be constructed of smooth, non-slip, hard materials, and kept clean and in good repair. When building use results in wet floors or requires frequent flushing of floors, floors shall be constructed of smooth cement, tile laid in cement, or other hard non-absorbent, watertight material; shall be graded and drained to properly trapped drains; and junctures formed by the wall and floor shall be covered with waterproof material that shall extend to a point at least six inches above the floor.

(f) Walls and ceilings. Walls and ceilings shall be constructed of hard materials, kept clean and in good repair. When uses of the building create steam or vapor, or when required by the Department, walls and ceilings shall be constructed of smooth cement, glazed tile, glazed brick or other non-absorbent material.

(g) Cleanliness and repair. Such buildings shall be regularly cleaned and kept clean and in good repair, and shall not be allowed to become overcrowded so as to impair the safety of operations or effectiveness of cleaning.

(h) Nothing in this section shall be interpreted as interfering with or prohibiting any private contract, lease, agreement or other arrangement between an owner, manager, tenant or occupant concerning their respective obligations to equip a building or provide the services required by this Code.

§131.11 Posting signs.

(a) Multiple dwellings.

(1) Buildings built before 1960. The owner, manager, lessee, agent, occupant or other person who manages or controls a multiple dwelling built before 1960, or a building built between 1960 and 1978 where the owner knows the building contains lead-based paint, shall affix and continuously maintain, in a conspicuous place in the public entry, hallway or mailbox area on the street level of such building, a sign approved by the Department, which shall contain the following information:

Deleted: and

NOTICE

Dry sanding and dry scraping of lead-based paint or paint of unknown lead content in any dwelling is prohibited.

Window guards are required in apartments occupied by children ages 10 and younger.

The owner of this building, which was built before 1960, is required to annually inspect for and safely repair peeling paint and other lead-based paint hazards in dwelling units occupied by children ages 6 and younger.

All tenants must return the annual window guard and lead inspection notice to the owner by February 15 of each year.

Call 311 if you do not receive an annual window guard or lead inspection notice.

(2) Buildings built in or after 1960. The owner, manager, lessee, agent, occupant or other person who manages or controls a multiple dwelling built in or after 1960 shall affix and continuously

maintain, in a conspicuous place in the public entry, hallway or mailbox area on the street level of such building, a sign approved by the Department, which shall contain the following information:

Deleted: and

NOTICE

Dry sanding and dry scraping of lead-based paint or paint of unknown lead content in any dwelling is prohibited.

Window guards are required in apartments occupied by children ages 10 and younger.

All tenants must return the annual window guard notice to the owner by February 15 of each year.

Call 311 if you do not receive an annual window guard notice.

(b) Owner information in residential rental buildings and units. Except for the New York City Housing Authority, owners of all residential buildings, and owners of residential rental units in one-and two- family houses, cooperatives and condominiums, who are not required to post certificates of inspection pursuant to the rules of HPD (Title 28 RCNY §25-241, or successor rule), shall post a sign in each building or individual rental unit owned, as applicable, containing the premises' address; name and address of owner or managing agent for such building or unit; and a telephone number which tenants or occupants may call for service and repairs.

(c) Signs to be maintained.

(1) Signs required by this section shall be printed on a durable metal or plastic base, and shall be lettered in a size, form and color that is easily readable. When appropriate, such signs shall be translated into languages other than English that will be understood by the majority of tenants and other persons residing in or visiting a building.

(2) Signs shall be replaced when defaced or in disrepair. Except when it is necessary to replace a sign, no person shall remove, mutilate, destroy or obliterate such sign or its lettering.

(3) In addition to employees of the Department, this section may be enforced and notices of violation issued by employees of HPD, DOB, or their successor agencies.

§131.13 Control of unsafe conditions.

(a) When activities conducted within a building result in the production of contaminants that the Department determines are harmful to public health, the Department may order the owner or person in control of the building to take such measures that the Department determines are necessary to eliminate or reduce such conditions so that they are no longer harmful to the public health.

(b) When required by the Department mechanical ventilating systems, devices for the control of dust, gases, vapors and fumes, abatement devices, or other means of reducing conditions dangerous to health shall be installed and maintained in a building or surrounding premises by persons in control of such building or premises.

Notes:

A public health nuisance, regardless of whether it is caused by a violation of other applicable law, remains subject to the nuisance abatement powers of the Department. *See, e.g.*, §3.09 of this Code (General standards to protect health and safety; prohibited acts; necessary acts and precautions), which was upheld as constitutional in the predecessor to the Health Code, New York City Sanitary Code §181, in *People ex rel. Styler v. Commonwealth Sanitation Co.*, 107 N.Y.S. 2d 982, 985 (Magistrates Ct. 1951): “The terms used by Section 181 of the Sanitary Code prohibiting careless and negligent acts and acts detrimental to health or dangerous to life, are no more indefinite and uncertain than those used in Sections 43 and 722 of the Penal Law and in many other criminal statutes, whose constitutionality has never been questioned.”

§131.15 Window guards.

(a) Window guards required.

(1) The owner, manager, lessee, agent or other person who manages or controls a multiple dwelling, including, but not limited to, owners of condominium units and the board of directors of a cooperative, shall provide, install, and maintain, a window guard of a type and installation in accordance with the specifications of the Department set forth in Chapter 12 of Title 24 of the Rules of the City of New York, on the windows of each apartment in which a child or children ten (10) years of age and under reside, and on the windows, if any, in the public halls of a multiple dwelling in which such children reside.

(2) This section shall not apply to windows giving access to fire escapes or to a window on the first floor that is a required means of egress from the dwelling unit. It shall be the duty of each such person who manages or controls a multiple dwelling to ascertain whether such a child resides therein, in accordance with the notice requirements of the Department in Chapter 12 of Title 24 of the Rules of the City of New York.

(b) No refusal of window guards by occupant. No tenant or occupant of a multiple dwelling unit, or other person, shall obstruct or interfere with the installation of window guards required by subdivision (a) of this section, nor shall any person remove such window guards.

(c) No refusal to install by owners. No owner, manager, lessee or other person who manages or controls a multiple dwelling shall refuse a written request of a tenant or occupant of a multiple

dwelling unit, to install window guards regardless of whether such is required by subdivision (a), except that this section shall not apply to windows giving access to fire escapes.

(d) Declaration of nuisance.

(1) Failure to install or maintain window guards pursuant to this section is hereby declared to constitute a nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code.

(2) Every person obligated to comply with the provisions of subdivision (a) of this section is hereby ordered to abate such nuisance by installing and maintaining required window guards.

(3) Whenever a nuisance or condition is found to exist in violation of this section, the Department may order the person or persons obligated to install and maintain window guards to do so. In the event such order is not complied with within five (5) days after service of such order, the Department may request an agency of the City to execute such order pursuant to the provisions of §17-147 of the Administrative Code and shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, pursuant to the provisions of Chapter 1, Title 17 of the Administrative Code. If such order is executed by HPD, or its successor agency, the expense of execution may be recovered by such agency pursuant to subchapter five of chapter two of Title 27 of the Administrative Code.

(e) Enforcement by Department of Housing Preservation and Development. Orders to install or repair window guards in multiple dwellings required by this section and any rules of the Department may be issued by the Commissioner and by HPD or its successor agency on behalf of the Commissioner.

Notes:

Prior to adoption of this section in 1976, window falls were one of the leading causes of preventable, accidental deaths in children ten (10) years of age. Courts have determined that this section is constitutional and not void for vagueness. *See, e.g., People v. Portmoy*, 140 Misc. 2d 945, 535 N.Y.S.2d 305 (Crim. Ct. Bronx Cty.1988). Courts have also upheld the strict liability aspect of this section, and, for that matter, the entirety of the Code. In *People v. Nemadi*, 140 Misc.2d 712, 531 N.Y.S.2d 693 (Crim. Ct. N.Y. Cty.1988), the court concluded that the City's authority to create strict liability offenses derives not from Public Health Law §12-b (1) but from §558(e) of the New York City Charter and that the City's determination that every violation was a misdemeanor was not arbitrary and was justified by the densely populated areas of New York City. Indeed, while strict liability offenses are generally disfavored, the legislative power to impose liability without fault is often found valid in cases of public health, safety and welfare, and the hazard sought to be prevented by this section is of the sort traditionally dealt with by

means of strict liability offenses. *See, e.g., People v. Simon*, 148 Misc.2d 845, 562 N.Y.S.2d 369 (Crim. Ct. Bronx Cty. 1990).

§131.17 Dry cleaning facilities.

(a) Perchloroethylene emissions. Dry cleaning facilities shall exhaust emissions from equipment using perchloroethylene so that no perchloroethylene vapors in excess of the nuisance level specified in subdivision (b) of this section enter co-located or adjacent dwellings, child-occupied facilities, or other occupied premises through windows, ventilation systems, or building structural penetrations.

(b) Nuisance level. Detection of perchloroethylene vapors from dry cleaning facilities in dwellings, child-occupied facilities, or other occupied premises at levels at or above 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) shall constitute a nuisance.

(c) Remediation orders. The Department may order the operators of such facilities to install and maintain mechanical ventilating systems or other devices for control of vapors when deemed necessary to prevent or remediate such nuisance.

§131.19 Modification by Commissioner.

When the strict application of any provision of this article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this article and upon such condition as, in his or her opinion are necessary to protect life and health. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided pursuant to §5.21.

RESOLVED, that Article 135 and the list of section headings in Article 135 of the New York City Health Code be, and the same hereby are, REPEALED.

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