

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION
OF AN AMENDMENT TO ARTICLE 131 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of intention to amend Article 131 of the New York City Health Code (the “Health Code”) was published in the City Record on August 3, 2007 and a public hearing was held on September 6, 2007. No written comments or testimony was received. The final resolution has been modified slightly, however, to clarify that the New York City Department of Housing Preservation and Development (“HPD”) will be authorized to write orders to abate a window guards nuisance on behalf of the Commissioner of the Department of Health and Mental Hygiene (the “Department”). At its meeting on October 24, 2007, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

This amendment to the Health Code is promulgated pursuant to §§558 and 1043 of the Charter. 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 Department’s authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The Department’s Division of Environmental Health, Bureau of Food Safety and Community Sanitation (“BFSCS”) has proposed that the Board of Health amend Article 131 of the Health Code to authorize HPD to issue Commissioner's Orders to Abate a Nuisance (“COTA”) on behalf of the Commissioner for missing or improperly installed window guards in units and public areas in multiple dwellings where children 10 years of age and younger reside.

Since the adoption of Health Code §131.15 (“Window guards”) in 1976, window guards have been required on windows in multiple dwelling units and public areas in multiple dwellings in the City where children 10 years of age and younger reside except for windows giving access to fire escapes. This provision has been effective in preventing many falls. From 1973-1976 there were approximately 200 preventable falls annually, and an average of 25 fatalities per year.¹ In calendar year 1977, the first year after §131.15 went into effect, there were 151 preventable falls, resulting in the deaths of 26 children. In more recent years, e.g., from 1996-2006, there has been an average of 12.5 preventable falls annually, with no more than two preventable fatalities occurring in any year.² In 2006, there were six preventable falls and no fatalities.

Health Code §131.15(d) provides that failure to install or maintain window guards constitutes a public nuisance and a condition dangerous to life and health, in accordance with §17-145 of the New

¹ BFSCS defines a preventable fall as a fall by a child ten years of age or younger from a window in a multiple dwelling that was required to be equipped with properly installed and maintained window guards.

² There were two fatalities from preventable falls each year in 1996, 1998, 2003 and 2004, and one in 1997 and 2005.

York City Administrative Code (“Administrative Code”). Health Code §131.15(d)(3) further provides that whenever a window guard nuisance or condition, such as an improperly installed guard is observed, the Department may order the landlord to provide, maintain and/or install windows guards within five days, and that when such order is not complied with within five days after service, the Department may request that an agency of the City execute the order pursuant to §17-147 of the Administrative Code to install or repair the window guards. The owner of the building is responsible for payment of any expenses incurred by the City. Currently, the HPD executes these orders when owners fail to do so. Although Housing Maintenance Code (“HMC”) §27–2125 authorizes HPD “to cause or order corrections of violations” in multiple dwellings if such violations are dangerous to human life and safety or detrimental to health, there is no specific HMC provision authorizing HPD to issue violations or orders relating to absent or improperly installed window guards. At present, HPD has reported that it observes lack of window guards or improperly installed guards in approximately 950 to 1,000 units per month when its inspectors are in a unit to inspect other housing-related complaints. Enabling HPD to issue COTAs on behalf of the Commissioner of Health for window guard violations would enhance and expedite enforcement, providing an owner with the earliest possible notice of the condition and an opportunity to correct before HPD does so, further promoting children’s safety.

The original proposal published for public comment would have authorized HPD to issue orders to abate window guard nuisances to landlords for the repair and installation of window guards. The final resolution has been clarified to indicate that HPD will be issuing such orders on behalf of the Commissioner.

The amendment is as follows:

Matter underlined is new

Matter to be deleted is indicated by [brackets].

RESOLVED, that §131.15 of Article 131 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on the eleventh of September, nineteen hundred eighty-six, be, and the same hereby is, amended by adding a new subdivision (e) to be printed together with explanatory notes, to read as follows:

(e) 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 the Department of Housing Preservation and Development, or successor agency, on behalf of the Commissioner.

Notes: Subdivision (e) was added by resolution adopted on October 24, 2007 to authorize the Department of Housing Preservation and Development to issue orders on behalf of the Commissioner for window guard installation and repairs directly to persons obligated to install and maintain window guards where required.