

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

**NOTICE OF ADOPTION OF A RESOLUTION
TO REPEAL AND RECODIFY ARTICLE 131
AND TO REPEAL ARTICLE 135
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 the Charter, on April 29, 2009, a public hearing was held on a proposal to repeal Article 131 (Buildings Generally) and Article 135 (Commercial Premises) of the New York City Health Code (the "Health Code") and to recodify Article 131 (Buildings) of the Health Code. Four persons testified at the public hearing, and written comments were received from three of the persons who testified. In response to the comments received, several changes have been made to the resolution. At its meeting on September 22, 2009, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§556, 558 and 1043 of the Charter. Section 556 of the Charter confers on the Department of Health and Mental Hygiene ("DOHMH" or the "Department") the 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 Board of Health has updated 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. One aspect of this revision is the repeal of Article 131 (Buildings Generally) and Article 135 (Commercial Premises), and the incorporation of surviving provisions of both articles into a new Article 131 (Buildings). The new Article 131 eliminates outdated and obsolete provisions of both articles, revises the provisions that have been retained, and adds new provisions consistent with the Department's current priorities and concerns. The comments received are addressed in the individual section discussions that follow.

§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 former §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 are incorporated into 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 Housing Maintenance Code requirements

Minimum seasonal (between October 1 and May 31) temperatures 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, buildings housing non-regulated educational, social or health services or buildings whose heating arrangements are subject to lease or contract) have been lowered from 68 degrees F (20 degrees C) to 65 degrees F (18.33 degrees C). 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 to 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. A comment received in favor of the proposed reduction in commercial building temperatures also recommended reducing the minimum temperature to be maintained in dwellings. However, as previously noted, dwelling temperatures are established in the Housing Maintenance Code, are the subject of legislation and cannot be amended by rule.

In addition, as noted above, the Statement of Basis and Purpose as originally published indicated an intention that buildings housing educational, social or health services and programs be exempt from the lowered minimum temperature, but the text of the resolution itself omitted such a provision. The resolution adopted by the Board corrects this omission and includes a provision explicitly exempting buildings in which such services are located from the reduced minimum temperature.

§131.09 Commercial buildings. This section retains provisions of former Article 135 that remain applicable to such buildings with respect to lighting (former §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 former §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 removes provisions of former §131.09, which requires posting of ownership information at certain residential buildings, because it largely duplicates rules of HPD. 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, this section preserves the requirement that minimum ownership information be posted in rental residential buildings not subject to HPD's rules.

The proposal published for public comment required additional signage that would alert occupants of multiple dwellings to the need to return notices to their landlords regarding lead paint and window guard inspections, and would warn about dry scraping of lead paint. Comments were received both objecting to and favoring such changes in signage requirements, from groups representing owners and occupants, respectively. In consideration of the comments received, the proposal to require building owners to post information about lead paint and window guards has been withdrawn. Signage requirements alerting building occupants to these particular health and safety responsibilities of building owners will be further considered in a future proposal so that Department requirements can be consistent with those of other agencies. They will be more concise and therefore less burdensome than the requirements originally proposed, and also be better able to effectively convey public health messages.

§131.13 Control of unsafe conditions. This section is derived from former §135.19 (Control of offensive or annoying conditions) and has been updated to reflect current regulatory practice. A comment was received from the DOS that “§131.041 Refrigerators, discarded; removal of locking devices,” originally proposed for repeal, does not duplicate any provision in DOS rules, and remains an important safeguard against children accidentally locking themselves in discarded refrigerators. Accordingly, this provision has been restored to the resolution and incorporated as subdivision (c) in this section.

§131.15 Window guards. This section retains all the provisions of former §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 (PERC) vapors from dry cleaning facilities located in the same or adjacent buildings. The City Department of Environmental Protection regulates and issues permits to dry cleaners using PERC 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. This section codifies current Department regulatory practice, and requires operators of dry cleaning facilities to provide for proper operation and exhaust ventilation of equipment using PERC. The standard for residential PERC contamination is based on research and guidelines issued by the New York State Department of Health ("NYSDOH").

The Department received comments from dry cleaner and solvent industry associations objecting to the establishment of the current intervention level of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of PERC as excessive, and expressing their concern that the Department would “automatically” issue notices of violation to dry cleaning establishments that exceed this threshold. The Department does not agree that the standard is excessive. NYSDOH established the level of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) as guidance for emissions into residences in 1991. The level was again formally reviewed by NYSDOH in 1997. NYSDOH has also used the toxicity value, which forms the basis for the guidance level, in a more recent (2004–2006) effort to establish related health-based guidance values for PERC.

The Department’s intention, with the promulgation of this rule, has been to codify and provide public notice of its practice. The Department’s current practice does not require that a notice of violation (“NOV”) be automatically issued upon receipt of laboratory results showing

elevated levels of PERC in residential premises. Professional judgment is always exercised when evaluating environmental sampling in environmental investigations.

Although no change has been made to the intervention level, in response to a comment regarding potentially duplicative requirements (*see, e.g.*, City Department of Environmental Protection rules in Chapter 12 Title 15 of the Rules of the City of New York), the Department has amended §131.17 (c) by replacing the term “install and maintain mechanical ventilating systems or other devices for control of vapors” with “evaluate and correct problems associated with vapor control.”

§131.19 Modification by Commissioner. This section contains the provisions of former §131.17.

The following provisions of former Articles 131 and 135 have been repealed because they are either obsolete or are duplicative of laws and regulations covering matters comprehensively regulated by other City agencies:

Obsolete provisions repealed:

- §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 repealed 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).
- §131.11 Receptacles for removal of waste materials duplicates Administrative Code §16-120.

The proposal is as follows:

Text in brackets [] is to be deleted; underlined text is new.

RESOLVED, that Article 131 and the list of section headings in Article 131 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby are repealed and recodified, 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 September 22, 2009, repealing Article 131 and Article 135, and recodifying 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.

§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 eighteen (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 or any successor provision.

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

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

(i) 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 DOS, 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 (12.78 degrees C) and during the hours between 10 p.m. and 6 a.m. a temperature of at least 55 degrees F (12.78 degrees C) whenever the outside temperature falls below 40 degrees F (4.44 degrees C); and

(2) In any other building, except for buildings in which educational, nutritional, geriatric, social, mental health, health care or similar services are provided directly to recipients when such services are being provided, a temperature of at least 65 degrees F (18.33 degrees C) shall be maintained when the outside temperature falls below 50 degrees F (10 degrees C) during the usual working hours of the occupants.

(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) 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 (28 RCNY §25-241, or any 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.

(b) 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 any successor agencies.

§131.13 Control of unsafe conditions.

(a) Contaminants. 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) Ventilation. 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.

(c) Discarding refrigerators. Every person who discards a refrigerator shall remove the refrigerator door, locking device or hinges before placing the refrigerator on the street for collection by DOS or other waste removal service.

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 any 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. Portnoy*, 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 evaluate and correct problems 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 of this Code.

RESOLVED, that Article 135 and the list of section headings in Article 135 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, be, and the same hereby are, REPEALED.