

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF INTENTION
TO AMEND ARTICLE 131 OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

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, notice is hereby given of the proposed amendment of Article 131 of the New York City Health Code (the "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 NOON ON FRIDAY, JULY 27, 2007 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. ON THURSDAY, JULY 26, 2007. 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 JULY 17, 2007.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. ON FRIDAY, JULY 27, 2007. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAILING TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV ON OR BEFORE 5:00 P.M., FRIDAY, JULY 27, 2007.

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

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 of Health and Mental Hygiene (DOHMH or Department), Division of Environmental Health, Bureau of Food Safety and Community Sanitation proposes that the Board of Health amend Article 131 of the New York City Health Code to delegate to the Department of Housing Preservation and Development (HPD) the authority to issue Commissioner's Orders to Abate a Nuisance (COTA) for missing or improperly installed window guards in public areas and units in multiple dwellings where a child under age eleven resides.

Since the adoption of New York City 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 ten years of age and younger reside. This provision has had the effect of preventing many falls. From 1973-1976 there were approximately 200 preventable falls annually, and an average of 25 fatalities per year. In 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 1998-2007, there has been an average of eight preventable falls annually, with no more than two fatalities occurring in any year.¹ No preventable falls or fatalities have been reported to date for calendar year 2007.

The owners, lessees, agents or other persons who manage or control multiple dwellings must provide, install, and maintain a window guard approved by the Department on each window, and in public hallways, except that the law does not apply to windows giving access to fire escapes. Section 131.15(d) provides that failure to install or maintain window guards constitutes a public nuisance and a condition dangerous to life and health, as described in §17-145 of the New York City Administrative Code (Administrative Code). It further provides, in §131.15(d)(3) of the Health Code, that whenever a 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. It further states 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, and that owner of the building is responsible for payment of any expenses incurred by the City. Currently, the City's Department of Housing Preservation and Development (HPD) executes such orders to abate when owners fail to do so.

As noted, the Department currently enforces Health Code §131.15, by issuing notices of violations (NOVs) and COTAs for missing or improperly installed window guards in units where a child under age eleven resides. HPD currently executes many of these COTAs by making the window guard repairs and installations. Although HPD has authority under Housing Maintenance Code (HMC) §27-2125 "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 provision within the HMC authorizing HPD to issue violations relating to absent or improperly installed window guards. At present, HPD has reported that it observes window guard problems (lack of window guards or improperly installed guards) in approximately 950 to 1,000 units per month when its inspectors are in a unit for inspection of other

¹ There were two fatalities from preventable falls in 1998, 2003 and 2004, and one in 2005.

housing-related complaints. Enabling HPD to issue COTAs for window guard violations would enhance and expedite enforcement of Health Code window guard provisions so that a COTA may be issued by HPD directly upon observation of the window guard condition, thereby providing the owner with the earliest possible notice of the condition and an opportunity to correct before HPD does so. The safety of children residing in these apartments would be better protected if the Board of Health authorized HPD as well as the Department to issue the DOHMH COTA for window guards directly to the landlord so that window guard repair and installation occurs expeditiously.

Accordingly, the Department proposes that §131.15 of the New York City Health Code be amended by adopting a new subdivision (e) to authorize HPD to issue orders to abate window guard nuisances to landlords for the repair and installation of window guards.

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 City's Department of Housing Preservation and Development, or successor agency.

Notes: Subdivision (e) was added by resolution adopted on XXX to authorize the City's Department of Housing Preservation and Development to issue orders for window guard installation and repairs directly to persons obligated to install and maintain window guards where required.

HC 131.15 intention.DOC