



RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

The Rent Stabilization Association of New York City represents 25,000 diverse owners and managers who collectively manage more than one million apartments in every neighborhood and community throughout the city. We thank the Department for giving us the opportunity to submit these comments in opposition to the proposed changes to Articles 11 and 173 of the New York City Health Code related to the blood lead level threshold for mandated Health Department investigations and the definition of lead-based paint.

New York City's lead laws triggering intervention and abatement rely upon a specified blood level reading in children. This level has been modified numerous times over the years. The most recent standard, according to Local Law 66 of 2019, requires the blood lead reference level and action level be 5 micrograms per deciliter "except that, if the federal centers for disease control and prevention or a successor agency defines a lower blood lead reference level the department shall (i) by rule define such lower level as the blood lead reference level for the purposes of this subchapter, section 27-2056.14 and any local law referring to a blood lead reference level except as otherwise provided by such local law or (ii) submit a report to the mayor and the speaker of the council detailing the reasons why such lower blood lead reference level should not be adopted for the city or should result in alternative public health actions other than those provided for in this subchapter."

In October 2021, the Centers for Disease Control and Prevention (CDC) modified its blood lead reference value and action level from 5 micrograms per deciliter to 3.5 micrograms per deciliter and now the city seeks to follow suit. This is not prudent or necessary.

The CDC's rationale is not based on risk or danger. It specifically notes that the "CDC's BLRV [blood level reference value] is...not health-based and is not a regulatory standard."¹ Rather, it is a population-based measurement, based on identifying a certain percentage of the population as having elevated blood lead levels. Because programs have been successful in reducing children's blood lead levels, the threshold now needs to be significantly reduced in order to find enough children with elevated blood levels to meet CDC's national population percentage targets, specifically identifying those who have more lead in their blood than do 97.5 percent of the population ages 1-5². Success is being punished.

The proposed rules also seek to memorialize the faulty lead-based paint standard adopted by the Housing and Preservation Department last year. Standards that fail to meet the parameters of the law, which clearly require the technology to be able to achieve a positive reading at 0.5 milligrams per centimeter squared, because the manufacturer's specification sheet declares a

¹ CDC updates blood lead reference value to 3.5 ug/dL. <https://www.cdc.gov/nceh/lead/data/blood-lead-reference-value.htm>. Visited 8/18/2022.

² Ibid

reading at that standard to be inconclusive. These proposed measures perpetuate the City's faulty approach to managing lead risks; instead of directing resources where they are most needed and impactful, the city continues focusing on broad measures ignoring the greatest harms and those at greatest risk.

Substantial resources have been devoted to abating lead-based paint in New York City's aging housing stock over the past forty years. Owners are required to affirmatively conduct XRF readings to determine if lead-based paint is present in every apartment. They must abate lead-based paint upon apartment turnover. Notices must be sent to every apartment each year inquiring as to the presence of children in every apartment, and in apartments where children reside, there must be annual inspections. Time and time again, landlords have applied for exemptions and obtained them only for the city to keep lowering the standards forcing owners to reapply. Considerable time and money have been expended and continue to be expended across the board to ameliorate conditions in the million or so New York apartments built before 1960. This amounts to untold billions of dollars being spent. And billions of dollars being misdirected.

The city should not be seeking to find more children—those considered healthy today - to suddenly label them as lead-poisoned tomorrow - but devote resources to those that truly are. The city should be investigating the true source of lead in the children, as these are many sources of lead in the environment: exposure at day camps, schools and other facilities; soil; lead-based pottery; water pipes; home folk remedies; and imported cosmetics, spices, medications, candy and cultural products. The city also should be focusing on children newly arriving to the city, who often come with elevated blood levels, in order to begin care as soon as possible.

There is no requirement that the city to adopt this threshold. To do so would be doing more of the same limited-response focusing on housing, a small segment of the possible lead universe. There is the possibility to undertake alternative public health measures that would achieve a greater impact. The Department should convene a Special Commission to meet with landlords and others to ascertain financial solutions and seek out ideas to make remediation more affordable for owners and impactful for the city. The Department should use this opportunity to study the sources of lead in New York City's children environment and then undertake proper health actions in response.

For these reasons, the RSA opposes the Proposed Amendments of Articles 11 and 173 of the New York City Health Code.



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Council Member Gale A. Brewer Testimony on the Department of Health and Mental Hygiene Proposed Amendment to Articles 11 and 173 of the New York City Health Code

August 29, 2022

My name is Gale A. Brewer, and I am the City Council Member for District 6 on the Upper West Side. Thank you to the Department of Health and Mental Hygiene (DOHMH) for the opportunity to provide testimony regarding the proposed amendment to Articles 11 and 173 of the New York City Health Code, to decrease the threshold for mandatory reporting and mandatory investigation of child lead poisoning from 5.0 micrograms per deciliter (mcg/dl) to 3.5 mcg/dl. I support this change and believe that this public health recommendation demonstrates the agency's commitment to ending and preventing child lead exposure and poisoning in New York City.

Lead is a metal commonly found in the lead-based paints formerly used in residential buildings. Lead has also been widely found leaching into drinking water from lead pipes or fixtures. In 1960, the use of lead paint was prohibited in New York due to the dangers it posed – passed 18 years prior to the federal ban. In 2019, Mayor Bill de Blasio and the working group Citywide Lead Prevention launched an initiative called LeadFreeNYC, with the goal of eliminating lead exposure through 45 distinct strategies. City agencies were tasked with meeting their [goals](#) by 2029, and it is clear that much work remains to be done to meet the benchmarks outlined in the report. In a letter sent August 9 to the Commissioners of the Departments of Health and Mental Hygiene, of Housing Preservation and Development, of Environmental Protection, and of Buildings, I advocated for a collaborative response to the concern about lead exposure; interagency cooperation is the only way lead poisoning can be fully prevented.

I asked for clarification regarding health-related concerns and offered potential solutions, specifically about the following:

- Promotion of testing children for lead poisoning
- Transparency and availability of records of lead's presence in buildings
- Solutions to eliminate lead in water sources
- Increased precision of lead paint chip testing, and
- Greater transparency about agency collaboration when addressing lead poisoning complaints

Exposure to even low levels of lead can result in severe outcomes for children under the age of 6. Some adverse effects, as outlined by the Centers for Disease Control (CDC) and Prevention, include the following: brain and nervous system damage, slowed growth and development, learning and behavioral issues, and hearing and speech problems. Lead exposure is especially

hazardous as the symptoms are often not immediately visible, underscoring the importance of regular testing in children under 6 to promote early detection.

In New York State, the regulations require that children are tested both at age 1 and 2 for lead exposure and it is recommended that children be tested every year until the age of 6. It was found in 2019 that while 80% of children in NYC were being tested before the age of 3, only 50% were tested at both ages 1 and 2. This finding points to many potentially missed exposures to lead poisoning in toddlers. The CDC states that there is no safe blood lead level for children. It is the responsibility of City agencies to proactively protect children from lead-based harm.

The September 2021 Report to the City Council on Progress in Preventing Elevated Blood Lead Levels in NYC (page 2), indicates that in 2020 there were 2,603 children under the age of 6 identified with a blood lead level of 5 mcg/dl or greater. The number is most likely higher if more children had been tested but unfortunately the pandemic has resulted in fewer tests in that same age category (also mentioned on page 1 of the report). According to DOHMH “in the first nine months of 2020, the rate of children with elevated blood lead levels associated with private housing was 11.2 per 1,000 children tested and among children who spent time in NYCHA housing, the rate was 4.4 per 1,000 children tested.”

On October 28, 2021, the CDC updated the blood lead reference value to 3.5 mcg/dl, from 5 mcg/dl. This national shift has allowed for increased scrutiny in facilities' testing and medical response to the poisoning. New York City should follow suit.

It is critical that in addition to raising the threshold for mandated investigation that the City also increase enforcement and corrective action. The City should target property owners who do not comply and provide assistance to owners who want to comply but cannot. Financial support could be provided through a grant program or a similar initiative.

I am submitting for the record a letter I sent to the Commissioners of the Departments of Health and Mental Hygiene, of Buildings, and of Housing Preservation and Development on August 9, 2022 regarding agency responsibility to prevent and end lead exposure and poisoning. I am pleased with the proposed decrease in the threshold for mandated investigation but also would like to emphasize the need for ongoing interventions as outlined in our correspondence.



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August 09, 2022

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Hon. Adolfo Carrión Jr.
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100 Gold Street
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Rohit T. Aggarwala
Commissioner, NYC Department of Environmental Protection
59-17 Junction Blvd
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Hon. Eric A. Ulrich
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Dear Commissioners:

I write to the four of you regarding one of the most important issues that impact the health and well-being of children: lead based paint. While I acknowledge the great work each of your respective departments have performed to reduce lead based paint hazards in NYC, the reality is that we are still seeing children poisoned every year. Children under the age of 6 are especially impacted.

When Local Law 1 of 2004 was passed it was meant to be used as a tool to permanently eliminate lead paint. Yet even with legislative amendments to the law and the lowering of action thresholds, exposure to lead paint is still real in NYC. In fact, the September 2021 Report to the City Council on Progress in Preventing Elevated Blood Lead Levels in NYC (page 2), indicates that in 2020 there were 2,603 children under the age of 6 identified with a blood lead level of 5 mcg/dl or greater. The number is most likely higher if more children had been tested but unfortunately the pandemic has resulted in fewer tests in that same age category (also mentioned

on page 1 of the report).

The Department of Health and Mental Hygiene proposed on May 4, 2022 that the Board of Health amend Articles 11 and 173 of the New York City Health Code to reduce the childhood blood lead level for both mandatory reporting and as the threshold for mandated investigation from 5.0 micrograms per deciliter (“mcg/dL”) to 3.5 mcg/dL. I support this proposed rule which will better protect New York City’s children from lead exposure and poisoning.

Alongside raising the threshold for mandated investigation, the City should also be serious about enforcement and corrective action. There must be swift action against landlords who do not comply, and support for owners who want to comply but cannot.

We have work to do together, both the administration as well I and my fellow legislators to ensure you have the tools you need to get NYC children under 6 EBLL numbers down to zero. I have questions that I will raise in this letter and would appreciate responses in your respective areas.

The questions are in no particular order as any lead related issue is of equal importance.

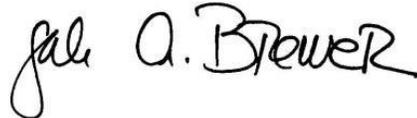
- What is being done to encourage parents to get their children tested even during these difficult times of COVID-19? Although the total number of children with an EBLL identified in 2020 was lower than in 2019, the rate of children under 6 with an EBLL increased. Why haven’t there been public service messages reminding New Yorkers to get their children tested?
- What are the addresses of the buildings where there was a child under 6 EBLL finding? I realize that specific apartment information is confidential but the building address should be something that can be provided. In fact I would like the addresses of the buildings where there has been an EBLL case involving a child under 6 for the past 4 years. What is being done to collectively and proactively inspect these building aside from HPD’s mandated requirement to attempt to inspect? Are outreach teams sent out to educate residents? Is any attempt made to contact the owner and offer assistance such as a loan to help pay for what can be a very expensive repair?
- Is the water in these buildings being tested for lead? Can the public see the results of any tests? I am pretty certain that given the age of these buildings there will be lead pipes supplying the domestic water as well as lead in the solder used when the pipes were installed. I know we tell folks to run the water before drinking it but why not eliminate the source of the lead as opposed to running it down the drain? Could something like ERP be used to remove this hazard if the owner will not and bill them for the work? Could a loan be provided for a re-pipe if the owner cannot afford it?
- What kind of review or audit is being conducted when an owner files for permits and submits a TPP? If they allege there are no lead hazards present does DOB cross reference with either DOHMH or HPD to see if lead based paint violations have been issued there or is it based solely on the owner’s word? What training is provided for DOB inspectors to help identify potential lead hazards and how well does the referral process work if they request either HPD or DOHMH to conduct a follow up inspections? Timeliness is critical here.

- If paint chip analysis is a more precise measurement of the presence of lead based paint then why isn't either HPD or DOHMH performing that in addition to XRF tests? When an owner such as NYCHA contests a DOHMH violation by submitting results of a paint chip analysis and DOHMH accepts the same and closes the violation what is being done at that point to identify the real source of the exposure to lead? In that case, you have been put on notice that what you assumed was the source is in fact not. What steps are then taken to continue the investigation?
- Can you lay out a road map of how your respective agencies address complaints about lead, what you do when there is a child with an EBLL, and most importantly how the four agencies work in unison in addressing lead conditions?

The work that has been done to reduce lead hazards is extraordinary and you should be proud of your staff who work on these issues every day. However, we need to focus on eliminating not merely reducing the hazard especially to protect our most precious resource – our children. I know from experience that when departments work together the result is more support for average New Yorkers. I have coordinated plenty of joint agency enforcement actions focused on some of the direst conditions both in my district and borough wide. It is time we became more surgical in focusing on the buildings that are the greatest risk.

I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, slightly slanted style.

Gale A. Brewer
District 6, City Council