

**CITY OF NEW YORK
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

Notice of Adoption of Rules regarding Indoor Allergen Hazards

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) by §§1043 and 1802 of the New York City Charter, and Administrative Code §§27-2090, 27-2017.7, and 27-2017.9, HPD is adopting rules regarding indoor allergen hazards. A notice of proposed rulemaking was published in the City Record on September 28, 2018. A public hearing was held on November 2, 2018.

Statement of Basis and Purpose of Rule

The adopted rules implement new legislation, Local Law 55 of 2018, enacted by the City Council regarding indoor allergen hazards. The legislation establishes an owner's responsibility to investigate for and remediate indoor allergen hazards like mold, cockroaches, mice, and rats in multiple dwellings. The rules provide for work practices to be used by owners in performing the work to remediate these conditions. The rules also provide a sample form for owners to use in providing notice to tenants as required under the law, and procedures for submitting certifications of correction of such violations and requesting postponements of the time period to correct such violations. The final rules also clarify and implement provisions of pending and enacted legislation relating to indoor allergen hazard remediation as well as comments received on the proposed rules. HPD's authority for these rules is found in New York City Charter §1802 and New York City Administrative Code §§ 27-2090, 27-2017.7 and 27-2017.9.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 28 of the rules of the city of New York is amended by adding a new chapter 54 to read as follows:

§54-01 Definitions. For purposes of this chapter:

Common area. The term "common area" means a portion of a multiple dwelling that is not within a dwelling unit and that is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling, as well as commonly used areas such as a laundry room.

Department. The term "department" means the City of New York Department of Housing Preservation and Development.

Harborage. The term “harborage” means any condition which provides shelter or protection for pests.

Indoor allergen hazard. The term “indoor allergen hazard” means any indoor infestation of cockroaches, mice, or rats or conditions conducive to such infestation, or an indoor mold hazard.

Indoor mold hazard. The term “indoor mold hazard” means any condition of mold growth on an indoor surface, building structure or ventilation system, including mold that is within wall cavities, that is likely to cause harm to a person or that has been cited as a violation by the Department.

Integrated pest management. The term “integrated pest management” means ongoing prevention, monitoring and pest control activities to eliminate pests from any building, lot, or dwelling. This includes, but is not limited to, the elimination of harborages and conditions conducive to pests, the use of traps, and, when necessary, the use of pesticides.

Pest. The term “pest” means any unwanted member of the Class Insecta, including, but not limited to houseflies, lice, bees, cockroaches, moths, silverfish, beetles, bedbugs, ants, termites, hornets, mosquitoes and wasps, and members of the Phylum Arthropoda such as spiders, mites, ticks, centipedes and wood lice, or of the Order Rodentia, including but not limited to mice, Norway rats, and any other unwanted plant, animal or fungal life that is a pest because it is destructive, annoying or a nuisance.

Remediation or remediate. The term “remediation” or “remediate” means measures to eradicate pests in accordance with Administrative Code section 27-2017.8 and these rules, and

measures to eradicate indoor mold hazards in accordance with Administrative Code section 27-2017.9 and these rules.

Underlying defect. The term “underlying defect” means a condition that causes an indoor mold hazard, such as a water leak or water infiltration from plumbing or defective masonry pointing or other moisture condition, or causes an infestation of pests, including holes or entryway paths for pests.

Visible mold. The term “visible mold” means mold that is readily identifiable by visual inspection, including mold that is behind furniture or other interior obstructions. Visible mold that is present on tile or grout does not constitute an indoor mold hazard violation under Administrative Code section 27-2017.3.

§54-02. Owner Notification to Tenants. All leases offered to tenants or prospective tenants in a multiple dwelling must contain a notice, prominently displayed within, which advises tenants of the obligations of the owner and tenant as set forth in Administrative Code section 27-2017 et seq. and these rules regarding control of indoor allergen hazards. Such notice must not materially deviate from the form of the notice in Appendix A of these rules, and must be provided in English and in the covered languages set forth in Administrative Code section 8-1002. In addition to such notice, the owner of such multiple dwelling must provide the tenant or prospective tenant of such dwelling unit with the pamphlet developed by the Department of Health and Mental Hygiene in accordance with Administrative Code section 17-199.7.

§54-03. Postponements.

(a) An owner may apply to the Department in writing for postponement of the time to correct an immediately hazardous violation issued in accordance with Administrative Code sections 27-

2017.3a(4) or 27-2017.4b within the five days preceding the date set for correction of such violation. No postponement may be requested for a hazardous violation that has become an immediately hazardous violation under Administrative Code section 27-2017.3a(4) or (5).

(b) Grant of a postponement request shall be in the sole discretion of the Department, and will be limited to circumstances where a showing has been made by the owner, to the satisfaction of the Department, that such owner has taken prompt action to correct the violation but that full correction can not be completed within the time provided because of serious technical difficulty, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit where the violation exists, or such other portion of the building necessary to make the required repair.

(c) An application for postponement must contain: a detailed statement by the registered owner or agent, or registered managing agent, explaining the prompt actions taken to correct the violation, the specific circumstances causing the inability to fully correct the violation within the time set, and an explanation of how correction will be completed within fourteen additional days. Where an owner claims inability to gain access, such application must include: a description of the steps taken to gain access, including but not limited to providing a written notice to the tenant informing the tenant of the hazard and need for access to the dwelling unit to correct the violation; proof of delivery of the notice by certified or registered mail; and why access could not be gained.

(d) The Department must make a determination in writing, including the reasons therefor, on whether the postponement shall be granted or denied. The Department may include such conditions as are deemed necessary, including, but not limited to, prompt repair or removal of harborages and actions to address any source of moisture that may be contributing to a mold condition, to ensure correction of the violation within the time set by the postponement.

(e) If the postponement is granted, a new date for correction must be set, which shall not exceed fourteen days from the initial date set for correction in the notice of violation.

54-04. Work Practices.

(a) An owner must use integrated pest management procedures as provided in Administrative Code section 27-2017.8, to repair any violation issued in accordance with section 27-2017.4b, and must also use such procedures, when appropriate, when addressing an infestation of pests upon inspection by such owner, or where otherwise directed by the Department. Such owner must :

1. inspect for, and physically remove pest nests, waste, and other debris by High-Efficiency Particulate Air (HEPA) vacuuming, washing surfaces, or otherwise collecting and discarding such debris;

2. eliminate points of entry and passage for pests by repairing and sealing any holes, gaps or cracks in walls, ceilings, floors, molding, base boards, around pipes and conduits, or around and within cabinets by using sealants, plaster, cement, wood, escutcheon plates, or other durable material. Attach door sweeps to any door leading to a hallway, basement, or outside the building to reduce gaps to no more than one-quarter inch; and

3. eliminate sources of water for pests by repairing drains, faucets, and other plumbing materials that accumulate water or leak. Remove and replace saturated materials such as interior walls and cabinets.

4. The use of pesticides must not substitute for pest management measures described in this section. Any pesticide applied must be applied by a pest professional licensed by New York State Department of Environmental Conservation (DEC).

(b) An owner must use the following work practices as provided in Administrative Code section 27-2017.9 when assessing and correcting indoor mold hazards and underlying defects as a result of an inspection by such owner, or when correcting an indoor mold hazard violation issued in accordance with Administrative Code section 27-2017.3:

1. investigate and correct any underlying defect, including moisture or leak conditions, that are causing or may cause mold violations;

2. remove or securely cover with plastic sheeting any furniture or other items in the work area that cannot be removed;

3. minimize the dispersion of dust and debris from the work area to other parts of the dwelling unit through methods such as: sealing ventilation ducts/grills and other openings in the work area with plastic sheeting; isolating the work area with plastic sheeting and covering egress pathways; cleaning or gently misting surfaces with a dilute soap or detergent solution prior to removal; the use of HEPA vacuum-shrouded tools or a vacuum equipped with a HEPA filter at the point of dust generation;

4. clean mold with soap or detergent and water;

5. remove and discard materials that cannot be cleaned properly;

6. properly remove and discard plastic sheeting, cleaning implements, and contaminated materials in sealed, heavy weight plastic bags;

7. clean any remaining visible dust from the work area using wet cleaning methods or HEPA vacuuming;

8. leave the work area dry and visibly free from mold, dust, and debris; and

9. perform assessments, remediation work, and provide notices and reports as required in compliance with article 32 of the New York state labor law and Administrative Code section 24-154, and any rules promulgated thereunder, where applicable.

§54-05. Certifications of Violations

(a)1. An owner's certification of correction of a pest violation that was issued pursuant to Administrative Code section 27-2017.4a must, where directed by the Department, include an affidavit affirming that the work practices required in accordance with section 54-05(a) of these rules were properly performed.

2. An owner's certification of correction of a pest violation that was issued pursuant to Administrative Code section 27-2017.4b must include an affidavit affirming that the work practices required in accordance with section 54-04(a) of these rules were properly performed. The Department may also require additional documentation for certification of correction of a violation of section 27-2017.4 deemed necessary to ensure that the violation has been properly corrected.

3. An owner's certification of correction of an indoor mold hazard violation issued pursuant to Administrative Code section 27-2017.3 must include an affidavit affirming that the work practices required in accordance with section 54-04(b) of these rules were properly performed. Where licensed workers are required to be used to correct an indoor mold hazard pursuant to New York state labor law article 32, or pursuant to Administrative Code section 24-154, such certification must include an affidavit by the remediator and by the assessor indicating that the work practices and notices required under those laws and rules, as set forth in section 54-04(b) were complied with, and shall include proof that the remediator's remediation plan and the assessor's final report were submitted to the Department of Environmental Protection in accordance with Administrative Code section 24-154. The Department may also require additional documentation for certification of correction of a violation of section 27-2017.3 deemed necessary to ensure that the violation has been properly corrected.

APPENDIX A

LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR INDOOR ALLERGEN HAZARDS

1. The owner of this building is required, under New York City Administrative Code section 27-2017.1 et seq., to make an annual inspection for indoor allergen hazards (such as mold, mice, rats, and cockroaches) in your apartment and the common areas of the building. The owner

must also inspect if you inform him or her that there is a condition in your apartment that is likely to cause an indoor allergen hazard, or you request an inspection, or the Department has issued a violation requiring correction of an indoor allergen hazard for your apartment. If there is an indoor allergen hazard in your apartment, the owner is required to fix it, using the safe work practices that are provided in the law. The owner must also provide new tenants with a pamphlet containing information about indoor allergen hazards.

2. The owner of this building is also required, prior to your occupancy as a new tenant, to fix all visible mold and pest infestations in the apartment, as well as any underlying defects, like leaks, using the safe work practices provided in the law. If the owner provides carpeting or furniture, he or she must thoroughly clean and vacuum it prior to occupancy. This notice must be signed by the owner or his or her representative, and state that he or she has complied with these requirements.

I, _____ (owner or representative name in print), certify that I have complied with the requirements of the New York City Administrative Code section 27-2017.5 by removing all visible mold and pest infestations and any underlying defects, and where applicable, cleaning and vacuuming any carpeting and furniture that I have provided to the tenant. I have performed the required work using the safe work practices provided in the law.

Signed:

Print Name:

Date:

This notice is also available in the following languages: [Español](#) (Spanish) | [简体中文](#) (Chinese) | [한국어](#) (Korean) | [Kreyol Ayisyien](#) (Haitian Creole) | [Русский](#) (Russian) | [عربي](#) (Arabic)

APÉNDICE A

AVISO DE ALQUILER/COMIENZO DE LA OCUPACIÓN SOBRE RIESGO DE ALÉRGENOS EN INTERIORES

1. Según el Código administrativo de la Ciudad de Nueva York, Sección 27-2017.1 y sig., el propietario de este edificio tiene obligación de hacer una inspección anual de riesgos de alérgenos en interiores (como moho, ratones, ratas y cucarachas) en el apartamento que usted ocupa y en las áreas comunes del edificio. El propietario debe inspeccionar también si usted lo informa de que hay una condición en el apartamento que podría causar un riesgo de alérgenos en interiores, o si usted solicita una inspección o el Departamento ha impuesto una violación que requiere la corrección de un riesgo de alérgenos en interiores en su apartamento. Si hubiera un riesgo de alérgeno en su apartamento, el propietario debe solucionarlo, utilizando las prácticas de trabajo seguro establecidas por la ley. El propietario también debe proveer a los inquilinos un folleto que contenga la información sobre los riesgos de alérgenos en interiores.

2. Antes de su ocupación como nuevo inquilino, el propietario de este edificio también debe solucionar todos los problemas visibles de moho e infestaciones en el apartamento, así como cualquier defecto subyacente como goteos, usando las prácticas de trabajo seguro establecidas por la ley. Si el propietario ofrece moqueta o mobiliario, debe limpiar y aspirar a conciencia antes de la ocupación. Este aviso debe firmarlo el propietario o su representante y establecer que ha cumplido con estos requisitos.

Yo, _____ (nombre del propietario o del representante en letra de molde), certifico que he cumplido con los requisitos del Código administrativo de la Ciudad de Nueva York Sección 27-2017.5 eliminando todo el moho e infestaciones visibles y cualquier defecto subyacente si fuera aplicable, limpiando y aspirando cualquier moqueta y mobiliario que

haya provisto al inquilino. He realizado los trabajos necesarios siguiendo las prácticas de trabajo seguro establecidas por la ley.

Firmado:

Nombre en letra de molde:

Fecha:

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