

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2005**

No. 37

Introduced by Council Members Gennaro, Quinn, Boyland, Gerson, Gioia, Koppell, Liu, Lopez, Martinez, Nelson, Perkins, Sanders, Vallone Jr., Weprin, Moskowitz, Reyna, Foster, McMahon, Recchia, Monserrate, Clarke, Gentile, Brewer, Yassky, Fidler, DeBlasio, Baez, James, The Speaker (Council Member Miller), Palma, Avella, Reed, Jackson, Sears, Rivera, Barron, Katz and the Public Advocate (Ms. Gotbaum).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the reduction of pesticide use by city agencies.

Be it enacted by the Council as follows:

Section 1. Title 17 of the administrative code of the city of New York is amended by adding thereto a new Chapter 12 to read as follows:

Chapter 12

Pesticide Use by City Agencies

- § 17-1201 Application*
- § 17-1202 Definitions*
- § 17-1203 Reduction of pesticide use*
- § 17-1204 Interagency pest management committee*
- § 17-1205 Exemptions*
- § 17-1206 Waiver*
- § 17-1207 Notification*
- § 17-1208 Recordkeeping and reporting*
- § 17-1209 Enforcement*
- § 17-1210 Rules*

§17-1201 Application. This chapter shall apply to all pest control activities on property owned or leased by the city, whether such activities are performed by city employees, contractors or subcontractors.

§17-1202 Definitions. For the purposes of this chapter only, the following terms shall have the following meanings:

(1) "Anti-microbial pesticide" shall mean:

i. disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;

ii. sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;

iii. bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

iv. sterilizers intended to destroy viruses and all living bacteria, fungi and their spores, on inanimate surfaces;

v. fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts), pathogenic to humans or other animals on inanimate surfaces; and

vi. commodity preservatives and protectants intended to inhibit the growth of, or destroy bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured products (such as fuel, textiles, lubricants, and paints), but not those utilized in the pulp and paper process or cooling towers.

(2) "Biological pesticide" shall mean a pesticide which is a naturally occurring substance that controls pests and microorganisms that control pests.

(3) "City agency" shall mean a city, county, borough, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(4) "Contractor" shall mean any person or entity that enters into a contract with a city agency, or any person or entity that enters into an agreement with such person or entity to perform work or provide labor or services related to such contract.

(5) "Pest" shall mean:

i. any insect, rodent, fungus, or weed; or

ii. any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living man or other living animals) which the commissioner of environmental conservation declares to be a pest.

(6) "Pesticide" shall mean:

i. any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or

ii. any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

§ 17-1203 Reduction of pesticide use. a. Effective six months after the enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified as Toxicity Category I by the United States environmental protection agency as of April 1, 2005, provided that for any pesticide classified as Toxicity Category I by the United States environmental protection agency after April 1, 2005, no such agency or contractor shall apply such pesticide after six months of its having been so classified, except as provided for in sections 17-1205 or 17-1206 of this chapter.

b. Effective twelve months after the enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified as a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen by the office of pesticide programs of the United States environmental protection agency as of April 1, 2005, except as provided for in sections 17-1205 or 17-1206 of this chapter.

c. Effective eighteen months after enactment of the local law that added this section, no city agency or contractor shall apply to any property owned or leased by the city any pesticide classified by the California office of environmental health hazard assessment as

a developmental toxin as of April 1, 2005, except as provided for in sections 17-1205 or 17-1206 of this chapter.

d. On February 1, 2007, and every February 1 thereafter, the department shall submit to the City Council a report listing changes made to the list of pesticides classified as a human carcinogen, likely to be carcinogenic to humans, a known/likely carcinogen, a probable human carcinogen, or a possible human carcinogen by the office of pesticide programs of the United States environmental protection agency and the list of pesticides classified as developmental toxins by the California office of environmental health hazard assessment after April 1, 2005. Such reports shall also include, for each pesticide added to or removed from such classifications, whether and to what extent such pesticide is used by city agencies or contractors in the city of New York.

§ 17-1204 Interagency pest management committee. a. Effective three months after enactment of the local law that added this section, an interagency pest management committee shall be formed, which shall be headed by the commissioner, or a designee, and which shall include the commissioners of sanitation, environmental protection, citywide administrative services and parks and recreation, the chair of the New York city housing authority and the chancellor of education, or their designees. Such committee shall share information related to the pest control strategies and experience of city agencies and shall meet on a semi-annual basis.

b. By January 1, 2007, the interagency pest management committee shall develop a plan to further reduce pesticide use by city agencies, including initiatives to implement integrated pest management, giving preference to employing physical, mechanical, cultural, biological and educational tactics to prevent conditions that promote pest infestations, which shall be updated on an annual basis, as necessary. The plan, and any updates of such plan, shall be submitted to the mayor and the speaker of the council within thirty days of issuance.

§ 17-1205 Exemptions. a. The restrictions established pursuant to section 17-1203 of this chapter shall not apply to the following:

(1) pesticides otherwise lawfully used for the purpose of maintaining a safe drinking water supply at drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution and treatment facilities;

(2) anti-microbial pesticides;

(3) pesticides applied to professional sports playing fields, golf courses or used to maintain water quality in swimming pools;

(4) pesticides used for the purpose of maintaining heating, ventilation and air conditioning systems, cooling towers and other industrial cooling and heating systems;

(5) pesticides used for the purpose of rodent control in containerized baits or placed directly into rodent burrows or placed in areas inaccessible to children or pets;

(6) pesticides or classes of pesticides classified by the United States environmental protection agency as not requiring regulation under the federal insecticide, fungicide and rodenticide act, and therefore exempt from such regulation when intended for use, and used only in the manner specified;

(7) biological pesticides; and

(8) boric acid and disodium tetrahydrate, silica gels, diatomaceous earth, and nonvolatile insect bait in tamper resistant containers.

§ 17-1206 Waiver. Any city agency, including the department, is authorized to apply to the commissioner for a waiver of the restrictions established pursuant to section 17-1203 of this chapter. Such application shall be in a form and manner prescribed by the commissioner and shall contain such information as the commissioner deems

reasonable and necessary to determine whether such waiver should be granted. In determining whether to grant or deny a request for a waiver, the commissioner shall consider whether the application of 17-1203 would be, in the absence of the waiver, unreasonable with respect to (i) the magnitude of the infestation, (ii) the threat to public health, (iii) the availability of effective alternatives and (iv) the likelihood of exposure of humans to the pesticide. Such waiver may be issued with respect to one or multiple applications and may be granted for a term deemed appropriate by the commissioner, provided, however, that such term shall not exceed one year. Within thirty days of granting a waiver, the department shall provide the pest management committee with a copy of such waiver.

§ 17-1207 Notification. a. Any city agency or contractor applying pesticides on property owned or leased by the city shall post a notice at publicly accessible locations on such site at least twenty-four hours prior to any such application, in a form and manner prescribed by the commissioner, provided, however, that applications requiring immediate action for public health reasons, such as severe rodent infestations, where mosquito larvae are present, or where populations of infected mosquitoes are present shall require that notice be placed concurrently with such application. Such notice shall include, but not be limited to:

(1) Date of posting, proposed date of pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(2) Address of pesticide application and, if known, specific sites to which the pesticide is to be applied;

(3) Pest to be controlled and method of pesticide application;

(4) Common trade names of the pesticide, if applicable;

(5) United States environmental protection agency registration number of the pesticide, the active ingredient(s) contained in the pesticide and information on how to obtain further information about the products applied, such as by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158; and

(6) Name and telephone number of the city agency or contractor responsible for the application.

b. The city agency or contractor responsible for posting the notice required pursuant to subdivision a of this section shall not remove such notice for the longer of either three days subsequent to the last moment of pesticide application or the number of days required on the pesticide product label.

c. The notification requirements established pursuant to this section shall not apply to pesticides listed in section 17-1205 of this chapter.

§17-1208 Recordkeeping and reporting. a. Each city agency that uses pesticides shall keep records, for a minimum of three years or such longer time period required by statute, regulation, or agency directive, of each pesticide application by such agency, or by a contractor in the fulfillment of a contract with such agency, which shall include, but not be limited to:

(1) Date and location of the specific site of pesticide use;

(2) Pest to be controlled and the method of pesticide application;

(3) Name and quantity of the pesticide used, including common trade names of such pesticide, if applicable;

(4) United States environmental protection agency registration number of the pesticide and active ingredient(s) contained in the pesticide;

(5) Name and telephone number of the city agency or contractor responsible for the application;

(6) Proof that notice required pursuant to section 17-1207 was provided;

(7) Any waiver that was granted pursuant to section 17-1206 of this chapter, if applicable.

b. Effective February 1, 2007, and every February first thereafter, each city agency that is subject to the requirements of subdivision a of this section shall submit a report to the commissioner and the speaker of the council, which shall contain the information required to be maintained pursuant to that subdivision.

c. The department of parks and recreation shall submit a report to the speaker of the New York City Council on February 1, 2007, indicating the pesticides used on city owned golf courses, the frequency of application of such pesticides and any integrated pest management program for such golf courses.

§ 17-1209 Enforcement. a. Every city contract to perform work or provide labor or services related to property owned or leased by the city shall contain the following provision: "To the extent that you apply pesticides to any property owned or leased by the city, you, or any subcontractor you hire, shall comply with chapter 12 of the administrative code."

b. Upon receiving information that a contractor is in violation of this chapter, the city agency holding the contract shall review such information and offer the contractor an opportunity to respond. If such city agency finds that a violation has occurred, it shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, and/or declaring the contractor in default.

§ 17-1210 Rules. The commissioner shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this chapter.

§ 2. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§3. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on April 20, 2005, and approved by the Mayor on May 9, 2005.

VICTOR L. ROBLES, City Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 37 of 2005, Council Int. No. 329-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on April 20, 2005: 49 for, 0 against, 0 not voting.

Was signed by the Mayor on May 9, 2005.

Was returned to the City Clerk on May 11, 2005.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel