

## Local Law 1/2004—Section by section analysis:

**§27-2056.2 Definitions.** Includes definitions of “chewable surfaces”—which includes, for example, window sills with intact paint that can be chewed by a young child. Also includes definitions of friction and impact surfaces—these are covered as lead based paint hazards when they are deteriorated. Lead paint is defined as 1.0 mg/cm-2.

**§27-2056.3 Owner Responsibility to Remediate.** Owners must prevent the reasonably foreseeable occurrence of lead hazards and remediate them, and the underlying defects that may cause lead hazards, using safe work practices.

### **§27-2056.4 Owner Responsibility to Notify Occupants and Investigate.**

a. Owners of pre-1960 multiple dwellings, and owners of post-1960 to pre-1978 buildings where the owner knows that there is lead based paint, have the responsibility to investigate dwelling units where children under 6 reside, and common areas, to find peeling paint, chewable surfaces, deteriorated subsurfaces, friction and impact surfaces. The investigation must be conducted annually, and more often if the owner knows of a condition that may cause a lead hazard, or the occupant complains about such a condition.

b. Occupants must inform the owner about the presence of a child and provide access.

c. Leases must contain a notice setting forth the owner’s responsibilities, and owners must provide a pamphlet informing occupants about lead paint hazards.

d. Upon lease-up, lease renewal, agreement to lease or commencement of occupancy, the owner must provide a notice to the occupant inquiring if a child under age 6 will reside in the unit. If the occupant states that there is no child and the occupant subsequently, during that one year period, fails to inform the owner that a child has come to live in the unit, the presumption of lead paint does not apply in any personal injury action brought for lead exposure.

e. The same notice as in (d) must be provided annually to each dwelling unit no later than January 16th. Occupants must respond by February 15th. If the owner does not receive a response, and does not otherwise actually know if a child resides in the unit, he must physically inspect to ascertain if a child lives there, between February 16th and March 1st. If in that time period, he is unable to access the unit, the owner must notify DOHMH that he was unable to determine if a child lives in the unit. (Includes same limitation on liability as in (d) where occupant has responded that no child lives in the unit.)

. • For calendar year 2004, if owners comply with the LL #38 notice provisions, they will be in compliance.

. f. Owners must inform the occupant of the results of the investigation and provide copies of any reports received. Copies must be retained for 10 years.

. g. Failure to comply is a misdemeanor punishable by a \$500 fine and/or six months in prison. Civil penalty is not more than \$1,500/per violation.

. h. HPD is authorized to perform sample audits to determine compliance.

### **§27-2056.5 Presumption.**

• a. Paint is presumed to contain lead in any pre-1960 multiple dwelling where a child

under 6 resides, and in common areas. Presumption is rebuttable by certified inspector.

- b. Owners may apply for an exemption from the presumption for the entire dwelling OR for a dwelling unit.

**§27-2056.6 Violation.** Peeling lead paint or lead paint on a deteriorated subsurface in a multiple dwelling unit with a child under 6 is a class C violation.

**§27-2056.7 Audit and Inspection by HPD of DOHMH COTA Building.**

- a. When DOHMH issues a Commissioner's Order To Abate (COTA) for a lead poisoned child in a multiple dwelling unit, HPD must, within 15 days, notify the owner that he must submit to HPD all records required to be maintained under the law within 45 days. HPD will then determine if there may be lead hazards in other units with children under age 6, and will attempt to inspect all such units within 10 days of such determination.
- b. If the owner does not provide the records, HPD must inspect child occupied units in 45 days to determine if there are any lead violations.
- c. The actions required of HPD are not applicable if HPD has inspected the building within the twelve months preceding the issuance of the COTA.
- d. Owner noncompliance is a class C violation and carries a \$1,000 penalty.

**§27-2056.8 Violation in a Dwelling Unit Upon Turnover.**

- a. -b. These requirements apply to all pre-1960 dwelling units and to pre-1960 private dwelling units that are not owner-occupied. In such units, owners must: remediate lead hazards; make floors, sills and wells cleanable; and remove or permanently cover all lead on friction surfaces of doors, door frames and windows, using safe work practices.
- c. Noncompliance is a class C violation.

**§27-2056.9 Department Inspections.**

- a. When making line of sight inspections in a pre-1960 multiple dwelling unit, HPD must ascertain the presence of a child under 6, including asking the occupant for an acknowledgement whether such a child resides in the unit. If a child lives there, HPD must perform a room-by-room inspection. For each room, the inspector must record whether the paint is peeling or intact. Where peeling paint is found, HPD must also inspect for an underlying defect and indicate on the inspection report the location of the peeling paint, the condition of the subsurface, and the location of any underlying defect. The inspector specifically need not move furniture unless there is visible evidence that causes the inspector to believe that there is peeling paint behind the furniture. Where the inspector determines that there is a violation, the notice of violation must be served in ten days.
- b. For lead complaints, HPD must inspect pre-1960 child occupied units within 10 days. The scope of the inspection is the same as for (a). If HPD is unable to gain access, it must reattempt the inspection within 5 days. If still unable to gain access, HPD may notify the occupant in writing that no further attempts will be made unless a new complaint is submitted.
- c. --For lead complaints, HPD inspectors must use XRF machines to determine

whether lead paint is present. If, for reasons “beyond the control” of HPD, an XRF cannot be used, then HPD may rely on the presumption to issue a violation. --For line of sight inspections, if HPD inspectors do not XRF test peeling paint on the initial inspection, they must return within 10 days thereafter to XRF inspect. Upon a determination that lead hazards exist, the notice of violation must be issued in ten additional days. HPD must leave the lead pamphlet at all premises that it inspects.

e.- f. HPD must develop a work practices pamphlet to be delivered with the notice of violation. Failure to include the pamphlet, or to comply with time periods does not render any notice of violation void, and does not provide an owner with a defense against liability.

#### **§27-2056.10 Department Implementation and Enforcement.**

- a. HPD must provide training. Personnel who conduct visual inspections must be trained in that capacity; personnel who perform XRF inspections must be EPA certified. All inspectors and supervisors must also be trained regarding state and local lead laws, and must demonstrate knowledge of the requirements of the new lead law.
- b. HPD must promulgate a comprehensive written procedure to guide department personnel in implementing and enforcing the new law. This must include a uniform method for HPD and DOHMH personnel to describe violations and identify their location in a unit, including a form for carrying out and recording inspections.
- c. HPD must promulgate rules including: uniform specifications and procedures governing testing and reporting of test results by owners and HPD; procedures for owners to comply with the notification, investigation and remediation responsibilities; procedures for rebutting the presumption; procedures for obtaining postponements; procedures for certification of correction of lead violations; procedures whereby DOHMH can order or provide for expeditious cleanup of lead dust where there is a lead poisoned child and DOHMH determines that lead dust is not coming from the subject dwelling unit.

#### **§27-2056.11 Work Practices**

- a. HPD must promulgate rules establishing the following safe work practices:
- (1) for work done to correct violations, work practices must be no less stringent than those required by DOHMH when it issues a violation for a lead poisoned child, including temporary relocation by the owner if necessary. All work must be performed by an EPA-certified firm.
  - (2) for any non-violation work done in a pre-1960 multiple dwelling unit or post-1960 to pre-1978 multiple dwelling unit where the owner knows there is lead paint, with a child under age 6, or in common areas of such multiple dwellings, where work will disturb more than 2 square feet but less than 100 square feet of lead paint or paint of unknown lead content, work practices must be no less stringent than Health Code §173.14, dust tests must be performed, and workers must be trained in lead safe work practices. Temporary relocation may be required where necessary.
  - (3) for any non-violation work done in such multiple dwelling unit where the work will disturb more than 100 square feet (question whether this applies to private dwellings— unclear in statute) of lead paint or paint of unknown lead content, or involves the removal of two or more windows with such paint, work practices must be

no less protective than those in Health Code §173.14, require dust testing. All work must be performed by an EPA-certified firm. Temporary relocation may be required. Further, not less than 10 days prior to the commencement of such work, owners must file a notice of commencement with DOHMH, and DOHMH is authorized to perform sample audits to determine if workers are certified.

- (4) work practices do not apply to work that disturbs less than two square feet of peeling paint per room, or 10% of the surface area of a component.
- b. Dust tests may only be performed by a third party who is independent of both the owner and anyone who is performing the work. Dust testers must be trained in an approved program.
- c. HPD must promulgate rules requiring that dust tests submitted to any lab include a certification that the test was performed in compliance with this law.
- d. For work performed to correct violations, all dust tests must be submitted to HPD. Where any other covered work is performed, owners must submit dust tests to the occupant.

#### **§27-2056.12 Reporting.**

- a. HPD is responsible for providing a report every fiscal year on its implementation of the law. Essentially, this report is the one that HPD provided under LL #38, except for the additional requirement that the report contain a statistical profile of multiple dwellings where violations are placed, indicating the age of the building and other factors relevant to the “prevalence of lead based paint hazards.”
- b. DOHMH must prepare an annual report on progress towards increasing lead screening rates and reducing new cases of lead poisoning, to be used by HPD in implementing the law.

**§27-2056.13 Transmittal of Violations to the DOHMH.** HPD must send a notice to any unit where it issues a lead violation including DOHMH’s telephone number. HPD must also refer to DOHMH the addresses of all units for which violations were issued, along with the name and number of the complainant, if any. DOHMH must then refer to medical providers any person who requests such assistance.

**§27-2056.14 Request to HPD from DOHMH to Execute an Order.** DOHMH must investigate any reported blood lead level of a child under 18 years of age that is in excess of 15 mcg/dl. DOHMH must also notify HPD of each unit where it has issued a COTA. (See HPD responsibilities under §27-2056.7) If the owner fails to comply with the COTA, DOHMH must certify the unit to HPD within 16 days of the report to it of the elevated blood lead level. HPD must correct the violations within 18 days of such certification.

#### **§27-2056.15 Waiver.**

- a. No owner can seek to have an occupant waive any provision of the lead law.
- b. Validates agreements made between coop tenant shareholders and condo owners and coop and condo boards regarding allocation of responsibility for compliance with the lead law.
- c. The lead law does not apply to multiple dwelling units where title is held by a coop or condo and the unit is occupied by the shareholder of record or his or her family.

**§27-2056.16 Exemption for Emergency Conditions.** The law specifically exempts from coverage work immediately necessary to safeguard against danger to life, health or safety.

**§27-2056.17 Record Keeping Requirements.** Owners of multiple dwellings or dwellings who perform work pursuant to the new lead law must retain all records relating to such work for ten years from the completion of the work. The records are to be made available to HPD and must be transferred to the owner's successor in title.

**§27-2056.18 Application of the article based on age of child.** The law, as enacted, was applicable to units with children under age 7. After one year, the Board of Health was authorized to determine that the law should be applicable, in whole or in part, only to children under age 6. The Board of Health has now determined that the law should be applicable to children under age 6, effective October 1, 2006.

**§27-2115(l) HPD Enforcement.**

- (1) Owners have 21 days to correct a lead violation in accordance with specified work practices. Owners may request a 14-day postponement, and then an additional 14-day postponement in circumstances where paint has been stabilized. HPD may promulgate rules for longer postponements in situations where an owner is doing substantial capital improvements that will reduce lead paint in the multiple dwelling or dwelling unit. HPD must provide written reasons for its postponement determinations to both owner and occupant.
- (2) Certifications must be submitted within 5 days of the correction date, and include a dust test result. HPD must mail a copy to the complainant within twelve days of receipt.
- (3) HPD must reinspect all violations within 14 days after the date set for correction. If not corrected, HPD must do the work within 45 days of such reinspection.
  - (4) HPD may not remove any violations from its records unless it has conducted a final inspection verifying remediation, and has copies of relevant dust tests. HPD must mail a copy of the final inspection report and status to the occupant and owner.
  - (5) The penalty for false certification is \$1,000--\$3,000, and possible misdemeanor charge.
- (6) The penalty for failure to correct a lead violation is \$250/day. Owners may assert various defenses to mitigate the fines.
- (7) Failure to comply with time periods by HPD does not void any violation or provide a basis for defense by the owner.

**DOHMH Provisions**

**§17-179 Department Screening, Diagnosis and Treatment.**

- a. DOHMH must refer to medical providers any child who needs lead screening or other services, upon request.
- b. DOHMH must develop a lead pamphlet to be used by HPD on inspections and made available to the public.

**§17-181 Lead based paint; dry scraping and sanding prohibited.** The law prohibits dry scraping and sanding of lead paint or paint of unknown content in any dwelling, day

care center or school. DOHMH is authorized to promulgate rules regarding this.

**§17-185. Inspection by DOHMH of Unsafe Work Practices.** DOHMH must promulgate rules requiring the agency to respond to complaints of unsafe lead paint work practices.

**§17-186 Lead Poisoning Prevention in Children.**

- a. DOHMH must develop a brochure advising medical providers of the law on screening and testing children for lead. It must be distributed annually to such providers.
- b.-c. DOHMH must develop a pamphlet regarding lead poisoning prevention that must, at a minimum, be distributed with each birth certificate given to a parent of a child. The pamphlet must also be available to the public.

**J-51 Benefits**

The law amends J-51 to permit benefits for abatement of lead hazards including the costs of inspection and risk assessment relating thereto, in units occupied by children under 6 regardless of whether the child has been lead poisoned, provided, however, that work performed to comply with a notice of violation under the new lead law is not eligible for benefits.

**Day Care Facilities §17-900. Definitions.** These provisions are applicable to day care services that regularly give care to seven or more children under six years of age for more than 5 hours per week for more than one month a year. Rest of definitions track the HMC provisions.

**§17-910. Presumption.**

- a.-b. There is a rebuttable presumption that paint on the interior of a pre-1978 day care facility is presumed to be lead paint. Testing must be performed by certified workers.

**§17-911. Remediation.**

- a. Peeling lead paint is prohibited.
- b. Lead paint or paint of unknown lead content on chewable, deteriorated, friction and impact surfaces must be remediated. (Note that definitions track HMC provisions, so that the only intact surface that must be abated under this provision is the chewable window sills.)
- c. Equipment must have lead free paint.
- d. If a noncomplying condition is found, DOHMH must serve the operator with an order to remediate. If the order is not complied with in 45 days, DOHMH must request an “agency of the City” to execute the order. That agency must execute the order in 45 days.
- e. Lead hazards must be remediated in compliance with DOHMH safe work practices.

**§17-912. Department Rules.** DOHMH must promulgate rules to implement the day care provisions, including safe work practices that are no less protective than those in Health Code §173.14. Dust testing is mandated. Work must be performed by persons trained in

lead safe work practices. Work practices do not apply where work disturbs less than 2 square feet or 10% of a component.

**§17-913. Annual Survey.** Day care operators must conduct annual surveys and must provide a copy of the survey results to DOHMH.

**Savings Clause**

The bill contains a provision validating all actions taken by HPD and DOHMH under LL #38 and LL #1 prior to the effective date of the new law, and providing that any outstanding violations existing after the effective date must be corrected using the new work practices.

**Effective Date**

The law takes effect 180 days after enactment, provided that HPD and DOHMH are mandated to promulgate rules and take actions to implement the law (except for the new annual notice provisions, which presumably kick in the following year).