

# **REPORT TO THE CITY COUNCIL: THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S IMPLEMENTATION OF LOCAL LAW #1 OF 2004 IN FY 2017**

*Submitted 11/1/2017*

This report was prepared by the Department of Housing Preservation and Development (HPD) in accordance with Administrative Code § 27-2056.12. The report describes the implementation of Local Law #1 of 2004 (Administrative Code § 27-2056.1 *et seq.*) in FY 2017.

## **LOCAL LAW #1**

Local Law #1 of 2004 ("Local Law #1") is known as the New York City Childhood Lead Poisoning Prevention Act of 2003. HPD has successfully implemented and enforced this Local Law since its effective date in August 2004.

## **PROCESS FOR ENFORCING LOCAL LAW #1**

### **Complaints**

Complaints are received for lead paint under Local Law #1 in the same manner that all other complaints are received by HPD. The vast majority of complaints are called in to 311 by tenants. 311 operates 24 hours a day, seven days a week. 311 complaints require a caller to indicate whether there is a child under six residing in the apartment<sup>1</sup>. Complaints where there is a child under six **and** reported conditions related to painted surfaces (such as leaks or broken plaster) are counted as lead-based paint complaints and are inspected by the Lead-Based Paint Inspection Program (LBPIP), a specialized unit within the Division of Code Enforcement. LBPIP Inspectors are equipped with XRF Analyzers so that testing can be done during the initial inspection. Pursuant to statutory mandate, an inspection must be attempted within 10 days from the date of a lead-based paint complaint.

The law also requires HPD to proactively inspect for lead hazards on all inspections when a child under six resides in the apartment. Given this, HPD also routes complaints including a child under six but no reported conditions related to painted surfaces to the LBPIP for inspection. However, these complaints are not counted as lead-based paint complaints since there is no reported condition related to paint.

After an attempt is made to contact the landlord to advise him/her of the complaint, the complaint is forwarded to the LBPIP for scheduling of an inspection with the tenant. If the tenant indicates that the condition has not been corrected, an appointment is set. If the tenant is not reached, an inspection is attempted without an appointment.

### **Inspections**

A LBPIP inspection consists of an inspector making a sketch of the apartment to designate all rooms, checking all painted surfaces for the presence of peeling or deterioration and gathering any additional information regarding children. The inspector will test any deteriorated surfaces within the apartment using an X-Ray Fluorescence Analyzer (XRF). Results from the XRF are downloaded onto a laptop computer. If the test result indicates that there is lead-based paint, a violation will be issued. As previously mentioned, the law requires HPD to proactively inspect for lead hazards on all inspections where a child under six resides in the apartment, and so

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<sup>1</sup> Complaints reporting only heat and hot water complaints are excluded from this process.

HPD routes complaints received with an indication that there is a child under six for this inspection by the LPBIP.

*Line of Sight Inspection:*

The term “line of sight lead-based paint inspection” refers to inspections conducted by Housing Inspectors not in the LBPIP when a child six resides in the unit. This occurs when inspections are conducted in apartments which did not file a complaint with 311, such as to investigate an allegation of a building-wide condition such as heat, to conduct a proactive inspection of the building related to an enhanced enforcement program, or to reinspect existing violations. If a Code Enforcement inspector enters an apartment in a multiple dwelling for any reason, the inspector will ask the occupant if a child under six resides in the apartment. If the occupant indicates that there is a child under six or if the inspector observes a child, the inspector is then required under Local Law #1 to check all painted surfaces for the presence of deteriorated or peeling paint. The inspector will note any peeling paint or deteriorated surfaces and the apartment will be referred to the LBPIP for an XRF inspection (conducted in the same manner as described above under the *Complaint Inspection* process) if there are any peeling or deteriorated surfaces. If there is no access when LBPIP attempts to inspect, a presumed lead-based paint violation is issued for the surfaces in each room where peeling paint was noted. Property owners may contest this presumption by supplying appropriate evidence to HPD.

At the time of both a complaint-based inspection by LBPIP and line of sight lead-based paint inspection, Housing Inspectors conducting such inspections are required to give to the family a copy of the Department of Health and Mental Hygiene (DOHMH) information pamphlet about lead-paint hazards. The pamphlet encourages blood testing for the children to check for lead poisoning and advises the tenant of ways to help prevent lead-based paint hazards.

**Violation Process and Emergency Repairs**

Once a violation is issued, a Notice of Violation (NOV) is sent to the owner along with a copy of the HPD booklet on safe work practices and the requirements for curing the violation. A call to the registered managing agent/owner of the property is also attempted in order to advise him/her of the existence of the condition, the mailing of the NOV and the expectation that the condition will be corrected on a timely basis.

Letters detailing the results of the inspection – including whether surfaces tested positive or negative – are sent to both tenants and owners.

If violations have not been certified as corrected by the end of the certification period (see below for information on certification), HPD sends an inspector within 10 days of the certification date to determine if the repairs have been made. If they have not been completed, HPD’s Emergency Repair and Environmental Hazards Unit (EREH) will issue a repair order to one of its contractors.

The EREH is composed of both office staff, including research and scheduling units, and field operations staff, including survey, review, and monitoring units. The units work cooperatively in an effort to encourage owner compliance and ensure that lead-based paint hazard violations are corrected properly. The violations are routed for scoping and appointments are made with tenants for access.

If a scope inspection is performed and it is observed at such inspection that the work has not been done by the owner, HPD may test the condition if a presumed lead-based paint violation was issued. If the surfaces were previously tested by the LPBIP or test positive by EREH, HPD will issue an Open Market Order to one of its approved contractors or order in-house staff to perform the necessary lead remediation. For the majority of cases, the work order is forwarded to the Bureau of Maintenance Procurement (BMP). BMP then awards the job to an approved contractor. Once awarded, the order is sent to the EREH for daily monitoring of the contractor's work, including taking dust wipe samples. All repair work performed through HPD is performed by properly trained and certified workers. If the amount of work to be done is considered a small job (i.e., a relatively small amount of square footage in the unit must be repaired) it may be referred to HPD's area site office. After the site office completes the work, HPD takes dust wipe samples and forwards the samples to a laboratory. If the samples are below clearance levels, the job is closed. If the sample fails, the area is re-cleaned and tested again. All violations corrected by HPD (either through staff or contractors) are closed after correction occurs.

If the landlord has done work to correct the lead hazard violations but failed to file a dust wipe test and other required documentation, then dust wipe samples are taken by HPD staff and sent to a laboratory for analysis. If dust wipe test results are positive, HPD cleans the affected area and performs another dust wipe test. If the dust wipe test shows that clearance levels have been achieved, the repair order is closed. In this case, the violation remains open on HPD's violation record, unless and until the landlord files required paperwork showing proper work practices, because the statute does not permit HPD to remove the violation if the owner does not submit documentation that the repair was performed using required work practices.

All work conducted by EREH is billed through the Department of Finance to the property. The charges become a lien against the property if not paid on time and may contribute to the property's eligibility for the City's tax lien sale.

One of the main obstacles to HPD's ability to correct lead hazard violations when the owner fails to do so is gaining access to the dwelling unit. HPD personnel have to gain access on several occasions: to inspect, to XRF test and scope, to perform the work, and to perform dust clearance testing. The necessity of gaining access multiple times increases the likelihood that at some point access will be denied. In order to improve access, HPD conducts a large number of inspections outside of normal work hours and on weekends.

Access problems also arise when either an owner or tenant affirmatively refuses access to HPD personnel or contractors, or when the tenant is uncooperative in providing access to the apartment. If the tenant affirmatively denies access to the dwelling unit, the work is canceled. If after two unsuccessful visit attempts, access has not been obtained, a letter is sent to the tenant asking him or her to contact HPD to schedule an appointment. If no response is received within eight days, the job is canceled. If the tenant responds and access is still not gained after scheduling an appointment, the job is canceled. Whenever the work is cancelled, the violation remains open.

If the property owner or one of his/her employees denies access to the dwelling unit, the lead hazard violations are forwarded to the Housing Litigation Division (HLD) to seek a court order for access. HLD prosecutes access warrant cases to allow EREH to perform lead repairs. Housing Court judges are often reluctant to issue access warrants without giving owners several opportunities to do the work themselves, particularly when there is partial compliance,

or evidence of difficulty in gaining sufficient access from the tenants to properly complete the violations, even though the statutory period to correct has passed.

Most access warrant cases are concluded when a re-inspection finds that the owner has completed the work, often under consent orders issued as interlocutory relief during the course of the case. HLD commenced 52 access warrant cases in FY2017 under LL# 1.

### **Violation Certification**

Once a violation is issued, the property owner has a period of time to correct the condition properly and certify that correction to HPD. If the property owner properly certifies that the violations were corrected within the 21-day correction period (or within any postponement period granted by the Department) by submitting a certification with acceptable documentation showing that violations have been properly corrected, Code Enforcement must attempt to re-inspect the condition within 14 days. If the condition is found to be corrected, the violation is closed.

A notice is automatically generated to the tenant once a valid certification is received. The notice informs the tenant that the owner has submitted a certification to HPD that the condition has been corrected and provides the tenant with information on how to challenge that certification. Should the tenant challenge the certification, HPD attempts to schedule an inspection with the tenant.

The tenant is also advised in the notice that he or she should give access to an inspector who will visit to verify the correction. Unfortunately, HPD inspectors often cannot obtain access to verify the correction and, although the violations are said to have been properly corrected, the violations remain open since Local Law #1 requires both appropriate documentation and a physical inspection. In 42.4 % of re-inspection attempts to verify owner certification of corrected lead violations, inspectors are unable to gain access to verify the correction.

If, when Code inspects, they find the work not done, the violations are forwarded to the EREH for scoping. HLD may also commence litigation for false certification in Housing Court. HLD commenced 41 cases against owners for false certification of the correction of violations. In FY2017 the Lead Unit was awarded \$42,250 in civil penalties and collected \$33,250 (collections include previous year penalties).

### **Training**

All new Code Enforcement inspectors and EREH field staff receive a three-day training with an approved EPA provider, as a precursor to taking the EPA Certification Exam as a Lead-Based Paint Inspector. They are also trained in: (1) Local Law #1 requirements regarding the surfaces and the definitions of surface conditions that require issuance of a specific violation; (2) how to designate the surfaces in a uniform manner (e.g., size of surfaces, compass location of wall, compass location of room) to ensure that the proper area is identified and remediated by the owner or HPD; and (3) the violation order numbers. Inspectors assigned to the LBPIP are additionally trained in the use of XRF machines and the use of laptop computers to automatically enter XRF and violation data. Through both the Lead-Based Paint Inspection Unit supervision and HPD's Field Audit Review Unit, there is continual review of the inspectors' work and training is provided as warranted.

HPD's Neighborhood Education and Outreach continues to provide courses in Lead Awareness

and Local Law #1 Compliance, and works to increase the awareness of the general public about Local Law #1 through various community outreach events and marketing initiatives.

**Contracts**

HPD currently maintains three contracts with maximum award capacity of \$3,500,000 for remediation and abatement and one contract with a maximum award capacity of \$99,999 for dust wipe analysis.

**City-Owned Housing**

In addition to implementing a process for the enforcement of Local Law #1 in private property, as the owner of many multiple dwellings HPD also implemented procedures to ensure compliance with Local Law 1 in its property management programs. The ongoing annual notification process for tenants is in compliance with Local Law 1 requirements. Responses to the annual notification are entered into the system; those responses reporting the presence of children under six are automatically forwarded to the EREH to scope and perform all necessary work related to the correction of lead-based paint hazards. Program will attempt three times to inspect or retrieve the completed survey for the units whose residents did not respond to the annual notification in order to determine whether a child under six resides in the unit. The results of these inspections are also entered into the system. DPM responds on an ongoing basis to complaints of peeling paint by inspecting the unit and correcting any hazards in the manner described above.

**Lead Poisoning Cases in New York City**

The Department of Health and Mental Hygiene submitted a report on September 6, 2017 to the City Council on Progress in Preventing Childhood Lead Poisoning in New York City. The report and more information about childhood lead poisoning are available through the NYC DOHMH website at: <https://www1.nyc.gov/site/doh/data/health-tools/childhood-lead-poisoning.page>

Additional data on childhood lead exposure are also available through the NYC DOHMH Environment and Health Data Portal at <http://www1.nyc.gov/site/doh/data/health-tools/environmental-public-health-tracking-program.page>

**\*\*\*\*\* Statistical Section Pursuant to §27-2056.12\*\*\*\*\***

The following table summarizes Expenditures and Capital Commitments for HPD's Lead Program in FY'17

<b>FY'17 Lead</b>						
	<b>H/C*</b>	<b>Personnel Service Expenditures</b>	<b>Other Than Personnel Service Expenditures</b>	<b>Expense Total</b>	<b>Capital Commitments</b>	<b>TOTAL</b>
<b>Lead Inspections and Repair</b>	181	11,074,149	2,284,251	13,358,400		13,358,400
<b>Housing Finance**</b>				0	335,412	335,412
<b>HUD Lead Grant (PPP)</b>				0	0	0
<b>HPD/DOH Outreach Initiative</b>	3	245,287		245,287		245,287
<b>Lead Demonstration</b>	3	165,211	1,548,002	1,713,213		1,713,213
<b>Lead Outreach</b>			13,141	13,141		13,141
<b>TOTAL</b>	<b>187</b>	<b>11,484,647</b>	<b>3,845,394</b>	<b>15,330,041</b>	<b>335,412</b>	<b>15,665,453</b>

\* PS active H/C as of 7/3/17

## Local Law #1 Enforcement and Implementation Statistics for Fiscal Year 2017

<b>Complaints for peeling paint where a child under six years of age resides</b>	
Apartments with Lead Complaints in privately-owned buildings	13,234
Apartments with Lead Complaints in City-owned buildings	184
<b>Inspections by HPD pursuant to Local Law 1 of 2004</b>	
Total inspections in privately-owned buildings	24,043
Total inspections in City-owned buildings	184
<b>Violations issued by HPD pursuant to Local Law 1 of 2004</b>	
Total violations issued	12,774
<b>Status of violations issued pursuant to Local Law 1 of 2004</b>	
Violation certifications submitted by owner	3,107
Certifications that did not result in removal of violations (false certifications)	82
Civil actions brought pursuant to false certification of violations	40
Violations Downgraded (presumed lead-based paint violations issued which were subsequently tested and found to not meet the standard for the issuance of a lead-based paint violation)	4,182
<b>Breakout of violation corrections by HPD</b>	
Jobs performed by HPD to correct violations	690
Total violations corrected by HPD	734
Total amount spent by HPD to correct conditions	\$1,327,605
Average amount spent by HPD per dwelling unit (all jobs)	\$1,924

# LEAD VIOLATIONS ISSUED - FY17



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