

GUIDE TO LOCAL LAW #1 OF 2004 WORK PRACTICES

THIS GUIDE IS INTENDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A COMPLETE OR FINAL STATEMENT OF ALL OF THE DUTIES OF OWNERS WITH REGARD TO LEAD-BASED PAINT HAZARDS AND VIOLATIONS OR REPAIR AND RENOVATION WORK. FOR A COMPLETE STATEMENT OF THE LAW CONSULT HOUSING MAINTENANCE CODE ARTICLE 14 (ADMINISTRATIVE CODE §27-2056.1 ET SEQ.), CHAPTER 11 OF TITLE 28 OF THE RULES OF THE

CITY OF NEW YORK, AND NEW YORK CITY HEALTH CODE §173.14

LINKS TO THE HPD RULES AND THE LAW ARE AVAILABLE AT: www.nyc.gov/lead-based-paint

INFORMATION ABOUT HOW TO CORRECT LEAD HAZARDS WHERE AN ORDER HAS BEEN ISSUED BY THE COMMISSIONER OF HEALTH IS AVAILABLE AT:

<https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead03.pdf>

INFORMATION ON WORKER TRAINING AND CERTIFIED TRAINING PROVIDERS IS AVAILABLE AT: www.epa.gov/lead.

Owners must correct all lead-based paint hazards and lead-based paint hazard violations in dwelling units where a child under the age of 6 resides. A lead-based paint hazard is any condition in a dwelling or dwelling unit where a child under age 6 resides that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. All paint in a pre-1960 multiple dwelling unit where a child under age 6 resides and in the common areas of such multiple dwellings is presumed to be lead paint. Correcting lead-based paint hazards and violations promptly using proper work practices and properly trained workers is critical in preventing lead poisoning in young children.

Lead-based paint hazards must be corrected in accordance with the work practices set forth in section 11-06 of Chapter 11 of Title 28 of the Rules of the City of New York (28 RCNY §11-06), and trained workers must be used to do the work. Lead-based paint violations issued by the Department of Housing Preservation and Development must also be corrected using special work practices and trained workers, as set forth in 28 RCNY §11-06. In addition, ANY repair or renovation work in dwelling units where a child under age 6 resides, that disturbs lead-based paint or paint of unknown lead content, is subject to these work practices and must be performed by trained workers. Finally, orders issued by the

Department of Health and Mental Hygiene for correction of violations where a child has been identified to have an elevated blood lead level, must be corrected in accordance with New York City Health Code § 173.14.

Throughout this guide, except where otherwise specified, the words, "department" and "HPD" mean Housing Preservation and Development, and the acronym "DOHMH" means the New York City Department of Health and Mental Hygiene. The term, "this section" refers to the provisions of this guide as set forth herein.

The following work practices apply to work performed in a pre-1960 multiple dwelling or in a multiple dwelling built between 1960 and 1978 where an owner knows there is lead paint, when the work is performed either in a dwelling unit in which a child under age 6 resides or in the common areas of such a building.

Safe Work Practices.

(a) Filing Procedures for Work Disturbing more than 100 square feet of Painted Surface per Room where no Lead-based Paint Hazard Violation has been issued by HPD. For work that will disturb more than 100 square feet of lead-based paint or paint of unknown lead content per room or involves the removal of two or more windows where no lead-based paint hazard violation has been issued by HPD an owner must file a notice of commencement of the work. The notice must be filed with DOHMH not less than ten days prior to beginning the work.

(b) Licensing and Training.

(1) Abatement. All work conducted as part of an abatement must be performed by firms and personnel certified to perform lead-based paint activities in accordance with regulations issued by the United States Environmental Protection Agency (EPA) at subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule. See 28 RCNY §11-01(a) for the definition of "abatement".

(2) **Lead-Based Paint Hazard Violations issued by HPD** and Work Disturbing more than 100 square feet of Painted Surface per Room. Work ordered by HPD to correct a lead-based paint hazard violation issued under article 14 of the Housing Maintenance Code, or work that disturbs more than 100 square feet of lead-based paint or paint of unknown lead content per room, or involves the removal of two or more windows, must be performed by a firm certified to perform lead abatement by the EPA in accordance with subpart L of 40 CFR part 745 or successor rule. Workers conducting such work must be trained, at a minimum, in accordance with the regulations issued by the United States Department of Housing and Urban Development (HUD) at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by HPD or DOHMH. Such work must be followed by clearance dust testing performed by an independent third party who

has been properly trained.

(3) Work Disturbing less than 100 square feet of Painted Surface per Room where no Lead-based Paint Hazard Violation has been issued by HPD. Work performed that will disturb less than 100 square feet of lead-based paint or paint of unknown lead content per room, where no lead-based paint hazard violation has been issued by HPD, must be performed by workers trained under regulations issued by HUD at 24 CFR §35.1330 (a)(4), or successor rule, or under an equivalent program approved by HPD or DOHMH.

Such work must be followed by clearance dust testing performed by an independent third party who has been properly trained.

(4) Turnover Work. Work performed in a dwelling unit upon turnover (vacancy of a unit) in accordance with §27-2056.8 of article 14 of the Housing Maintenance Code and 28 RCNY §11-05. No person shall perform a lead-contaminated dust clearance test pursuant to this paragraph unless such person is a third party, who is independent of the owner and any individual or firm that performs the work upon turnover. Personnel performing lead-contaminated dust clearance testing after completion of such work must be trained in accordance with regulations issued by HUD, or successor rule, or under an equivalent program approved by HPD or DOHMH.

(c) **Recordkeeping.** An owner must keep a record of all work performed pursuant to this section and such records must be maintained for a period of ten years from the date of completion of the work or transferred to a subsequent owner and maintained during such time period and made available to HPD upon request.

(d) **Work Methods.**

Minimizing dust dispersion. Work must be carried out in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas. Repair of lead-based paint hazard violations may be performed by wet sanding, wet scraping, removal, enclosure, encapsulation, replacement or abatement except where otherwise specified in article 14 of the Housing Maintenance Code or the rules promulgated there under. All plastic sheeting used must be six-mil polyethylene.

(e) **Prohibited Methods.** The following methods must **not** be used while performing work that disturbs lead-based paint or paint of unknown lead content under the circumstances described in this guide:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without HEPA (high efficiency particulate air filter) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (5) Dry sanding or dry scraping.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the

United States Consumer Product Safety Commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the United States Occupational Safety and Health Administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

(f) **Work Practices and Surface Finishing.**

(1) All tools and materials used when disturbing paint lead-based paint or paint of unknown lead content must be used in accordance with the manufacturer's instructions.

(2) All work activities must be performed using standard construction and treatment methods, and in accordance with manufacturer's instructions, where applicable.

(3) All surfaces where paint has been disturbed must be sealed and finished with appropriate materials. Underlying surface substrates must be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings must be applied in accordance with the manufacturer's recommendations.

(g) **Occupant Protection.**

(1) Lead-Based Paint Hazard Violations issued by HPD and Work Disturbing more than 100 square feet of Painted Surface. Work ordered by HPD to correct a lead-based paint hazard violation or work that will disturb more than 100 square feet of lead-based paint or paint of unknown lead content, or that involves the removal of two or more windows, must be performed in accordance with the following requirements:

(i) Postings. No later than twenty-four hours prior to beginning work a warning sign of at least 8- 1/2" by 11" with letters at least one inch high, reading as follows: WARNING: LEAD WORK AREA - POISON - NO SMOKING OR EATING must be posted adjacent to the work area and must remain in place until the work area has been cleared for re-occupancy. In addition, a notice of commencement of work information submitted to DOHMH, where applicable, must be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(ii) Pre-cleaning and protecting moveable items. Objects and floors in the work area must be cleaned and then objects must either be moved or protected by plastic sheeting.

(iii) Sealing vents. Forced-air systems within the work area must be turned off and covered with plastic sheeting.

(iv) Affixing doorway entrance flap. The work area must be sealed off from non-work areas by taping with waterproof tape and plastic sheeting to create a flap opening into the work area.

(v) Covering floors. The floor of the work area must be covered with at least two sheets of plastic sheeting.

(vi) Sealing openings. All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with this section, must be sealed with two layers of plastic sheeting.

(vii) Instructing occupants. Occupants must be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved.

(viii) Hazardous materials. All hazardous materials must be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, must be on-site and made available upon request to the occupants of the dwelling unit.

(ix) Clean-up and lead-contaminated dust clearance testing procedures:

(A) Daily clean-up. At the completion of work each day, the work area must be thoroughly wet-mopped or HEPA-vacuumed. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials must be cleaned as follows:

(a) Large debris (e.g., door, windows, trim). Large debris must be wrapped in plastic sheeting, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris must be HEPA-vacuumed or wet swept and collected. Dry sweeping is prohibited.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area must be examined visually to ensure that no lead debris has escaped containment.

(d) Supply storage. Upon finishing work for the day, all work supplies must be stored in sealed containers or removed from the premises, in a lawful manner.

(B) Final clean-up. Final cleaning must be performed as follows, in the following sequence:

(a) The final cleaning process may not start sooner than one (1) hour after paint disturbance activities have been completed, but before repainting, if necessary.

(b) First, all plastic sheeting must be sprayed with water mist and swept prior to removal and placed in double four-mil or single six-mil plastic bags. Plastic bags must be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area must be HEPA-vacuumed.

(d) Third, all surfaces in the work area must be washed with a detergent solution. Wash water must be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process must be HEPA-vacuumed again.

(f) Fifth, all surfaces must be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed.

(C) Final inspection. After final clean-up, and re-painting if necessary, has been completed, a final inspection must be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation must include a visual inspection and lead-contaminated dust clearance testing. Three wipe samples must be collected and tested from each room or work area; one wipe sample each must be taken from a window well, a window sill and the floor. In addition, lead-

contaminated dust clearance samples must be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(D) Clearance for re-occupancy.

Lead-contaminated dust levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every lead-contaminated dust sample result is equal or below the following levels may be cleared for re-occupancy:

- Floors: 5 micrograms of lead per square foot
- Window Sills: 40 micrograms of lead/ square foot
- Window Wells: 100 micrograms of lead/ square foot

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed, and dust test samples have been collected in compliance with this section. The owner must provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit.

(E) Relocation. (a) An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. Such owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access under housing maintenance code §§27-2009 and 27-2056.4(b), and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in subdivision (g)(1)(ix)(A) of this section; occupants have safe access to areas adequate for sleeping; occupants have bathroom and kitchen facilities available to them; occupants have safe access to entry/egress pathways; and the work does not create other safety hazards (e.g., exposed electrical wiring or holes in the floor). (b) Where compliance with §27-2056.8 of the administrative code would necessitate that an occupant of a dwelling unit where a child under age six resides temporarily relocate from the dwelling unit in accordance with the safe work practices in this section 11-06, and the occupant of such dwelling unit refuses to relocate, the owner shall be exempt from such compliance with §27-2056.8 upon approval by the department of documentation demonstrating the owner's good faith effort to perform the required work and to show the occupant's refusal to relocate. Such exemption shall remain in effect until the dwelling unit is vacated by the previous occupant and turned over to a new occupant. Upon approval of such exemption, the department shall dismiss any violation of §27-2056.8 which was the basis for the owner's request for the exemption, or which was issued after the exemption was granted and prior to the dwelling being turned over to a new occupant. (c) An owner will submit the following documentation to apply for an exemption from compliance with §27-2056.8: (1) a copy of the notice to the tenant explaining the scope of work required to be done, the reasons that temporary

relocation is necessary, and an offer of a suitable, decent, safe and similarly accessible dwelling unit; (2) a document detailing the scope of all work required to be done in the dwelling unit to comply with the requirements of §27-2056.8; (3) the reasons that the work cannot be done without the occupant temporarily relocating from the dwelling unit, including, but not limited to, why the owner cannot provide safe temporary access to the work area as required under 11-06(g)(1)(ix)(F); (4) the offer of a suitable, decent, safe and similarly accessible dwelling unit that the owner conveyed to the occupant for temporary relocation; and (5) a document, signed by the occupant, refusing to temporarily relocate from the unit so that the work described in the scope of work can be performed, or, if the tenant has refused to relocate and has refused to sign such document, an affidavit from the owner regarding such occupant's refusal, including the date and time of the owner's good faith effort to contact the occupant.

(F) Temporary access to the work area when occupants not relocated. When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day, provided that at the end of each work day:

(a) Any work area to be accessed is properly cleaned as specified in the daily clean-up requirements of subdivision (g)(1)(ix)(A) of this section and the final clean-up requirements of subdivision (g)(1)(ix)(B)(b) through (d) and (f);

(b) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;

(c) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(d) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(e) Work areas are prepared in accordance with the requirements above when work recommences; and

(f) At the end of each work day, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed by the person responsible for overseeing the work. No person shall make a false, untrue or misleading statement or forge the signature of another person on any document or record required to be prepared pursuant to these rules.

(g) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the actions required by clauses (a) through (f) of this subparagraph (F). Nothing herein shall extend the time for compliance with any violation issued pursuant to article 14 of the Housing Maintenance Code.

(2) Work Disturbing less than 100 square feet of Painted Surface per Room where no Lead-based Paint Hazard Violation has been issued by HPD. Work that will disturb less than 100 square feet of lead-based paint or paint of unknown lead content per room where no lead-based paint hazard

violation has been issued by HPD must be performed in accordance with the following requirements:

(i) Postings. A warning sign must be posted in accordance with subdivision (g)(1)(i) of this section and caution tape must be placed across the entrance to the work area.

(ii) Pre-cleaning and protecting moveable items. Must be performed as described in subdivision (g)(1)(ii) of this section.

(iii) Covering floors. The floor of the work area must be covered with plastic or equivalent sheeting as described in subdivision (g)(1)(ii) of this section.

(iv) Sealing openings. Where applicable, forced air systems in the work area must be turned off and any openings in the work area must be sealed as described in subdivision (g)(1)(iii) and (iv) of this section.

(v) Instructing occupants. Occupants must be instructed by the owner and the contractor to avoid entering the work area until final cleanup has been completed.

(vi) Hazardous materials. All hazardous materials must be handled as described in subdivision (g)(viii) of the section.

(vii) Clean-up and lead-contaminated dust clearance testing must be conducted in accordance with subdivision (g)(1)(ix) of this section

(viii) Relocation and temporary access to the work area when occupants are not located, where provided, must be performed in accordance with (g)(1)(ix)(E) and (F) of this section.

(3) Turnover. Work performed in a vacant dwelling unit on turnover in accordance §27-2056.8 of article 14 of the Housing Maintenance Code.

(i) Preparation. The procedures described in subdivision (g)(2)(i)-(iv) of this section must be followed, unless the work is being performed during occupancy where a child under age six resided.

(ii) Clean-up. At the completion of work, the work area must be thoroughly wet-mopped or HEPA-vacuumed and a visual examination must be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris must be wet-mopped or HEPA-vacuumed. All work supplies must be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(iii) Lead-contaminated dust clearance testing. Lead-contaminated dust clearance testing must be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

¹Under HPD's rules, "Turnover" means the new occupancy of a dwelling unit after termination of a prior tenancy and does not include temporary relocation of a tenant. Owners must repair all lead hazards in any pre- 1960 multiple dwelling unit or in any pre-1960 non owner occupied private dwelling unit. Owners must certify that they have complied with the turnover requirements in a notice provided to the new occupant.

