



City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, N.Y. 10038

VICKI BEEN
Commissioner

December 5, 2014

Hon. Melissa Mark-Viverito, Speaker
New York City Council
City Hall
New York, N.Y. 10007

**Re: Report to the City Council:
Implementation of Local Law #1 of 2004 in FY 2014**

Dear Speaker Mark-Viverito:

I am pleased to submit to the City Council the Department of Housing Preservation and Development's report on the implementation of Local Law #1 of 2004, in accordance with Administrative Code §27-2056.12. The report contains a narrative analysis of the program and incorporates a statistical section on expenditures, enforcement, and implementation.

Thank you for your time and attention to the report.

Sincerely,

A handwritten signature in cursive script that reads "Vicki Been".

Vicki Been

**REPORT TO THE CITY COUNCIL:
THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S
IMPLEMENTATION OF LOCAL LAW #1 OF 2004
IN FY 2014**

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 2014.

LOCAL LAW #1

Local Law #1 is the City's Lead Poisoning Prevention and Control Law. 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 complaints are received by HPD. Complaints are called in to 311 by tenants. 311 operates 24 hours a day, seven days a week. If a complaint includes peeling paint or describes a condition which could cause deteriorated surfaces (such as leaks or mold), the operator will ask if there is a child under six living in the apartment.¹ For lead complaints, 311 operators attempt to obtain information regarding children in the household, including the name and age of any children under six. The number of apartments filing lead complaints decreased significantly from FY12 to FY13, from 14,520 to 12,695 and has continued to decrease from FY13 to FY 14 by another 200 complaints (12,695 to 12,453).

In FY10, HPD modified the intake process so that 311 asks about children under six for almost all apartment-based complaints; only complaints specifically about building-wide heat or hot water are excluded from this process. Complaints where a child under six is identified as an occupant of the apartment even though there is no indication of a peeling paint condition are referred to the Lead-Based Paint Inspection Program (LBPIP) for inspection as outlined below, but are not counted as lead-based paint complaints.

After an attempt is made to contact the landlord to advise him/her of the lead-based paint complaint, the complaint is forwarded to HPD's 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

Complaint Inspection - Pursuant to statutory mandate, an inspection must be attempted within 10 days from the date of a lead-based paint complaint. 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

¹ As of October 1, 2006, the Board of Health reduced the applicable age of a child to under six years old from under seven years old pursuant to the authority provided by Local Law #1. HPD modified its documents and procedures to implement this change.

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.

Line of Sight Inspection – In addition to conducting lead-based paint inspections in response to a complaint, the law requires HPD to proactively inspect for lead hazards on all inspections where a child under six resides in the apartment. 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 lives there. 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.

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

Inspection outcomes

For Fiscal Year '14:

- 10% of all tests of painted surfaces tested positive for lead paint.
- The number of lead violations issued (tested and presumed) decreased by 4% overall.
 - The number of positive lead violations decreased by 12%.

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 is also attempted to the registered agent/owner of the property 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 its contractors.

The EREH is comprised 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 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 repair. For the majority of cases, the work order is forwarded to the Bureau of Maintenance Procurement (BMP). BMP then awards the job to one of the approved contractors. Once awarded, the order is sent to the EREH for daily monitoring of the contractor's work, including the taking of 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.

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 a dust wipe test. If the dust wipe test shows clearance levels have been achieved, the repair order is closed. In this case, the violation remains open on HPD's violation record, because the statute does not permit HPD to remove the violation if there is no record 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 the unit, 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 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 the owner 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 142 access warrant cases in FY14 under LL# 1.

Violation Certification

As mentioned above, 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 that violations have been properly corrected, Code Enforcement must attempt to re-inspect the condition within 14 days.

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. Whether or not a tenant protest is received, inspectors attempt to re-inspect the condition within 14 days of the certification period.

The tenant is also advised 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 have been properly corrected, the violations remain open since Local Law #1 requires both appropriate documentation and a physical inspection. In 43% 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 21 cases against owners for false certification of the correction of violations. In FY14, the Lead Unit was awarded \$41,500 in civil penalties and collected \$42,500 (collections include previous year penalties).

If the condition is found to be corrected, the violation is closed.

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 (i.e., 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. All inspectors working as of November 1, 2004 received the same training in advance of implementation of Local Law #1. 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 Public Outreach and Education Unit continues to provide courses in Lead Awareness, Safe Work Practices, Local Law #1 Compliance and Visual Assessment, 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 four contracts with maximum award capacity of \$2,950,000 for remediation and abatement, and three contracts with maximum award capacity of \$150,000 for dust wipe analysis.

City-Owned Housing

In addition to implementing a process for the enforcement of Local Law #1, as the owner of many multiple dwellings HPD also implemented procedures to ensure compliance with Local Law #1 in its property management programs. The Division of Property Management (DPM) inspects for and identifies the existence of lead paint hazards in these units. Inspections resulting in the identification of lead paint hazards are entered into the computer system, and conditions in units where children under six reside are referred to the EREH for correction. The ongoing annual notification process for tenants was revamped to reflect the 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 paint hazards. Units that do not respond to the annual notification are inspected 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.

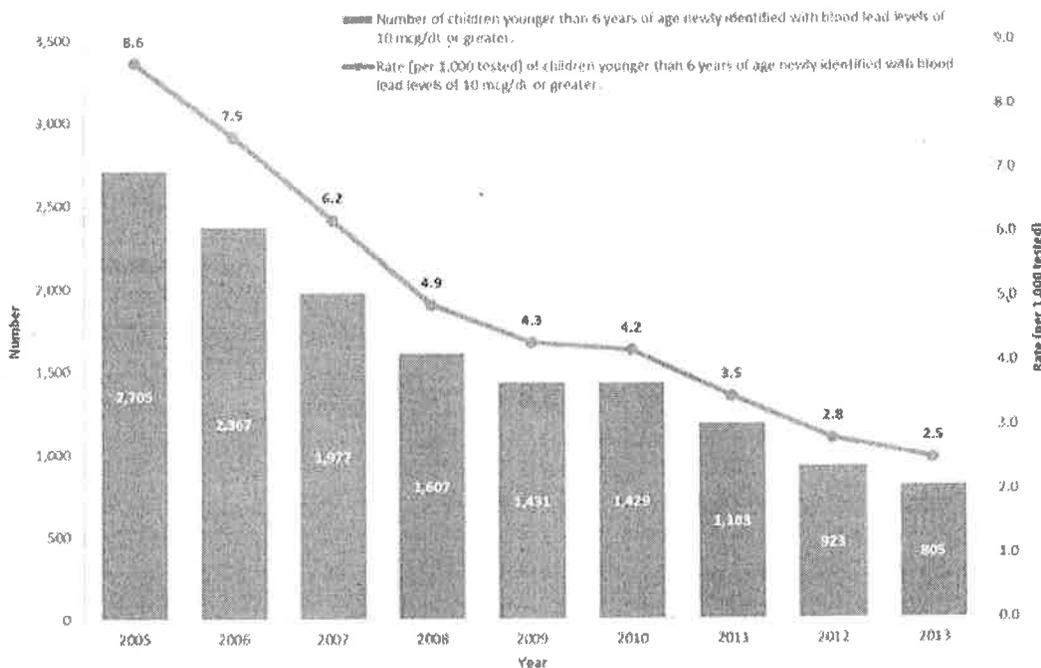
Lead Poisoning Cases in New York City

On October 6, 2014, the Commissioner of DOHMH issued a press release describing the strides made by New York City in combating childhood lead poisoning. As reported by DOHMH:

The number of young children with lead poisoning in New York City in 2013 is at a historic low, the DOHMH recently announced in its annual report to the City Council. In 2013 there were 805 children under 6 years of age newly identified with lead poisoning, a 13 percent decline compared to 2012, when the total was 923. The number of childhood lead poisoning cases has declined 70 percent since 2005, but lead poisoning continues to disproportionately affect children of color and children living in low income neighborhoods.

“New York City has made great progress in reducing childhood lead poisoning, but children of color, especially those in low income communities living in older, poorly maintained housing, make up the largest proportion of lead poisoned children,” said Dr. Mary Bassett, New York City Health Commissioner. “We are targeting our efforts to those communities to help reduce these disparities and eliminate the risk of lead poisoning for all children.”

Figure 1. Continued Decline in Number of Children with Lead Poisoning



Source: New York City Department of Health and Mental Hygiene Childhood Blood Lead Registry, 2005 - 2013.

When a blood lead level of 15 mcg/dL or higher is detected in children younger than 18, DOHMH conducts a home inspection to identify lead paint hazards and other lead exposures. If lead paint hazards are identified, DOHMH orders the building owner to repair the problem. In 2013, 285 children under 18 years of age were newly identified with blood lead levels of 15 mcg/dL or higher. Of these children, 254 were younger than 6 years of age, the age group with highest risk. This represents a 19 percent decline compared to 2012.

In 2013, Hispanic, Black and Asian children represented 83 percent of children younger than 6 with blood lead levels of 15 mcg/dL or greater, while their proportion in the population of New York City children younger than 6 was 68 percent. This difference was driven mostly by the disproportionate number of Asian children among children with lead poisoning. In 2013, there were 55 Asian children under 6 years of age who had blood lead levels of 15 mcg/dL, representing 22 percent of the total number of children with this blood lead level. Asian children under 6 years of age represent just 11 percent of the total population of children citywide. Also in 2013, 60 percent of the children younger than 6 years of age with blood lead levels of 15 mcg/dL or greater lived in high poverty neighborhoods (defined as zip codes with 20 percent or more of the population living below poverty level).

In addition to home inspections, the DOHMH also reaches out to parents and health care providers of children with blood lead levels between 5-9 mcg/dL, providing education and guidance on preventing lead poisoning. Early identification is important in order to identify and prevent further exposures as quickly as possible, and inspections also are offered to families of young children with blood lead levels between 10 and 14 mcg/dL. These approaches have contributed to the ongoing decline citywide in number of lead poisoned children.

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

Detailed Statement of Expenditures

The following table summarizes Expenditures and Capital Commitments for HPD's Lead Program in FY'14

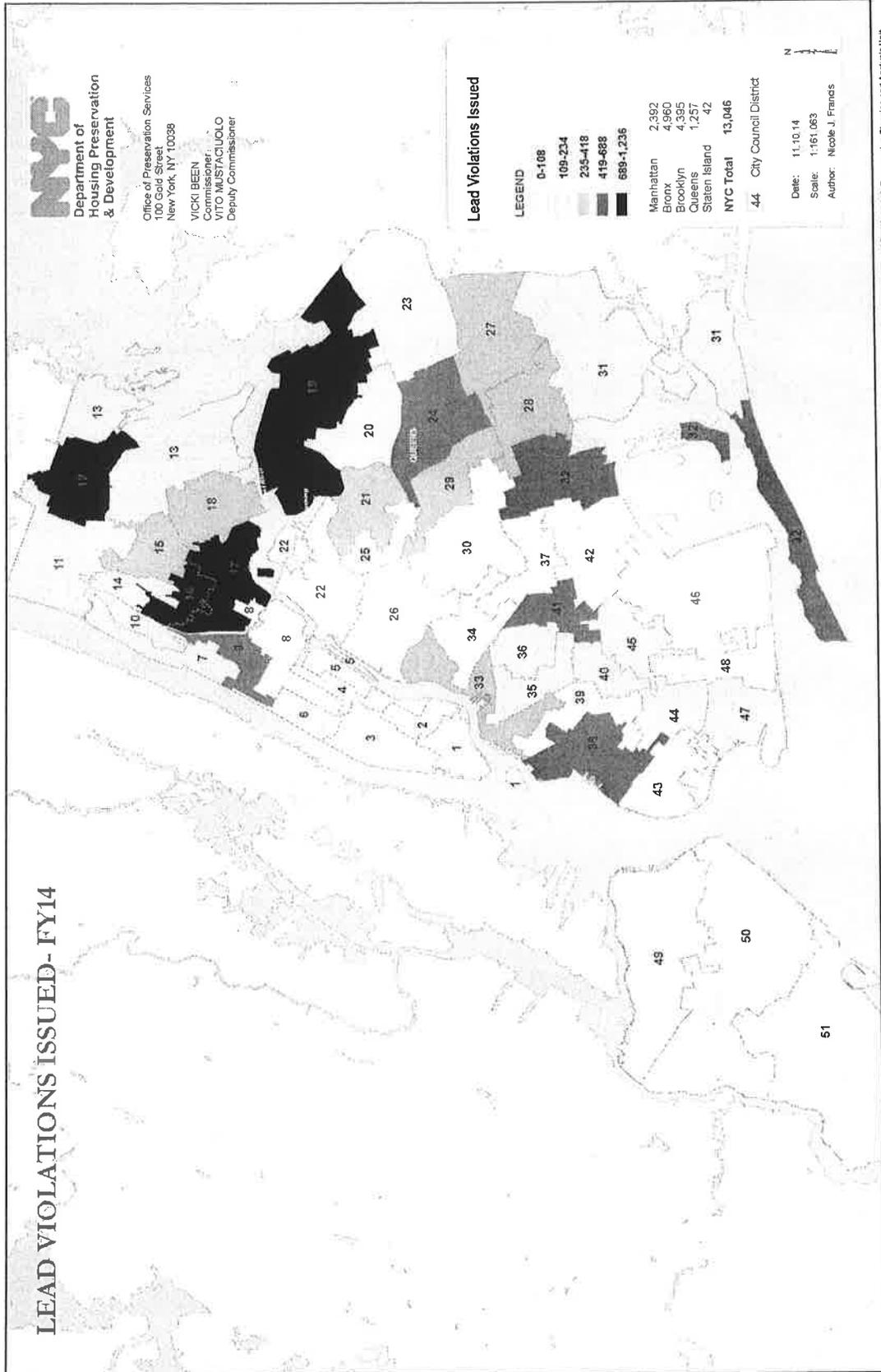
FY'14 Lead						
	Headcount*	Personnel Service Expenditures	Other Than Personnel Service Expenditures	Expense Total	Capital Actuals	TOTAL
Total Lead	199	11,684,972	1,925,660	13,610,632		13,610,632
Housing Finance				0	3,242,000	3,242,000
HUD Lead Grant (PPP)				0		0
HPD/DOH Outreach Initiative	4	286,624		286,624		286,624
Lead Demonstration	4	208,790	613,654	822,444		822,444
Lead Outreach			5,688	5,688		5,688
TOTAL	207	12,180,386	2,545,002	14,725,388	3,242,000	17,967,388

* PS active H/C as of 6/30/14

Local Law #1 Enforcement and Implementation Statistics for Fiscal Year 2014

Complaints for peeling paint where a child under six years of age resides	
Apartments with Lead Complaints in privately-owned buildings	12,453
Apartments with Lead Complaints in City-owned buildings	32
Inspections by HPD pursuant to Local Law 1 of 2004	
Total inspections in privately-owned owned buildings	24,165
Total inspections in City-owned buildings	117
Violations issued by HPD pursuant to Local Law 1 of 2004	
Total violations issued	13,150
Status of violations issued pursuant to Local Law 1 of 2004	
Violation certifications submitted by owner	2,859
Certifications that did not result in removal of violations (false certifications)	60
Civil actions brought pursuant to false certification of violations	21
Breakout of violation corrections by HPD of 2004	
Jobs performed by HPD to correct violations	805
Total violations corrected by HPD	1,145
Total amount spent by HPD to correct conditions	\$1,330,881
Average amount spent by HPD per dwelling unit (all jobs)	\$1653

Local Law #1 Violations by Council District for Fiscal Year 2014



City of New York, Department of Housing Preservation and Development, Preservation Planning and Analysis Unit.

CD 1 in Manhattan had no lead-based paint violations issued during the period.

