

“Get Ahead of Lead” October 2021 Briefing

Dear Property Owners,

Furthering our commitment to providing property owners information on their obligations under the law, the Department of Housing Preservation and Development (HPD) will be publishing a series of quarterly bulletins online and via email. Each bulletin will highlight one aspect of the law and is not meant to comprehensively cover all laws and rules that apply. This bulletin will be available in other languages on [HPD’s webpage](#) within the next two weeks, under the heading *Briefings*.

This publication is intended for informational purposes only and is not intended as legal advice. This information is not a complete or final statement of all the duties of owners and tenants regarding laws and rules relating to housing in New York City.

ATTENTION: THE LEVEL OF LEAD IN PAINT WHICH TRIGGERS THE REQUIREMENTS OF LOCAL LAW 1 OF 2004 IS CHANGING

Under the NYC Childhood Lead Poisoning Prevention Act, also known as Local Law 1 of 2004 (Local Law 1), the definition of lead-based paint currently in effect is paint that has a lead content measured at 1.0 mg/cm² or greater. The lead paint content can be determined by either:

- Laboratory analysis of a paint chip sample collected by a certified lead inspector or risk assessor; or
- By an instrument called an X-ray Florescence analyzer (XRF), which can be used on site by a certified lead inspector or risk assessor. This instrument must be approved at a level of testing called an “action level” by the U.S. Department of Housing and Urban Development. The approval becomes official through the issuance of a performance characteristic sheet (PCS), which states the action level that the instrument has been tested at and provides guidance about how to use and understand the results of the tested and approved instrument.

On December 1, 2021, in compliance with Local Law 66 of 2019 and the rules adopted by the Department of Housing Preservation and Development (HPD), the definition of lead-based paint will be amended to be defined as paint that has a lead content measured at 0.5 mg/cm² or greater as determined by laboratory analysis or an XRF instrument with an approved PCS and programmed at a testing action level of 0.5 mg/cm². The U.S. Department of Housing and Urban Development has approved a PCS for the XRF instrument Viken Detection Model Pb200i tested at a 0.5 mg/cm² action level. Therefore, this instrument will be required to conduct XRF testing in New York City until another such commercially available instrument tested at a 0.5 mg/cm² action level is issued an approved PCS at that action level.

The PCS for the Viken Detection Model Pb200i tested at a 0.5 mg/cm² action level classifies results as follows:

- **positive** for lead-based paint if the machine measures lead content to be greater than or equal to 0.6 mg/cm²
- **negative** for lead-based paint if the machine measures lead content to be less than or equal to 0.4 mg/cm²
- **inconclusive** for lead-based paint if the machine measures lead content to be equal to 0.5 mg/cm².

This change in the sensitivity of the machine to test for lead in paint at lower levels of lead means that surfaces that were previously tested as negative for lead-based paint using an XRF instrument at the 1.0 mg/cm² action level may test positive when using an approved instrument programmed at the 0.5 mg/cm² action level as will be required after December 1, 2021.

What does this mean for building owners?

The change impacts all requirements under Local Law 1, including but not limited to:

- The issuance of HPD violations for lead-based paint hazards
- Compliance with requirements applicable on the turnover of units
- Compliance with the requirement to complete XRF testing in all units subject to Local Law 1 by 2025
- Lead-based paint exemptions issued by HPD

Please carefully review the [Frequently Asked Questions](#) document attached for more specific information about the changes relevant to each process.

Below is an explanation of the impact this change will have on the HPD violation process:

- **CURRENT:** HPD conducts visual inspections in apartments in buildings built prior to 1960 where a child under six resides and performs XRF testing where the paint is peeling.
 - ***Paint is Positive*** for lead if the lead content is determined by the XRF instrument to be 1.0 mg/cm² or greater. HPD will then issue a violation for a lead-based paint hazard. An owner cannot contest this violation.
 - ***Paint is Negative*** for lead if the lead content is determined by the XRF instrument to be 0.9 mg/cm² or less. HPD will not issue a violation for a lead-based paint hazard.
 - ***Paint is untested but presumed to be lead-based paint*** based on the presumption established in Local Law 1. If an inspector observes a child under six residing in an apartment and the paint is peeling but the paint is not able to be tested by the inspector then or by HPD during a follow-up inspection, HPD issues a presumed lead-based paint hazard violation. An owner can contest this violation by providing laboratory or XRF test results that show the paint has been determined to have a lead content of less than 1.0 mg/cm². The XRF testing must be performed using an instrument with an approved PCS at the 1.0 mg/cm² action level and testing at that 1.0 mg/cm² testing action level.
- **STARTING DECEMBER 1, 2021:** HPD inspectors will continue to inspect using the same process but will be using XRF instruments with the approved PCS at the 0.5 mg/cm² action level and set to that testing action level of 0.5 mg/cm².
 - ***Paint is Positive*** for lead if the lead content is determined by the XRF instrument to be 0.6 mg/cm² or greater. HPD will then issue a violation for a lead-based paint hazard. An owner cannot contest this violation.
 - ***Paint is Negative*** for lead if the lead content is determined by the XRF instrument to be 0.4 mg/cm² or less. HPD will not issue a violation for a lead-based paint hazard.
 - ***Paint is untested but presumed to be lead-based paint*** based on the presumption established in Local Law 1. Same as the current process, if an inspector observes a child under six residing in an apartment and the paint is peeling but the paint is not able to be

tested by the inspector then or by HPD during a follow-up inspection, HPD will issue a presumed lead-based paint hazard violation. An owner can contest this violation by providing laboratory or XRF test results that show the paint has been determined to have a lead content of less than 0.5 mg/cm². The XRF testing must be performed using an instrument with an approved PCS at the 0.5 mg/cm² action level and testing at that 0.5 mg/cm² testing action level.

- ***Paint is tested as “inconclusive” for lead content at 0.5 mg/cm² and is presumed to be lead-based paint.*** HPD will issue a presumed lead-based paint hazard violation with a new violation order number specific to this result. An owner can contest this violation **ONLY** by providing laboratory test results that show the paint has been determined to have a lead content of less than 0.5 mg/cm². XRF testing will not be accepted for the contestation.