

## **New York Lead Hazard Control Regulations Summary – 11/30/23**

Lead paint and dust are of particular concern in New York State given that the state has the oldest housing stock in the nation. Approximately 78% of New York's housing stock was built before 1978, the year in which the federal government banned lead paint. New York also has more known cases of children with elevated blood levels than any other state. Approximately 28,820 children born in New York in 2019, or 12% of births, reportedly have blood lead levels greater than 2 µg/dL. Lead exposure among New York children born in 2019 is projected to carry an estimated \$6.4 billion lifetime economic burden due to reduced lifetime productivity, premature mortality and increased spending on health care utilization, education and social assistance.

Various measures have been enacted in New York to help address the dangers of lead paint and dust, some of which are summarized below.

### ***New York State Public Health Law***

In 1970, finding that childhood lead poisoning was a "major public health concern", the New York State Legislature enacted Title X of Article 13 of the Public Health Law. The Public Health Law banned the use and sale of lead-based paint in New York State. The Law authorized the State Commissioner of Health, local county health departments, and local housing code agencies to designate areas of residential dwellings with paint "condition[s] conducive to lead poisoning" and order the removal of these conditions. Conditions conducive to lead poisoning include lead-based paint that is chipping, peeling, or otherwise accessible for ingestion or inhalation by children.

In 1992, the Public Health Law was amended to authorize, inter alia, mandatory blood lead level screenings for children and the creation of a Lead Poisoning Prevention Program within the State Department of Health. Physicians and other medical providers who provide care to children must screen children at 12 and 24 months of age, and at each well-child visit or annually up to age six (6). The results of all blood lead tests must be reported to the state and local health departments.

Once a child with elevated blood lead levels has been identified to the local health department, the department shall perform a lead exposure assessment evaluating conditions "conductive to lead poisoning" for any dwelling, child facility, or other area in which the child spends a significant period of time. Such investigation may involve the sampling and testing of peeling or chipping paint in an approved laboratory or the use of x-ray fluorescence testing. If the lead exposure assessment identifies a condition conducive

to lead poisoning, the local health department must provide the property owner with written notice and demand for discontinuance. Actions required to abate a lead-based paint hazard condition may include “encapsulation, replacement, enclosure, or removal” and may involve the removal of chipping paint, the replacement of building components with lead-free materials, and the scraping and/or sanding of surfaces to remove paint. If the owner of a dwelling fails to comply with the notice and demand, the county health department may conduct a formal hearing and, on proof of violation, may order the abatement of the paint condition and assess a penalty of up to \$2,500.

### ***New York Property Maintenance Code***

The State Code is part of the New York State Fire Prevention and Building Code. The State Code requires that all exterior building surfaces, including but not limited to doors, door frames, window frames, and porches, be maintained in “good condition.” It further provides that “[p]eeling, flaking, and chipped paint shall be eliminated and surfaces repainted.” The State Code also requires that all interior building surfaces, including doors and windows, be maintained in “good, clean and sanitary condition” and provides that “[p]eeling, chipping, flaking or abraded paint shall be repaired, removed or covered.”

Appendix J of the State Code sets forth provisions that apply to the repair, alteration, change of occupancy, addition, and relocation of existing buildings.

Specific to lead-based paint, the State Code provides:

In addition to requirements of this code, 40 CFR 745 (titled “Lead-based Paint Poisoning Prevention in Certain Residential Structures”), a regulation issued and enforced by the Federal Environmental Protection Agency, applies to certain activities in buildings that may contain lead-based paint, including renovations performed for compensation in “target housing” and “child-occupied facilities,” “abatement” of lead-based paint hazards and other “lead-based paint activities” (as those terms are defined in 40 CFR Part 745).

Any person who violates an order to remedy a condition pursuant to the State Code or who knowingly violates the State Code is subject to a fine of up to \$1,000 per day.

### ***New York Warranty of Habitability***

In 1975, the New York State Legislature codified the common law warranty of habitability by enacting Real Property Law § 235-b. The statute requires that all leased residential premises be “fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.” A rental property that has conditions conducive to lead poisoning is unfit for human habitation and violates the warranty of habitability owed by the landlord to all tenants of such property.

### ***New York Attorney General’s Enforcement of Lead Hazard Laws***

New York Attorney General Letitia James has taken various actions against landlords for violations of federal, state, and local lead hazard laws. For example, in July 2023, Attorney General James, Onondaga County Executive Ryan McMahon, and Syracuse Mayor Ben Walsh filed a lawsuit against William D'Angelo and his company Marpat LLC for repeatedly and persistently violating lead safety laws at nearly two dozen rental properties in Syracuse. Also in July 2023, Attorney General James filed a lawsuit against Syracuse landlord Todd Hobbs for repeated and persistent violations of lead safety laws at more than a dozen rental properties. Attorney General James also filed a motion for a preliminary injunction against Hobbs, seeking to stop him from selling off his properties while litigation is pending.

In March 2023, Attorney General James sued Buffalo landlord Farhad Raiszadeh for repeated and flagrant violations of lead safety laws at dozens of properties in East Buffalo. In November 2022, Attorney General James secured \$5.1 million in restitution and penalties to fund ongoing childhood lead poisoning prevention programs administered by the City of Buffalo and Erie County, as a result of a September 2020 lawsuit against a group of individuals and companies in the Buffalo region for illegally allowing lead paint-related hazards to proliferate in their rental properties.

In June 2022, Attorney General James shut down Syracuse landlord John Kiggins and his company, Endzone Properties, Inc., for repeatedly violating lead paint laws and failing to address lead paint hazards, which resulted in the lead poisoning of 18 children living in Endzone properties in Syracuse.

In September 2021, Attorney General James announced an agreement in her lawsuit against Chestnut Holdings of New York, Inc., a property management corporation, over its failures to protect children from lead paint hazards in New York City. Also in September 2021, Attorney General James reached a pre-suit agreement with A&E Real Estate Holdings, LLC to ensure that children living in its New York City apartments are protected from dangerous lead-based paint.

### ***New York City Laws***

In 2004, the New York City Council, finding that childhood lead poisoning from paint was a preventable public health crisis, enacted the New York City Childhood Lead Poisoning Prevention Act of 2003. The Act establishes a rebuttable presumption that the paint in apartments built prior to January 1, 1960 where a child under six resides is "lead-based paint." The Act requires owners of apartment buildings where children under six live "to prevent the reasonably foreseeable occurrence" of lead-based paint hazards and expeditiously remediate those hazards.

"Lead-based paint hazards" are lead dust, and lead-based paint that is peeling (e.g., paint that is chipping, curling, or "not completely adhered to the underlying surface") or is present on chewable surfaces (e.g., interior window sills), deteriorated subsurfaces (e.g., rotting or decayed wood), friction surfaces (e.g., painted surfaces that touch other painted surfaces,

such as doors, hinges, and window frames), and impact surfaces (e.g., any interior painted surface that show chipping, marking, or denting).

The Act directs owners to conduct investigations at least annually for “peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces” in apartments in regulated buildings where a child under six resides and to expeditiously remediate all lead-based paint hazards and underlying defects. Upon turnover of the tenants in any apartment in an apartment building constructed prior to January 1, 1960, owners must:

- (1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
- (2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
- (3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
- (4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

When a dwelling unit changes tenants, owners are required under Local Law 1 to complete certain lead-based paint activities focused on making the unit safe for a new tenant and before the new tenant takes occupancy (regardless of whether the new tenant has a child at the time of initial occupancy). This is referred to as “turnover.”

Owners must:

- Remediate all lead-based paint hazards and any such underlying defects, when such underlying defects exist. At a minimum this would mean wet scrape and paint.
- Provide for the removal of lead-based paint on chewable surfaces with evidence of teeth marks or encapsulate the surface with a hard, puncture resistant encapsulant.
- Provide for the removal of all lead-based paint on friction surfaces on all doors and door frames.
- Provide for the removal of all lead-based paint on frictions surfaces on all windows or provide for the installation of replacement window channels or sliders on the friction surfaces.
- Make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable.
- All the work must be done following the safe work practices described below. Owners must then certify compliance with the turnover requirements on the Lease/Commencement of Occupancy Notice for Prevention of Lead-Based Paint Hazards (Contrato/Comienzo de Ocupacion y Medidas de Precaucion con los

Peligros en la Pintura-Encuesta Respecto al Niño) provided to the new tenant with the lease (and at lease renewal) and provide documentation to the new tenant upon request along with a copy of the Lead Paint Hazards in the Home (Peligros de la Pintura con Plomo en el Hogar) pamphlet. HPD has created sample forms for an owner to document the turnover inspection was completed: see the Sample Forms for Turnover Vacancy Compliance

Local Law 1 of 2004 requires that owners follow and retain evidence that safe work practices were used for all repair work in a dwelling unit or building common area where a child under the age of 6 resides when more than 2 square feet of lead-based paint or paint of an unknown lead content is disturbed.

- The owner must use contractors certified in abatement by the United States Environmental Protection Agency (EPA) and the level of certification increases if the work being done is over 100 square feet, or requires the removal of two or more painted windows, is in response to a violation, or is specifically for abatement.
- For work that does not meet these elevated requirements, the owner must hire a contractor firm who is a certified do to renovation (known as Renovation, Repair and Painting or RRP) by the EPA. The EPA website has information about the Renovation, Repair and Painting (RRP) program. After the work is completed, an EPA-certified Lead Inspector or Risk Assessor must take dust samples to confirm the area is free of lead-contaminated dust, below the levels provided in Local Law 1 and HPD's rules. Owners must retain copies of the firm and worker certificates for the work and the dust samples, the results of the dust samples, and any invoices or documentation of the work done.
- The RRP certification requirement extends to plumbers, electricians, carpentry, etc., if there is any work being done where paint would be disturbed.
- Failure to follow safe work practice can result in violations being issued by the Department of Buildings (DOB) or DOHMH

After an owner has completed work upon turnover, a lead-contaminated dust clearance test must be performed by a third party (neither the owner nor the individual or company that performed the turnover work). Owners must certify compliance with the turnover provisions in a notice provided to a new tenant upon signing a lease. Between 2019 and 2021, New York City lowered their lead dust clearance and lead dust hazard risk assessment testing standards twice. Specifically, New York City lowered their standards for floors, window sills and window wells (*i.e.*, troughs), respectively, from 40 µg/ft<sup>2</sup>, 250 µg/ft<sup>2</sup>, and 400 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup>, 50 µg/ft<sup>2</sup>, and 100 µg/ft<sup>2</sup> in 2019 (effective June 12, 2019)<sup>121</sup> and again to 5 µg/ft<sup>2</sup>, 40 µg/ft<sup>2</sup>, 100 µg/ft<sup>2</sup> in 2021 (effective June 1, 2021).

### ***NYC 5-Year Testing Requirement (Local Law 31 of 2020)***

Effective August 9, 2020, Local Law 31 of 2020 states that an owner must use an Environmental Protection Agency (EPA) certified inspector or risk assessor, independent of

the owner or any firm hired to perform lead-based paint remediation, to test for the presence of lead-based paint in a dwelling unit of a building built prior to 1960. The inspection must take place within 5 years of the effective date of the law (by August 9, 2025) or within one year if a child under the age of 6 comes to reside in the unit (whichever is sooner). This requirement must also be met if the rental building was built between 1960 and 1978 and the owner has actual knowledge of lead-based paint. As of January 1, 2020, the term “reside” now means that a child under six years of age lives in the dwelling unit in a pre-1960 building, OR a child under six years of age routinely spends 10 or more hours per week in such a dwelling unit.

### ***Erie County Laws***

The County Code was promulgated and adopted by the Erie County Board of Health on May 7, 1948 pursuant to § 347 of the New York State Public Health Law and § 504 of the Erie County Department of Health Charter. The County Code seeks ensure “that the quality of housing and other properties is adequate for protection of public health,” including “safety from lead poisoning.” Dwellings cannot be occupied or leased to another unless the premises “are clean, sanitary, fit for human occupancy” and compliant with all applicable laws.

The County Code mandates that “[t]he owner of any ... premises, dwellings, dwelling units, or parts thereof shall take action to prevent the occurrence of conditions conducive to lead poisoning and shall expeditiously correct an identified or presumed lead hazard using Lead Safe Work Practices, ... .” A “condition conducive to lead poisoning” is defined to include, inter alia: (1) when children with elevated blood lead levels have been previously identified in the building; (2) when lead paint is accessible for ingestion or inhalation; or (3) where deterioration of lead paint, through peeling, chipping, chalking or cracking, is likely to occur.<sup>126</sup> The existence of conditions conducive to lead poisoning in residential properties is classified as a “Nuisance.” Lead-based paint is presumed to be present in residential properties constructed before January 1, 1978.

The County Code further defines Lead Safe Work Practices to include, in part, “implementing dust control and clean-up methods discussed in the EPA Renovation, Repair and Painting Rule or as approved by the Erie County Commissioner of Health.” Art. IX § 1.7(ee). Article IX of the County Code further requires that “[a]ll correction and control of lead hazards and regular maintenance, painting or renovation performed in housing constructed prior to January 1, 1978 must be performed by an individual certified by the EPA or who possesses other lead safe certification as approved by the Erie County Commissioner of Health.” Art. IX § 1.22(i)(3)(i)(a).

Where the Erie County Department of Health (County Health) has issued a notice of conditions conducive to lead poisoning, the owner of the subject property must submit a work plan or lead-based paint reduction plan (Lead Safe Work Plan) for approval by County Health prior to the owner commencing any work. Proof of EPA or other approved lead safe certification for the individual performing the corrections must be provided to County Health

prior to the commencement of any work and shall be included as part of the work plan or lead-based paint hazard reduction plan.

All identified or presumed lead hazards must be corrected within 45 days of receiving a Notice or as agreed upon with County Health. Violators are subject to civil penalties of up to \$250 per day for each violation of the County Code, and penalties of up to \$500 per violation per day if, upon County Health reinspection, the violation has not been remedied. Each day a violation continues constitutes a separate offense. The County may bring an action to enforce the County Code in any court of competent jurisdiction

### ***Onondaga County Laws***

The Onondaga County Sanitary Code seeks “to protect, preserve, and promote the physical and mental health and social well-being of the people” by ensuring that “the quality of housing is adequate for protection of public health, safety, and general welfare.” The County Code establishes minimum housing standards to prevent conditions “likely to affect adversely the public health,” and to “achieve and maintain such levels of residential environmental quality.” Among these standards, the County Code mandates that “[n]o owner or other person shall occupy or let to another person any vacant dwelling or dwelling unit unless it and the premises are clean, sanitary, fit for human occupancy, and comply with the requirements of ... all applicable laws.”

Article VII of the County Code generally prohibits a property owner to allow a condition to persist on any premises that creates a nuisance or a condition which may be dangerous to life or health. Under the County Code, for all dwellings constructed prior to 1978, it is presumed that the paint thereon is lead-based paint. The County Code declares the existence of conditions conducive to lead poisoning in any dwelling or part thereof to be a nuisance. The County Code also requires the use of Lead Safe Work Practices and prohibits certain unsafe practices, when addressing lead hazards in dwellings.

### ***City of Buffalo Laws***

The City Code has requirements for the control of lead-based paint hazards. The City Code requires owners to maintain exterior and interior surfaces of buildings, including walls, ceilings, doors, and windows, in a “clean, safe and sanitary manner” and “[f]ree of substantial deterioration.” “Substantial deterioration” is defined to include “specific instances of disrepair, including but not limited to substantial conditions of peeling, chipping, [or] cracking.”

The City Code provides that, if a child is identified as having an elevated blood lead level, the City may conduct an inspection of the child’s dwelling and/or secondary residence. If a lead-based paint violation is found, the City shall issue a notice requiring abatement of the violation. Each violation is subject to a penalty of up to \$1,500. Each day that a violation continues is a separate violation.

Any building that is unfit for human habitation or otherwise violates the housing standards set forth in Chapter 242 of the City Code is a public nuisance. Houses that contain lead-based paint in a condition violative of the City Code are unfit for human habitation and are a public nuisance. The City Code provides that “[l]ead-based paint violations are subject to fines” and further provides that, “upon testing of paint in the property, any owner found to have a property with existing lead-based paint violations must remediate the violation.” The City Code incorporates the State Code described above below. Under the City Code, any violations of the State Code are subject to a penalty of up to \$1,500 per violation. Each day a violation continues is, for penalty purposes, a separate violation.

### ***City of Rochester Laws***

#### **A. Deteriorated paint violation.**

The interior and exterior of any residential building on which the original construction was completed prior to January 1, 1978, and the exterior of any nonresidential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- (1) 20 square feet on exterior surfaces;
- (2) 2 square feet in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

#### **B. Bare soil violation.**

Bare soil shall not be present within the dripline of any residential building on which the original construction was completed prior to January 1, 1978.

#### **C. Dust-lead hazard violation.**

A dust-lead hazard shall be identified and cited in accordance with the procedures set forth in Section 90-55, Inspection for violations.

#### **§90-55. Inspection for violations.**

All inspections, including, but not limited to, inspections performed as part of an application for a Certificate of Occupancy pursuant to Section 90-16 of the City Code, a renewal of a Certificate of Occupancy, or based upon the filing of a complaint, shall include a visual assessment for deteriorated paint and bare soil violations. With respect to units located in the high risk area identified by the Mayor or the Mayor’s designee, when the visual assessment identifies no deteriorated paint violation, wipe samples shall be obtained in accordance with the protocols established in 40 CFR §745.227(e)(8)(v)(B) to determine whether a dust-lead hazard exists. When a dust-lead hazard is identified, a lead-based paint hazard violation shall be cited, and a Certification of Clearance as described in §90-57

shall be required in order to remove such violation. The high risk area to be identified by the Mayor or the Mayor's designee shall, at a minimum, consist of those census block groups which cumulatively encompass an area in which no fewer than 90% of the units identified by the County Health Department for inspections in conjunction with its elevated blood-lead level

inspections for the period of the preceding five years are located. Where the filing of a complaint leads to an inspection, the inspection shall include the unit which is the focus of the complaint and all common areas.

#### §90-56. Remedy for violations.

Following a visual assessment which results in the citation of a deteriorated paint violation, the violation may be removed only by one of the following methods:

A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR §745.227(b) not to contain lead-based paint.

B. Certification by a lead-based paint inspector or risk assessor that all cited violations of Section 90-54, Violations, have been abated, or interim controls implemented, and clearance has been achieved in accordance with standards found at 40 CFR §745.227(e), regardless of whether abatement has been achieved or interim controls implemented, and provided however that the property has been inspected pursuant to those standards since the deteriorated paint or dust-lead hazard violation was last cited.

C. Certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the housing program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided, however, that with respect to the Federal Housing Choice Voucher program, the property has been inspected pursuant to those requirements since the deteriorated paint was last detected.

D. Where only exterior deteriorated paint violations, including deteriorated paint violations on an open porch, and/or bare soil violations are cited, clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented.

#### **City of Syracuse Laws**

The Property Conservation Code of the City of Syracuse, Chapter 27 of the Revised General Ordinances of the City of Syracuse, establishes uniform standards governing the "condition, occupancy and maintenance of all premises" to "enhance the residential neighborhoods and to protect the safety, health and welfare of the persons who live, work and recreate in the city." City Code § 27-2. The City Code has explicit requirements for the maintenance of paint and the control of lead-based paint hazards.

City Code provides, in relation to “Protective coating for wood surface,”

All exterior wood surfaces of a structure or building that are not of a species inherently resistant to decay shall be treated when necessary with a protective coating or other preservative to prevent deterioration. However, any exterior surface which has had a protective coating or preservative applied to it, must be maintained to prevent deterioration.

Interior surfaces of floors, walls and ceilings must also be maintained “free of deterioration in a clean and sanitary condition.”. Owners must remove any paint revealed by inspection containing more than one percent of lead from its surface and cover the surface with paint containing less than .06% of lead, or may cover the lead-based paint without first removing it “if the material and the method used to cover the surface are approved” by the Division of Code Enforcement of the Department of Community Development of the City of Syracuse.

In 2020, the City of Syracuse’s Common Council enacted the Lead Abatement and Control Ordinance, Chapter 54 of the Revised General Ordinances of the City of Syracuse, which will allow City inspectors to inspect homes for lead and site appropriate violations of the presence of lead in homes. The stated intent of the Lead Ordinance is to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 nonresidential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to such hazards. The Lead Ordinance took effect on October 1, 2020.

Under the Lead Ordinance, all paint on residential buildings constructed prior to 1978, is presumed to be lead-based paint. Among other things, the Lead Ordinance requires residential buildings to “be maintained free of lead-based paint hazards.”. The Lead Ordinance also mandates the use of lead safe work practices for correcting lead hazards in buildings as well as EPA certified personnel and firms. The existence of conditions conducive to lead poisoning in a residential rental property is a nuisance, a condition which may be dangerous to life or health and violates the City Code.

Prepared by EEA with information provided by Eve Gartner, Earth Justice and Lead Free Kids New York (LFKNY) . Thanks!