

# Lead Loopholes

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*How Lax Enforcement of New York City's  
Lead Paint Poisoning Prevention Laws  
Lets Landlords off the Hook and  
Leaves Children at Risk*



## Acknowledgements



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The Cooper Square Committee (CSC) works with area residents to contribute to the preservation and development of affordable, environmentally healthy housing and community/cultural spaces so that the Cooper Square area remains racially, economically, and culturally diverse. The Cooper Square Committee has spearheaded significant neighborhood victories in its history, comprising nearly 60 years of tenant organizing, community-based planning, advocacy and development. It relies on the active involvement of its members in the organization's work to advance its affordable housing agenda.



### *About Northern Manhattan Improvement Corporation*

Northern Manhattan Improvement Corporation, a community-based multi-services agency, has been active in organizing, educating, and litigating on childhood lead poisoning prevention for nearly a quarter of a century, service as counsel to the New York City Coalition to End Lead Poisoning.



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The New York League of Conservation Voters Education Fund (NYLCVEF) educates, engages, and empowers New Yorkers to be effective advocates for the environment. Through policy forums, civic engagement campaigns, and nonpartisan electoral work, NYLCVEF encourages New Yorkers to participate in the environmental decision-making process and get involved in local sustainability issues, including climate change, public health, and natural resource protection. Learn more at [www.nylcvef.org](http://www.nylcvef.org)

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*“Childhood lead poisoning . . . is a totally preventable disease—remove the lead from the child’s environment and the disease will disappear.”<sup>1</sup>*

**IN 2004, NEW YORK CITY** enacted Local Law 1, the most ambitious lead poisoning prevention law in the country. The City decreed that lead poisoning was both “a preventable childhood disease and a public health crisis” and “established as its goal the elimination of childhood lead poisoning by the year 2010.”<sup>2</sup> In order to accomplish that goal, Local Law 1 specified actions that landlords of rental properties must take to prevent exposure to lead, and assigned enforcement responsibilities to City agencies to assure landlord compliance. The law holds landlords accountable for proactively finding and abating lead paint hazards *before* children become lead poisoned, and to eventually remove all lead paint hazards from rental apartments throughout the City.

Data from the Department of Health and Mental Hygiene (DOHMH) and the Department of Housing Preservation and Development (HPD) show that the City is failing to enforce the primary prevention measures of Local Law 1: the provisions that would ensure lead paint hazards are found and abated before children are exposed. Landlords are not being held accountable for failing to regularly inspect apartments where children reside in order to identify lead paint hazards, for failing to abate lead paint hazards before a new tenant moves in to an apartment, or for failing to use safe work practices. HPD enforcement data

indicates that New York City has **never taken any enforcement action against a single landlord for failing to conduct the mandated annual inspections** in the 14 years since the law went into effect, even though the failure to do so is a misdemeanor punishable by up to 6 months imprisonment, to say nothing of leaving vulnerable children at risk. As a result, rather than the proactive regime envisioned by Local Law 1 of 2004, the City's response remains complaint driven.

Since 2010—when, under Local Law 1, childhood lead poisoning was supposed to be ended—DOHMH has identified **52,183 New York City children under age six** with blood lead levels of 5 micrograms per deciliter (“ug/dL”) or greater, the current federal Centers for Disease Control (“CDC”) level of concern.<sup>3</sup> The vast majority of these children reside in private housing: according to DOHMH health data, of 63,031 children under age 18 identified with blood leads of 5 ug/dL or greater since 2010, some 97% resided in private housing, and only 3% in public housing.<sup>4</sup> And, critically, lead is not an equal opportunity poisoner: according to DOHMH's data from 2017, Latino, Black, and Asian children represented 79% of children under age six with acute lead poisoning (i.e., 15 ug/dL or greater).<sup>5</sup>

While the number of children with very high blood lead levels has dropped precipitously since 2004, the City remains far from its goal of eliminating childhood lead poisoning. Indeed, DOHMH data indicates that for the past 5 years the number and rate of children diagnosed with severe levels of lead poisoning—15 ug/dL or greater, at which immediate DOHMH intervention is required—has remained at a constant average of 245 per year. And as science has advanced, we now know that any level of lead exposure can be permanently harmful to children's developing brains and bodies.

There are grave consequences to failing to prevent lead exposure before it happens: most of these children have probably incurred permanent injuries from wholly preventable elevated blood lead levels. As public health advocates, community organizers, and attorneys, we see the families whose lives are affected by these failures in enforcement. And we know the City can do better. This report outlines the key primary prevention measures in New York City's lead law and gives recommendations for how agencies can better enforce those measures and how the City Council could amend the law to ensure landlords are held accountable for failing to ensure the homes they provide to families are safe from lead hazards.



## Impact of Lead on Children's Health

**LEAD IS A HIGHLY TOXIC METAL** that can cause serious health problems. The neurological and behavioral effects of lead poisoning in children are irreversible, with devastating impacts on families. Children are particularly at risk of lead poisoning, particularly from birth until at least age seven, for several key reasons. First, in their early developmental stages children's brains and nervous systems are particularly vulnerable to lead-induced injuries, especially as lead more easily crosses the blood/brain barrier. Secondly, children's normal hand-to-mouth activity causes frequent ingestion of lead particles, and their environment—particularly for infants crawling on floors—puts them at higher risk to lead dust exposure. Lastly, young children tend to absorb and retain lead at a higher rate than do older children and adults.<sup>6</sup> Environmental factors cause older children to be at risk as well, and children continue to be at risk through the age of seven and beyond. Ingestion of lead particles by pregnant women also causes damage to the developing fetus, because lead can cross the placental barriers from their mothers' bloodstream.

There is no safe blood lead level for children. Acute lead poisoning (e.g., blood lead levels of ~40 ug/dL and above) can cause kidney failure, convulsions, coma, and death.<sup>7</sup> But even blood-lead concentrations once thought "safe" (e.g., below 5 ug/dL) are now known to lead to decreased intelligence, behavioral difficulties, and learning problems.<sup>8</sup> Studies show that lead damages children's nervous systems and delays brain development.<sup>9</sup> Children who are exposed to lower but chronic levels of lead may not display any apparent symptoms, so elevated blood lead levels are often overlooked. If unaddressed, however, children who experience prolonged lead exposure may suffer from

impaired kidney function, neurobehavioral impacts, and cognitive dysfunction.<sup>10</sup> These effects have life-long impacts on IQ and behaviour, leading to attention deficit disorder, reduced educational attainment, and increased anti-social tendencies.<sup>11</sup> Additionally, lead is harmful to pregnant women and can lead to negative reproductive outcomes including miscarriages and premature births.



## Lead Paint Remains the Primary Source of Lead Exposure

**IT HAS LONG BEEN UNDERSTOOD** that lead paint on the interior surfaces of children's homes and other buildings, where they spend significant amounts of time, is the primary cause of childhood lead poisoning today.<sup>12</sup> The problem stems primarily from peeling or chalking lead paint on aging or damaged structures.<sup>13</sup> The paint particles either fall off from natural deterioration or are removed when the structure is repaired. Experts now consider lead dust to be "the primary exposure pathway of childhood lead poisoning."<sup>14</sup> Lead dust is invisible to the naked eye and highly toxic even in very small quantities. The current "clearance" level for lead dust on floors after clean-up under New York City law, by reference to federal standards, is just 40 micrograms (millionths' of a gram) per square foot of floor area ( $\mu\text{g}/\text{ft}^2$ ), an amount less than half the mass of a single particle of coffee sweetener, and there are ample indicia that this standard is not longer sufficiently protective.<sup>15</sup>


Lead dust can be inhaled or swallowed when present on contaminated surfaces, such as children's toys, hands, and food, and is generated not only from peeling or chalking lead paint, but also from normal

abrasion of intact painted surfaces, such as window and door frames. Lead paint on impact surfaces such as baseboards and door frames generates lead dust via regular wear and tear. Lead-based paint on accessible surfaces such as window sills poses a great risk to toddlers who explore the world through “mouthing.” Lead paint on surfaces breaks down over time and also generates lead dust. Even intact lead-based paint can generate lead dust through regular wear and tear. Because of lead’s toxicity, unsafe paint repairs can generate dangerous levels of lead dust and create extremely hazardous conditions. Thus, even when covered by several subsequent coats of lead-free paint, lead paint exposure can occur when the paint begins to deteriorate, the surface it rests on becomes unsound, or it is broken, scraped or sanded.

Because lead poisoning is the most common, preventable and devastating environmental disease among children, even at very low exposure levels, the long-standing consensus among the public health community is to focus efforts on primary prevention, rather than awaiting the poisoning of a child before performing environmental remediation.<sup>16</sup>

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*Experts now consider lead dust to be “the primary exposure pathway of childhood lead poisoning.”<sup>14</sup>*



*In September, 2015, the Rollins family, which included two young children (one a few months old, the other 2 years old), was placed with the assistance of HRA into a private rental dwelling in Coney Island—a building that later was listed at the 14th worst landlord on the Public Advocate’s annual “100 Worst Landlord in New York City”. HRA approved the lease even though the landlord never certified that it had complied with the Turnover requirements of LL1/04, nor disclose any records concerning lead-based paint. The family repeatedly filed complaints with HPD about the poor conditions, and HPD repeatedly inspected the apartment, but it was not until July of 2017 that HPD performed a lead inspection, and at that point found peeling lead paint in numerous locations, including window and door frames. Unfortunately, by that point, one of the children had been diagnosed with lead poisoning, and the family relocated to temporary shelter at Montefiore Medical Center’s Lead Safe House. HPD took no action to place violations for the failure to do the turnover work and annual inspections.*



## New York City's Action on Lead

**NEW YORK CITY HAS LONG BEEN A LEADER** in the effort to combat childhood lead poisoning from lead-based paint. In 1960, the Board of Health banned the sale and use of lead-based paint on the interior surfaces of dwellings, day care centers, and schools in New York. And 35 years ago, the City Council established one of the first lead poisoning primary prevention laws in the nation by enacting Local Law 1 of 1983, which mandated that in child-occupied rental dwellings lead abatement take place *before* children become irreparably injured from lead-based paint hazards. After many years of litigation and controversy following the enactment of Local Law 1 of 1983, in 2003 the City Council<sup>17</sup> overwhelmingly passed a major reform package still in effect today: the New York City Childhood Lead Poisoning Prevention Act, which was enacted, over then-Mayor Bloomberg's veto, as Local Law 1 of 2004.

Local Law 1 of 2004 ("LL1/04") created the country's most protective measures to identify and remediate housing-based lead hazards. In order to accomplish its

goal of eliminating childhood lead poisoning by 2010, the Act declared that "City government must focus on primary prevention as the essential tool."<sup>18</sup> Key to primary prevention was the need to assure that owners take preventative action.

Because the City itself could never undertake the vast task of regularly inspecting *all* of the hundreds of thousands of pre-1960 dwelling units where vulnerable children reside to make certain there were no lead hazards, LL1/04 imposed on building owners the fundamental responsibility to prevent and promptly remediate lead-based paint hazards, including underlying defects (such as leaks or loose plaster) that can cause those hazards, using specified safe work practices. The law defines lead hazards very broadly—to include "any condition . . . that causes exposure to lead from lead-contaminated surface 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 impacts."



## KEY PRIMARY PREVENTION PROVISIONS OF LOCAL LAW 1 OF 2004

- **Annual Inspections.** Under §27-2056.4, the landlord is required to:
  - Affirmatively ascertain whether young children are present in the dwelling, and provide a pamphlet notifying occupants of lead paint hazards;
  - Inspect child-occupied dwellings at least annually, and more often as needed, for lead-based paint hazards;
  - Document in writing the results of each such inspection, provide the written results to the tenant, and retain the report for 10 years, to be made available to HPD on request and to succeeding owners.
- **Lead Abatement at Vacancy.** Under §§ 27-2056.8 and 27-2056.11, when a tenant vacates an apartment the landlord must, prior to re-renting it:
  - Remediate all lead-based paint hazards and underlying defects;
  - Make all bare floors, window sills, and window wells smooth and cleanable;
  - Remove and permanently cover all lead-based paint on friction surfaces on doors, door frames, and windows;
  - Use safe work practices for all abatement work.
- **Safe Work Practices.** Under §27-2056.11, for all work that could disturb lead-based paint, whether to abate lead paint hazards or do ordinary repairs or renovations, the landlord must:
  - Employ properly trained and credentialed individuals and firms;
  - Use specific measures to control the dispersal of lead dust during the work so as to protect the tenants and their possessions from contamination;
  - Use specific cleaning procedures;
  - Conduct lead dust clearance tests with the results reported in writing to the tenants;
  - Pre-notify DOHMH when work will disturb over 100 square feet of lead-based paint or paint that may contain lead, or replace 2 or more windows.

## Failure to Enforce Landlords' Primary Prevention Obligations

**LOCAL LAW 1 OF 2004** gave the City the responsibility to enforce all aspects of the law, including the power to audit building owners' compliance with their primary prevention obligations. However, it appears that the City has failed to implement any ongoing systems to ensure that owners are satisfying their legal obligations to prevent lead paint exposure before it occurs. Instead, the City continues to rely largely on a complaint-driven system of enforcement, rather than being proactive. This is, of course, contrary to the intent of LL1/2004.

### *Annual Inspections:*

HPD enforcement data shows that New York City has never taken any enforcement action against a single landlord for failing to conduct annual inspections in the 14 years since the law went into effect. As reported last November by Reuters, a review of "the past 12 years of HPD violation records [] found the agency hasn't cited a single landlord for failure to conduct the annual inspections."<sup>19</sup> We know landlords aren't regularly inspecting for lead paint hazards because tenants continue to complain about peeling paint, and HPD continues to find and issue violations for lead paint hazards, that landlords haven't identified and remediated. HPD has the power to ask for records of past inspections when it finds lead paint hazards, and landlords are obligated to maintain records of inspections for ten years. Yet the lack of violations indicate that HPD is not asking to see records of inspections. Without enforcement, negligent landlords will continue to violate this essential primary prevention obligation with complete impunity, resulting in the continued exposure of vulnerable children to lead-based paint hazards.

### *Lead Abatement At Vacancy:*

Again, data indicate that HPD has performed essentially no enforcement of this provision. The Reuters report in November 2017 found that over the past 12 years only


*The Yearwood family. In August of 2010, the Department of Homeless Services ("DHS") placed a family with five young children (including a 1-year old and twin 3-year olds), who had been staying in a City-run shelter, into a rental dwelling in Washington Heights. Shortly after moving in, the children's mother made a complaint to HPD concerning the bad conditions in the apartment. An HPD inspection found 16 violations for peeling lead-based paint, including on door frames. Shortly thereafter, the Administration for Children's Services ("ACS") warned the mother that they would remove the children from her custody because of the hazardous conditions they were living in. DHS refused to relocate the family, and only through the assistance of a legal services provider did the family obtain temporary shelter at Montefiore Medical Center's Lead Safe House, while the family successfully litigated in Housing Court to secure remediation of the hazards.*

one violation was issued for failure to abate lead paint hazards at vacancy. Our own review of HPD data indicates that as of the summer of 2017, while HPD issued 307,218 peeling lead paint violations under LL1/2004 from the beginning of 2005 through the summer of 2017, it placed just 2 violations during that time period for the failure to comply with mandatory lead abatements at turnover. The intent of this provision is to ensure that, over time, as apartments become vacant, all lead paint hazards will be fully abated. Without consequences for landlords that fail to conduct abatement at turnover, families will continue to move into apartments with lead paint hazards and the City will not reach its goal of eliminating lead poisoning.


#### **Safe Work Practices:**

Very few landlords file pre-notifications of planned work that may disturb lead-based paint with DOHMH (our information is that the figure is less than 100 per year), with no consequences for landlords. This failure prevents DOHMH from conducting spot checks for compliance. Tenant experience across the city, particularly in neighborhoods experiencing gentrification, where renovation work in old buildings is very common, indicates that non-compliance with the safe work practice rules is rampant, resulting in increased exposure to toxic lead dust.

Without effective enforcement of key primary prevention provisions, it should not be surprising that LL1/04 has not achieved its goal of ending lead poisoning by 2010. Landlords have learned that they will face no consequences for not conducting annual inspections or for failing to conduct lead paint hazard abatement at turnover. Relying on complaints from tenants will only allow HPD to address a small portion of the lead hazards that exist.



*The Ali family, with 2 young children (including a 2 year old) moved into an apartment in the Fordham heights neighborhood of the Bronx in early 2016, and shortly thereafter a third child was born. The landlord certified with the initial lease that it had complied with the turnover requirements, but at the same time certified that it had no records concerning lead-based paint. Two years later, the youngest child was diagnosed as highly lead poisoned. City inspectors arrived and found lead-based paint on at least 15 different locations on door and window frames. HPD took no action to place violations for the failure to do the turnover work and annual inspections. After obtaining assistance from a legal services provider, the family was temporarily relocated.*



*In the spring of 2014, Shahed Miah, his pregnant wife, and their two young children (one under the age of six) lived through intense lead dust contamination due to unchecked construction in their building on Manhattan's Lower East Side. Landlord Sammy Mahfar purchased the building where Miah and his family live in March of that year. Shortly thereafter, a massive gut renovation project began in multiple units of the building. Tenants repeatedly complained about dust pouring out of the units that were being demolished. Little to no precautions were made to contain the dust. The demolition work went on for weeks.*

*Tenants called to request an inspection from DOHMH, which found lead levels as high as 440 times the permissible threshold in common areas of the building. Of the 16 swabs that DOHMH took and tested from throughout the building, none of them tested below the safe level and all were alarmingly high. DOHMH issued a commissioner's order to clean up the lead hazard. Construction continued in the building. When DOHMH revisited the building for a follow-up inspection in June they then again found levels as high as 18 times the permissible threshold. Again, a commissioner's order was sent to the landlord to clean up the lead hazard.*

*Notably, DOHMH did not notify the tenants of these alarmingly high test results, and the Miah family and other tenants only learned about the intensely high lead test results after submitting a Freedom of Information Law request.*

*By this point Miah and his neighbors were diligently organizing with tenants from other buildings owned by Mahfar, along with community groups including the Cooper Square Committee. The tenants met with the landlord, began to hold press conferences, contact their elected officials, utilize the media, and develop a long term legal strategy to hold their landlord accountable. During the process of organizing, Mahfar tenants would learn that at least three other buildings were also grossly contaminated with lead during demolition. When the tenants of four buildings owned by Mahfar brought civil litigation against their landlord in early 2015, a judge in Manhattan housing court granted a temporary restraining order against the landlord and his agents due to the intense contamination. The tenants negotiated a strong settlement in court and inspired the NYS Attorney General to investigate and levy a settlement against the landlord as well, focusing specifically on lead contamination from construction dust.*



**NEW YORK CITY CAN DO BETTER.** While HPD still cannot itself conduct annual inspections of tens of thousands of apartments for lead paint hazards, there are many ways it can better hold landlords accountable as set forth in the detailed recommendations that follow. Strengthening enforcement and accountability is a crucial step in improving New York City's lead poisoning prevention record. While efforts to tighten local law are laudable, changes such as making lead dust clearance level standards more stringent will do little or nothing to decrease childhood lead poisoning if negligent owners continue the widespread practice of doing construction work in child-occupied dwellings without taking any lead dust tests whatsoever.

## Recommendations for Improved Enforcement and Accountability

**BELOW ARE DETAILED RECOMMENDATIONS** for relevant agencies to improve enforcement. Many of these steps can be taken under the existing authority of LL1/2004, with no need to enact new legislation. In addition, we include recommendations for the City Council to amend the law to address loopholes and add increased accountability measures. Finally, increased reporting of data on enforcement is crucial to monitor the City's progress toward full enforcement of Local Law 1 of 2004 and progress toward its goal of eliminating childhood lead poisoning.

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### Enforcement of Landlord's Annual Inquiry and Inspection Obligations

HPD should always seek inspection records when it places a violation of lead-based paint, and should conduct random audits seeking landlords' records of annual inspections.

#### **RECOMMENDATIONS FOR HPD**

**Follow Up After Violation:** § 27-2056.6 provides that where there is a violation for lead based paint, HPD can request records of the most recent annual inspection.

- If such records are not produced, HPD should place a violation under §27-2056.4(g), and
- Conduct an audit similar to that required by §27-2056.7

**Random Audits:** § 27-2056.4(h) gives HPD the power to do "sample audits" to determine compliance. HPD should develop a sampling protocol, such as:

- Conducting sample audits in 5% of buildings where HPD has inspected and cited violations of any nature, or where HPD has cited lead violations;
- Increasing that amount of audits if excessive viola-

tions are found. For example, in the event that, in a given year, HPD finds non-compliance in excess of 25% of the buildings audited, HPD shall increase the auditing to 10%, until such time as non-compliance drops below 25%.

#### RECOMMENDATIONS FOR THE CITY COUNCIL

- Amend Administrative Code § 27-2056.4 to require that HPD audit a minimum of 100 buildings annually to determine compliance with that section.
- Amend Administrative Code § 27-2056.9 to require that HPD, upon identifying any lead-based paint in a dwelling unit with an XRF machine, request all records be provided within 45 pertaining to compliance with 27-2056.4, and upon finding non-compliance, take enforcement action to seek the penalties provided under 27-2056.4(g).
- Amend the Administrative Code § 27-2056.12 to require that HPD report the number of investigations conduction and violations or other enforcement actions taken for violation of § 27-2056.4.
- Amend Administrative Code § 27-2098 so that multiple dwelling registrations require, if the building is subject to § 27-2056.4, for each dwelling unit in such dwelling (i) the name of the persons who performed the investigations and any remediation since the most recent registration date and (ii) whether the department has granted an exemption from the presumption established by section 27-2056.5 for such unit.

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### Enforcement of Requirement to Eliminate Certain Lead Hazards at Vacancy

HPD should penalize landlords for failing to comply with this provision of the law whenever it places a violation in a unit where the tenant moved in after August 2, 2004 when LL1/04 went into effect. HPD should also conduct random audits of landlords, possibly using information from NY Homes and Community Renewal, which maintains registration of rent regulated units including vacancies.

#### RECOMMENDATIONS FOR HPD

**Follow Up After Citation or Violation:** HPD should follow-up whenever it finds lead-based paint violations under § 27-2056.6 on a surface that should have been abated at turnover.

- As a matter of course, when issuing a violation, HPD could ask the tenant how long they have resided there. If tenancy began after August 2, 2004, there is a prima facie violation of the turnover provisions.
- Liase with DHCR. HPD should work out a data sharing agreement with NYS DHCR, which keeps records of annual registrations of rent regulated apartments that include changes of tenancy, to identify apartments that have had a vacancy since LL1/04 went into effect.
- A violation could automatically trigger an audit of the landlord, including a request for records of all turn-overs in the building since August 1, 2004, and verification of whether landlord complied.
  - §2056.17 requires records to be kept for 10 years, if no records are available, this is a violation
  - Results of the records review could trigger inspections of other apartments with children in the building

**Random Audits:** HPD should conduct random audits in violation-prone buildings (such as buildings in AEP):

- **Sampling:** Audits could be required for a certain percentage of apartments in violation prone buildings with children under age 6 where there has been turnover in the past 10 years. A building would be considered "violation prone" if a specified number of violations were issued or complaints were made within a specified time period.
- **Prior Notification:** HPD could require prior notification by landlords of apartments being vacated in violation prone buildings so that HPD could inspect and record the condition both immediately before and immediately after the remediation is performed.
- **Presumption of LBP:** One cost effective and logical approach would be to presume that intact lead paint on friction and impact surfaces, in a post turnover

apartment, violates the turnover requirements if there is no evidence that either the window or door frame have been replaced in the interim. This is a rational presumption that HPD could make in its rulemaking and would not need additional statutory authority.

***Explore the use of the interface between the federal lead disclosure law (42 USC 4852d) and the turnover abatement law (§ 27-2056.8):***

- Federal law requires sellers and landlords to disclose all records of lead-based paint and lead-based hazards (including dust tests). LL1/04 requires landlords to document in writing to the incoming tenant that they did the required turnover work, including dust tests. Often, in initial leases landlords sign one form “certifying” that they did the required abatement work at turnover, but then sign another form certifying under federal law that they have no records (such as the results of the lead dust clearance tests that are mandated at the conclusions of the turnover works). Obviously, one of these statements is false.
- Section 8 leases approved by NYCHA, and leases approved by DHS, may include the same contradictory certification. The City should not permit this kind of “siloeing” to continue and should work with HUD or EPA on enforcement.

**RECOMMENDATIONS FOR THE CITY COUNCIL**

- Amend the Administrative Code § 27-2056.12 to require that HPD report the number of investigations conducted and violations or other enforcement actions taken for violation of § 27-2056.8.
- Amend Administrative Code § 27-2056.9 to:
  - require that HPD, when investigating any violation of LL1/04, request from the occupant the date of turnover and (if turnover was subsequent to the August 2, 2004 effective date of LL1/04), inspect for compliance with 27-2056.8, and issue violations for non-compliance
  - require that HPD, upon identifying any lead-based paint in a dwelling unit with an XRF machine, re-

quest all records be provided within 45 days pertaining to compliance with 27-2056.8, and upon finding non-compliance, issue a violation, and require that all the work that should have been performed at turnover be performed within 45 days.

- Amend Administrative Code § 27-2056.8 to require that HPD audit a minimum of 100 buildings annually to determine compliance with that section.
- Amend Administrative Code § 27-2098 so that multiple dwelling registrations also require that if the building is subject to § 27-2056.8, for each dwelling unit in such dwelling (i) whether such unit turned over during the period covered by such registration, (ii) the name of the persons who performed the investigations and any remediation since the most recent registration date and (iii) whether the department has granted an exemption from the presumption established by section 27-2056.5 for such unit.

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***Safe Work Practices (“SWP”)***

HPD and DOHMH should audit landlords’ work practices when addressing lead paint violations placed by HPD to ensure landlords are properly using safe work practices. The agencies should also coordinate with the Department of Buildings to flag larger renovation projects that could disturb lead-based paint in occupied buildings.

**RECOMMENDATIONS FOR HPD AND DOHMH**

***Follow Up After Violation:*** For work done pursuant to § 27-2056.11(a)(1), after a lead paint violation has been issued, HPD should audit a percentage of lead Notice of Violations (“NOV”) corrections to ascertain compliance with law, including whether tenants are being provided with dust test results, per § 27-2056.11(d).

***Random Audits:*** For work done pursuant to § 27-2056.11(a)(2)(i), where no lead paint violation was involved, or where the size of the job was small, HPD should:

- audit a percentage of NOV corrections for other Housing Maintenance Code (“HMC”) violations or Department of Buildings (“DOB”) jobs that did not involve lead violations but did fall under the SWP requirements (i.e., disturbing more than de minimis areas of painted surfaces, such as opening a wall to install new plumbing or wiring, or a collapsed wall) to see whether SWP and dust testing were followed (landlord should have records of where children reside); and
- develop a system for spot checking these types of projects.

For work done pursuant to §27-2056.11(a)(2)(ii), where no lead paint violation was involved, but where the size of the job was larger (i.e., > 100 ft. in a room or removal of 2 windows), pre-filing is required with the Health Department (“DOHMH”) per § 27-2056.11(a)(2)(ii) (“DOHMH”). HPD and/or DOHMH should:

- Develop a protocol to coordinate with DOB:
  - Large renovations that are being permitted by DOB should trigger a pre-filing notice; and
  - Require that DOB job applications include a box to check off regarding whether the work involves activities that would trigger the requirement for pre-filing with DOHMH.[10]
- Perform a statistical analysis of DOHMH filings to cross-index with DOB filings.
- Coordinate with EPA Region II to boost compliance between NYC laws on pre-filing and pre-renovation warning requirements of 40 CFR § 745.84.

For compliance with the prohibition in § 17-181 on dry scraping /dry sanding; HPD should:

- utilize some of the same mechanisms as above.
- do spot checking of contractors in coordination with Department of Consumer Affairs (“DCA”) and EPA region II (Repair Renovation and Painting (“RRP”) program).

For compliance with posting of warning signs in stores (HC § 173.13(a)(2)& (3), HPD could:

- Devise a plan w/ DCA to inspect set percentage of hardware and paint stores each year for signage.
- Coordinate with EPA Region II's RRP program for contractor compliance monitoring

For Day Care center compliance with annual survey and reporting requirements (§ 17-913 and HC § 47.63(e)), HPD should:

- Conduct yearly audits to confirm receipt of annual surveys
- If survey is not submitted, issue violation.

## RECOMMENDATIONS FOR THE CITY COUNCIL

- Amend the Administrative Code to require that DHMH report the number of investigations conducted and violations or other enforcement actions taken for violation of § 27-2056.11.
- Amend the Administrative Code § 27-2056.14 to require that DOHMH,
  - when investigating a report of a child with an elevated blood lead level, inspect the all newly completed or ongoing construction work in the rest of the building of the child’s residence (or, as needed, adjoining buildings) for compliance with the SWP requirements of § 27-2056.11 and 40 CFR Part 745 Subpart E (the federal renovation, repair, and painting rules).
  - If DOHMH finds a violation of SWP in a common area of the building, notify all residents
- Amend the Administrative Code to break down silos between DOB, DOHMH, and HPD:
  - Amend § 27-2056.13 to require that notice of HPD lead violations be sent to DOB.
  - Amend § 24-223 to require that where DOB is informed of lead-based paint hazards or any orders relating to lead-based paint issued by HPD or DOHMH, take appropriate action, including deny after hours work permits and notify occupants.
  - Amend § 28-207.2 to give DOB the power to issue stop work orders for violations of the SWP.
  - Amend § 28-207.2.3.1 to allow the rescission of



stop work orders where lead hazards are at issue only upon both DOB and DOHMH determining that the unsafe work practices have been cured, and require that the owners of occupied buildings in those circumstances notify by mail all occupants the stop work orders including the reasons why the orders were issued, the lead dust test results, and require that a lead mitigation plan be prepared.

- Amend § 28-104.8.1 to require that building permit applications require the owner certify that either (1) it has notified DOHMH pursuant to 27-2056.11(a) (2) of the work, or (2) the scope of the work does not require the notification to DOHMH. Require DOB to transmit such permit applications to DOHMH where the owner avers it had notified DOHMH.
- Amend § 28-104.8.4 to require that building permit applications require the owner certify compliance with the pre-notifications to DOHMH pursuant to 27-2056.11(a)(2)

compliance, and

- correction by ERP.
- § 27-2056.7 requires that the City audit and inspect other apartments in a building once a child with an EBL has been identified. Data could be provided as to:
  - how many audits requested;
  - the percentage of owners that complied with requests for documents;
  - the criteria which HPD uses to find responses adequate;
  - the percentage of cases where HPD found owner responses to be inadequate; and
  - the percentage of those cases where HPD did its own inspections as a result.

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## Additional Data Reporting

The HPD annual reports to the City Council required by § 27-2056.12, do not provide sufficient detail of enforcement activity. The Council could request that a far more detailed report be provided, including such information as:

- Report data regarding HPD's compliance with timeframes for:
  - initial inspections within 10 days of complaints;
  - issuance of NOVs within 10 days of inspection;
  - re-inspections with 14 days of due date for correction; and
  - correction by HPD within 45 days after re-inspection finds non-compliance.
- With respect to the City's responses to children with elevated blood levels ("EBL"), data could be provided to confirm the timeliness of:
  - DOHMH inspections;
  - referrals to HPD for correction upon owner non-

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*As public health advocates, community organizers, and attorneys, we see the families whose lives are affected by these failures in enforcement.*

**WITHOUT MEANINGFUL ENFORCEMENT** of landlords' primary prevention obligations, Local Law 1 of 2004 will never achieve its goal, and without a clear understanding of the flaws in the enforcement and compliance with the current law, attempts to craft ameliorative measures will unfortunately take place in a vacuum.

The precursor to Local Law 1, Intro 101A, would have required not only far more detailed reporting from City agencies—such as detailed statistical profiling on the dwellings where violations were found and children poisoned so as to better understand and target enforcement efforts—but also specific targeted benchmarks for the reduction and elimination of lead poisoning, and a requirement that DOHMH make specific recommendations for amendments in the event those benchmarks were not attained. These provisions were, alas, eliminated from the final bill language during the (ultimately unsuccessful) negotiations between the Bloomberg administration and the Council in an effort to forestall a mayoral veto.

Nonetheless, there should by now exist over 14 years worth of data that can help understand the reasons why children continued to become lead poisoned once Local Law 1 went into effect on August 2, 2004—where they lived, where the hazards were found, where and how the landlords had failed to act, and where the City had failed to enforce. Access to all this data—much less a detailed analysis of it—is beyond the capacity of the authors of this report at this time. But we would urge that all branches of City government—not only the agencies charged with enforcement, but various other bodies with the power and ability to conduct oversight or audit, such as the Council committees, the Comptroller's office, and the Public Advocate's office—to engage in a thorough investigation and analysis. Without it, New York City's vulnerable children will only continue to be needlessly poisoned by this "totally preventable disease."

<sup>1</sup> Childhood Lead Poisoning - United States: Report to the Congress by the Agency of Toxic Substances and Disease Registry, 260 *Journal of the American Medical Association* 1533 (9/16/88).

<sup>2</sup> N.Y.C. Admin. Code § 27-2056.

<sup>3</sup> DOHMH, Report to the New York City Council on Progress in Preventing Childhood Lead Poisoning in New York City August 30, 2018 (available at [www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-18.pdf](http://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-18.pdf)), at 2.

<sup>4</sup> *Id.* at 6. Only about half of New York City children are tested at both age one and age two as required by state law, so the actual number is likely much higher. *Id.* at 7.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> However, there are long term impacts on older children and adults as well. See, e.g., Lanphear et al, Low-level Lead Exposure and Mortality in US Adults: a Population-based Cohort Study, 3 *The Lancet: Public Health* (4) e177 (April 2018) (data on 14,000 adults found that an increase from 1 to 6.7 µg/dL in blood leads was significantly associated with an increase in mortality of 37% for all-causes, 70% for cardiovascular, and 108% for ischemic heart disease); Kosnett, Recommendations for Medical Management of Adult Lead Exposure, 115 *Env. Health Perspectives* (3) 463 (2007) (summarizing body of literature on potential for hypertension, effects on renal function, cognitive dysfunction, and adverse female reproductive outcome in adults with blood lead levels < 40 µg/dL); Weuve, Cumulative Exposure to Lead in Relation to Cognitive Function in Older Women, 117 *Env. Health Perspectives* 574(2009) (cumulative exposure to lead, even at low levels experienced in community settings, may have adverse consequences for women's cognition in older age); Lustberg, Silbergeld, Blood Lead Levels and Mortality, 162 *Ach. Intern. Med.* 2443-2449 (Nov. 2002) (individuals with elevated blood lead levels experienced significantly increased circulatory and cardiovascular mortality, and lead exposure may increase susceptibility to cancer); Schwartz, Stewart, Bolla, Simon, Bandeen-Roche, Gordon, Links, Todd, Past Adult Lead Exposure Is Associated with Longitudinal Decline in Cognitive Function, 55 *Neurology* 1144-50 (2000).

<sup>7</sup> World Health Organization (2010) Childhood Lead Poisoning. (n.d.). Geneva 27, Switzerland: World Health Organization WHO Document Production Service: [www.who.int/ceh/publications/leadguidance.pdf](http://www.who.int/ceh/publications/leadguidance.pdf) (herein "WHO 2010")

<sup>8</sup> *Id.*

<sup>9</sup> Lidsky, TI & Schneider, JS (2003). Lead neurotoxicity in children: basic mechanisms and clinical correlates, *Brain*, 126(1):5-19.

<sup>10</sup> WHO (2010)

<sup>11</sup> Lanphear, BP et al. (2005). Low-level lead exposure and children's intellectual function: An international pooled analysis. *Environmental Health Perspectives*, 113(7):894-899.

<sup>12</sup> U.S. Dep't of Health and Human Services, Centers for Disease Control ("CDC"), Advisory Committee on Childhood Lead Poisoning, Preventing Lead Exposure in Young Children - A Housing-Based Approach to Primary Prevention of Lead Poisoning, October 2004, at 18.

<sup>13</sup> CDC, Preventing Lead Poisoning in Young Children (1991) at 18.

<sup>14</sup> New York City Coalition to End Lead Poisoning v. Vallone, 100 N.Y.2d 337, 343 (2003).

<sup>15</sup> On January 31, 2017, HUD lowered its clearance level to 10 µg/ft<sup>2</sup> for certain grantees. See [www.hud.gov/sites/documents/LEADDUSTCLEARANCE.PDF](http://www.hud.gov/sites/documents/LEADDUSTCLEARANCE.PDF).

<sup>16</sup> E.g., CDC, Advisory Committee on Childhood Lead Poisoning, Preventing Lead Exposure in Young Children - A Housing-Based Approach to Primary Prevention of Lead Poisoning, October 2004 (urging primary prevention); Lanphear, Cognitive Deficits Associated with Blood Lead Concentrations < 10 µg/dL in US Children and Adolescents, 115 *Public Health Reports* 521-29 (Nov-Dec. 2000); Rogan, The Effect of Chelation Therapy with Succimer on Neuropsychological Development in Children Exposed to Lead, 344 *New England Journal of Medicine* (19) 1421-26 (May 10, 2001); Landrigan, Schechter, Lipton, Fahs, and Schwartz, Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality, and Costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities, 110 *Environmental Health Perspectives* (7) 721-728 (July 2002).

<sup>17</sup> Among the co-sponsors was then-Councilmember Bill DeBlasio.

<sup>18</sup> N.Y.C. Admin. Code § 27-2056.1.

<sup>19</sup> Schneyer, J & Pell, M.B. (2017). Special Report: Lead poisoning lurks in scores of New York areas. *Reuters*. <https://www.reuters.com/article/us-usa-lead-new-york-specialreport/special-report-lead-poisoning-lurks-in-scores-of-new-york-areas-idUSKBN1DE1GC>



