



## **Landlords: New York City's lead-based paint laws are changing in 2020 - by Lee Wasserman**

July 07, 2020 - Owners Developers & Managers

One bad apple can spoil a bunch, but several bad apples, coupled with substantial media pressure and children's health at risk was enough for the City Council to aggressively amend New York City's lead paint laws. While many New York City landlords are complying with the cities' lead paint laws, landlords with the oldest, most dilapidated and high-risk properties, according to a recent New York City Department of Health and Mental Hygiene (DOHMH) audit, appear not too have been as diligent, whereby placing too many children at risk. This, coupled with the New York City Housing Authorities' (NYCHA) lead paint situation and national media pressure about lead in water, created the ideal dynamics for New York City to pass some of the nation's most stringent lead paint laws going into effect beginning August 2020. New York City's lead paint laws have historically been based on "Secondary Prevention" strategies, (waiting until a child is identified as lead poisoned before requiring environmental intervention). Under these most recent New York City lead paint law changes, a strategy of "primary prevention" (mandating intervention before a child is lead poisoned) will take place.

Over the past 12 months, City Council passed 15 different enactments, (Local laws 63-73 of 2019 & 27-31 of 2020), which instituted numerous changes to the New York City Childhood Lead Poisoning Prevention Act (CLPPA) of 2003 (also known as Local Law 1 of 2004). The changes are substantial and impacting multiple New York City regulations, work practices, and obligations, inclusive of landlords, management entities, New York City Housing Preservation & Development (HPD) and New York City DOHMH responsibilities. Below are some of the major changes and new obligations to affect property owners and managers.

Effective 2019, §27-2056.17 HPD to audit a minimum of 200 buildings each year to determine compliance with aspects of the CLLPA, including records of compliance with the annual inspection, child inquiries, and turnover, and to issue violations for non-compliance both with the record-keeping requirements and the substantive requirements of §27-2056.4 and §27-2056.8.

Effective 1/1/2020 (per LL64/2019) the CLPPA was amended to specify that the term "resides" means "to routinely spend 10 or more hours per week within a dwelling unit. §27-2056.2 (12).

"Lead-based paint" is defined as 1.0 mg/cm<sup>2</sup> (federal law). However, under amendments LL66/2019,

HPD may adopt a rule setting a more stringent standard of 0.5 mg/cm<sup>2</sup>, but no earlier than 4/13/20, and not until HUD has approved a Performance Characteristic Sheet (PCS) for at least one commercially available XRF analyzer. Notwithstanding, on 6/11/19, the Board of Health, pursuant to LL66/2019, adopted the 0.5 mg/cm<sup>2</sup> standard for the purpose of DHMH inspections in response to children with elevated blood lead levels by adding a new definition, “unsafe lead paint,” in Health Code §173.14.

Effective 8/9/2020 (per LL31/2020), owners must have one investigation for lead paint conducted by a 3rd party who is an EPA-certified inspector or risk assessor using an XRF analyzer on all surfaces in an apartment to determine whether lead paint is present, unless the apartment was previously exempted under §27-2056.5. This provision is applicable within five years of the effective date of this subdivision, or within one year after a child of applicable age comes to reside in a dwelling unit. Thus, if a child under six years of age was residing in an apartment as of 8/9/2020, by 8/9/2021, owners must have completed a full XRF inspection of the apartment and by 8/9/25, all apartments must have such inspection, regardless of whether a child under age six resides there. (§27-2056.4(a-1))

Effective 8/9/2020 (per LL31/2020), contractors applying to the Department of Consumer Affairs for a home improvement license must provide documentation that the applicant has obtained EPA’s Lead Safe Work Practice training by RRP certification or a signed affirmation that the work the contractor performs will not involve work covered by the RRP rules.

Per §27-2056.2(8) “lead-contaminated dust was 40 µg/ft<sup>2</sup> on floors, 250 µg/ft<sup>2</sup> on window sills, and 400 µg/ft<sup>2</sup> in window wells. LL 66/2019 tightened the definition, effective 6/13/19, to 10 µg/ft<sup>2</sup> on floors, 50 µg/ft<sup>2</sup> on window sills, and 100 µg/ft<sup>2</sup> in window wells; and effective 6/1/21, the standards will be further tightened to 5 µg/ft<sup>2</sup> on floors and 40 µg/ft<sup>2</sup> on window sills.

Effective 2/11/21, the term “multiple dwelling” will also include one- and two-family homes (except those units occupied by the owner or a member of the owner’s family), thus all such child-occupied dwellings constructed before the requisite dates will be covered. Admin. Code §27-2056.1 (as amended by LL29/2020).

For a complete understanding of the changes, I strongly recommend familiarizing yourself with New York City HPD’s and DOHMH websites that provide the regulations along with guidance documents to assist with compliance. You should also identify a New York State EPA, but New York City experienced and knowledgeable independent third-party certified lead evaluation firm who can assist with interpretation and compliance.

Lee Wasserman is the president of LEW Corp. and NAETI, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540