

ENROLLED ORIGINAL

AN ACT

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Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Lead-Based Paint Abatement and Control Act of 1996 to conform District of Columbia law more closely with federal law, to focus Department of Health lead paint poisoning prevention efforts on target housing and child-occupied facilities, and to increase criminal and civil penalties and fines for violations to match federal standards; to amend the Public Property Lead Elimination Act of 1977 to provide the Mayor with authority to inspect for the presence of lead paint in all public buildings and publicly-operated residences regularly frequented by children under 8 years of age, and to conform the inspection standards to those used under federal law; and to amend the Housing Regulations of the District of Columbia to require notice to the Department of Health of peeling paint in older housing businesses and to clarify inspection and enforcement procedures.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lead-Based Paint Abatement and Control Amendment Act of 2004".

Sec. 2. The Lead-Based Paint Abatement and Control Act of 1996, effective April 9, 1997 (D.C. Law 11-221; D.C. Official Code § 8-115.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 8-115.01) is amended as follows:

Amend
§ 8-115.01

(1) Paragraph (1) is amended to read as follows:

"(1)(A) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards at target housing, child-occupied facilities, and zero-bedroom units that are known to have children under 8 years of age residing in or regularly visiting the unit, including:

"(i) The removal of lead-based paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-based painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

"(ii) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

"(B) The term "abatement" includes:

"(i) Projects for which there is a written contract or other documentation, which provides that an individual or business entity will be conducting lead-based paint activities in or to a residential dwelling, a child-occupied facility, or a zero-bedroom unit that is known to have children under 8 years of age residing in or regularly visiting the unit that:

"(I) Shall result in the permanent elimination of lead-based paint hazards; or

"(II) Are designed to permanently eliminate lead-based paint hazards and are described in subparagraph (A)(i) and (ii) of this paragraph;

"(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by individuals or business entities certified in accordance with this act or rules issued pursuant to this act, unless such projects are covered by subparagraph (C) of this paragraph;

"(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by individuals or business entities who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subparagraph (C) of this paragraph; or

"(iv) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to federal or District of Columbia abatement orders.

"(C) The term "abatement" does not include:

"(i) Renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards; and

"(ii) Interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) Paragraph (4) is amended by striking the word "activities" and inserting the phrase "activities or interim controls" in its place.

(3) Paragraph (5) is amended by striking the word "activities" and inserting the phrase "activities or interim controls" in its place.

(4) A new paragraph (5A) is added to read as follows:

"(5A) "Child-occupied facilities" means a building, or portion of a building, constructed prior to 1978, and visited regularly by the same child, under the age of 8 years. The term "child-occupied facilities" may include day-care centers, preschools, and kindergarten classrooms. The location of a child-occupied facility as part of a larger structure does not make

the entire structure a child-occupied facility, only the portion of the structure that is occupied or regularly visited by children under 8 years of age.

(5) A new paragraph (7A) is added to read as follows:

"(7A) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, renovations, remodeling, restoration, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(6) Paragraph (8) is amended by striking the phrase ", or in any quantity sufficient to constitute a health or environmental hazard".

(7) Paragraph (9) is amended as follows:

(A) Subparagraph (A) is amended as follows:

(i) Sub-subparagraph (i) is amended as follows:

(I) Strike the phrase "Identification, risk" and insert the word "Risk" in its place.

(II) Strike the word "and" at the end.

(ii) Sub-subparagraph (ii) is amended by striking the phrase "subparagraph." and inserting the phrase "subparagraph; or" in its place.

(iii) A new sub-subparagraph (iii) is added to read as follows:

"(iii) Performing lead-based paint projects that permanently eliminate lead-based paint hazards, and are not otherwise excluded or exempted under section 5.".

(B) Subparagraph (B) is amended by striking the phrase "routine, ordinary, and common maintenance and repairs" and inserting the phrase "interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards" in its place.

(8) New paragraphs (12), (13), (14), (15), (16), (17), and (18) are added to read as follows:

"(12) "Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and lead-based paint activities.

"(13) "Regularly visited by children under 8" means visited regularly by the same child, under 8 years of age, on at least 2 different days within any week (Sunday through Saturday); provided, that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours.

"(14) "Residential dwelling" means:

"(A) A single-family dwelling, including attached structures, such as porches and stoops; or

"(B) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or

intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"(15) "Residential real property" means real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"(16)(A) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling, including:

"(i) Gathering information regarding the age and history of the housing and occupancy by children under 8 years of age;

"(ii) Visual inspection;

"(iii) Dust wipe sampling or other environmental sampling techniques;

"(iv) Other activity as may be appropriate; and

"(v) Provision of a report explaining the results of the investigation and options for reducing lead-based paint hazards.

"(B) The term "risk assessment" does not preclude other disciplines from performing tasks appropriate to their discipline (e.g. air monitors collecting air samples, inspectors from conducting visual inspection or clearance related procedures).

"(17) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 8 years of age resides, or is expected to reside in, or regularly visits such housing), or any zero-bedroom unit.

"(18) "Zero-bedroom unit" means any residential unit in which the living areas are not separated from the sleeping areas.".

(b) Section 3(3) (D.C. Official Code § 8-115.02(3)) is amended by striking the word "Mayor" and inserting the phrase "Mayor, through the formal rulemaking and regulatory process of section 15" in its place.

**Amend
§ 8-115.02**

(c) Section 4 (D.C. Official Code § 8-115.03) is amended as follows:

**Amend
§ 8-115.03**

(1) Subsection (a) is amended as follows:

(A) Paragraph (2) is amended by striking the word "or" the end.

(B) Paragraph (3) is amended by striking the phrase "activities." and inserting the phrase "activities;" in its place.

(C) New paragraphs (4), (5), and (6) are added to read as follows:

"(4) Perform any lead-based paint activity in violation of any applicable federal standards, including:

"(A) The Occupational Safety and Health Administration ("OSHA") occupational standards relating to lead, including those standards found at 29 C.F.R. § 1926.62 and 29 C.F.R. § 1910.1025;

“(B) The United States Housing and Urban Development Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Activities in 24 C.F.R. Part 35, Subpart R; and

“(C) The United States Environmental Protection Agency certification and training requirements and work practices standards found at 40 C.F.R. § 745.226 and § 745.227 when performing lead-based paint activities or interim controls;

“(5) Perform interim controls; or

“(6) Perform any lead-based paint activity without first providing 7 days notification to the Mayor containing the following information:

“(A) The location of the lead-based paint activity project; and

“(B) The starting, projected clearance, and completion dates of the lead-based paint activity.”.

(2) Subsection (b) is amended by striking the word "individual" and inserting the phrase "business entity or individual" in its place.

(3) A new subsection (d) is added to read as follows:

“(d) No individual or business entity who performs lead-based paint activities or interim controls may cause lead-based paint dust, chips, debris, or residue to be disbursed onto adjacent property or increase the risk of exposure to lead-based paint hazards for the public by failing to follow applicable lead-safe work practices.”.

(d) Section 5 (D.C. Official Code § 8-115.04) is amended to read as follows:

Amend
§ 8-115.04

“Sec. 5. Exemptions from provisions of this act.

“(a) The following are exempt from the provisions of this act:

“(1) Individuals who perform lead-based paint activities or interim controls at residences which they own, unless:

“(A) The residence is occupied by a person or persons other than the owner or the owner’s immediate family; or

“(B) Any child under the age of 8 years resides, is expected to reside in, or regularly visits such housing;

“(2) Any structure built after 1977;

“(3) Any structure built prior to 1978, that has been determined, through a certified lead-risk assessment or lead-based paint inspection, to be free of lead-based paint and lead-based paint hazards in both the structure and the surrounding real property in accordance with the United States Environmental Protection Agency standards in 40 C.F.R. § 745.65(a) through (c); and

“(4) Any individuals performing interim controls.

“(b) The following are exempt from sections 4(a)(6), 6, 8, 8a, 9, and 10:

“(1) Business entities that are in the business of performing interim controls;

“(2) Individuals or business entities who perform lead-based paint activities at housing for the elderly or persons with disabilities, unless any child under the age of 8 years resides, is expected to reside in, or regularly visits, such housing; and

"(3) Individuals or business entities who perform lead-based paint activities at a zero-bedroom unit, unless the owner or business entity removing the lead-based paint has actual knowledge that:

"(A) A child under 8 years of age resides in or regularly visits the unit; or

"(B) A child under 8 years of age will reside in or regularly visit the unit immediately upon the completion of the project.

"(c) Individuals or business entities who perform the following lead-based paint activities are exempt from the requirements of sections 4(a)(6), 8, 8a, and 10:

"(1) Risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; and

"(2) Planning, project designing, and supervision of lead-based paint activities.

"(d) Individuals or business entities who perform lead-based paint activities at commercial and government buildings are exempt from sections 6, 8, and 8a, unless the commercial or governmental building is a child-occupied facility or it is known that the building will become target housing or a child-occupied facility immediately following the project's completion.

"(e) Individuals or business entities who perform lead-based paint activities at the following buildings, units, or structures are exempt from sections 6 and 8:

"(1) Vacant commercial buildings that are known to become a child-occupied facility immediately following the project's completion;

"(2) Vacant zero-bedroom units, unless the owner or business entity removing the lead-based paint has actual knowledge that a child under 8 years of age will reside in or regularly visit the unit within 30 days of the completion of the project; and

"(3) Other outdoor structures, including bridges and towers.".

(e) Section 6 (D.C. Official Code § 8-115.05) is amended as follows:

(1) The section title is amended by striking the phrase "entities." and inserting the phrase "entities to conduct lead-based paint abatement; risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; or planning, project designing, and supervision of lead-based paint activities." in its place.

(2) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase "a lead-based paint activity" and inserting the phrase "lead-based paint abatement; risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; or planning, project designing, and supervision of lead-based paint activities" in its place.

(B) Paragraph (3) is amended by striking the phrase "Mayor." and inserting the phrase "Mayor through the formal rulemaking and regulatory process of section 15." in its place

(3) Subsection (b) is amended as follows:

Amend
§ 8-115.05

(A) The lead-in language is amended by striking the phrase "activity or" and inserting the word "abatement; risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; or planning, project designing, and supervision of lead-based paint activities" in its place.

(B) Paragraph (1) is amended by striking the word "activities" and inserting the word "abatement; risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; or planning, project designing, and supervision of lead-based paint activities" in its place.

(C) Paragraph (2) is amended by striking the word "activities" and inserting the word "abatement; risk assessment and inspection of lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil; or planning, project designing, and supervision of lead-based paint activities" in its place.

(D) Paragraph (4) is amended by striking the phrase "act." and inserting the phrase "act through the formal rulemaking and regulatory process of section 15." in its place.

(4) Subsection (c) is amended by striking the phrase "certification." and inserting the phrase "certification through the formal rulemaking and regulatory process of section 15." in its place.

(f) A new section 6a is added to read as follows:

"Sec. 6a. Required training of employees of a business entity performing interim controls and certain lead-based paint activities.

"Employees of a business entity performing lead-based paint activities and interim controls that are not covered by section 6 and not otherwise exempted under section 5:

"(1) Are required to complete a United States Department of Housing and Urban Development-approved course on lead-safe work practices (24 C.F.R. § 35.1330) or a comparable training course as approved by the Mayor; or

"(2) Shall, in the case of target housing and child-occupied facilities, be supervised by an individual who is certified under section 6."

(g) Section 7(a)(1)(D) (D.C. Official Code § 8-115.06(a)(1)(D)) is amended by striking the phrase "accreditation;" and inserting the phrase "accreditation through the formal rulemaking and regulatory process of section 15." in its place.

(h) Section 8 (D.C. Official Code § 8-115.07) is amended as follows:

Amend
§ 8-115.06

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended by striking the phrase "individuals, except governmental agencies," and inserting the word "individuals" in its place.

(B) Paragraph (2) is amended by striking the phrase "activity" and inserting the phrase "abatement" in its place.

(C) Paragraph (9) is amended by striking the phrase "Mayor." and inserting the phrase "Mayor through the formal rulemaking and regulatory process of section 15." in its place.

Amend
§ 8-115.07

(2) A new subsection (c) is added to read as follows:

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"(c) A single application and permit shall be sufficient for an entire abatement project. Separate permits for each unit or building are not required as long as the units and buildings are located on the same real property.".

(i) A new section 8a is added to read as follows:

"Sec. 8a. Clearance report required.

"(a) All individuals or business entities performing lead-based paint activities that are not otherwise exempted under section 5 are required to submit to the Mayor a clearance report from a certified lead-risk assessor or certified lead-based paint inspector certifying that the project scope of work area is free of lead-based paint hazards.

"(b) A single clearance report shall be sufficient for an entire lead-based paint activity project. Separate reports for each unit or building are not required as long as the units and buildings are located on the same real property and random sampling has been performed throughout the lead-based paint scope of work area according to the methods found at 40 C.F.R. § 745.227(e)(9).".

(j) Section 9(c)(7) (D.C. Official Code § 8-115.08(c)(7)) is amended by striking the phrase "requires." and inserting the phrase "requires through the formal rulemaking and regulatory process of section 15." in its place.

Amend
§ 8-115.08

(k) Section 10 (D.C. Official Code § 8-115.09) is amended by inserting a new subsection (a-1) to read as follows:

Amend
§ 8-115.09

"(a-1) The Mayor shall have the right to inspect a lead-based paint project upon receiving credible information that a violation of section 4(d) is occurring.".

(l) Section 13 (D.C. Official Code § 8-115.12) is amended as follows:

Amend
§ 8-115.12

(1) Subsection (a) is amended to read as follows:

"(a) Notwithstanding any other provision of this act, any person who knowingly or willfully violates sections 4, 6, 7, or 8, or the implementing rules and regulations, shall be subject, upon conviction, to a fine of not more than \$25,000 for each day of each violation, or to imprisonment for not more than one year, or both.".

(2) Subsection (b) is amended to read as follows:

"(b) In determining the severity of a criminal penalty, the Superior Court of the District of Columbia shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.".

(3) Subsection (c) is amended by striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General" in its place.

(m) Section 14 (D.C. Official Code § 8-115.13) is amended as follows:

Amend
§ 8-115.13

(1) Subsection (a) is amended to read as follows:

"(a) Any violation of this act is punishable by a civil penalty not to exceed \$25,000 for each day of each violation.".

(2) Subsection (b) is amended by striking the word "fines" and inserting the phrase "infraction fines" in its place.

(3) A new subsection (c) is added to read as follows:

"(c) In determining the severity of a civil penalty under subsection (a) of this section, the Superior Court of the District of Columbia shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.".

Sec. 3. Section 2(a) of the Public Property Lead Elimination Act of 1977, effective October 26, 1977 (D.C. Law 2-28; D.C. Official Code § 10-702(a)), is amended to read as follows:

Amend
§ 10-702

"(a) The Mayor of the District of Columbia is hereby authorized and directed to inspect for the presence of lead paint in all public buildings and publicly-operated residences belonging to or in the possession of the District of Columbia and regularly frequented by children under 8 years of age. Where there are reasonable grounds to believe that a lead-based paint hazard exists to the health of such children, because of the presence of lead or lead compounds in the paint, plaster, or structural materials of any such interior surface, the Mayor shall cause an analysis to be made of the paint, plaster, or structural materials of the interior structure to determine the quantity of lead or lead compounds contained in the material. If the analysis reveals the presence of lead-based paint hazards, as identified by the United States Environmental Protection Agency in 40 C.F.R. § 745.65(a) through (c), the Mayor shall cause the lead condition to be repaired or controlled; provided, that the repairs and controls shall be of a sufficient quality to equal or exceed that required of private housing located in the District of Columbia pursuant to regulations promulgated with respect to housing in the District of Columbia."

Sec. 4. The Housing Regulations of the District of Columbia, issued August 11, 1955 (C.O. 55-1503; 14 DCMR Chapters 2 and 7), are amended as follows:

DCMR

(a) Section 2605.2 (14 DCMR § 707.8) is amended by striking the first sentence and inserting the following in its place:

"The Director of the agency responsible for the enforcement of the health regulations shall be the designated agent of the District of Columbia to inspect any residential premises where there is reason to believe lead may present a health hazard because of the presence of a child under the age of 8 years who lives in the premises or is a regular visitor to the premises who spends a substantial portion of his or her time there.".

(b) Section 2605.3 (14 DCMR § 707.13 and 707.14) is amended to read as follows:

"2605.3. In any case in which analysis reveals the presence of lead or lead in its compounds in a quantity exceeding five-tenths (0.5) of one percent (1%) of the total weight of the material or more than seven-tenths of a milligram per square centimeter (0.7 mg/cm²) or

lead-based paint hazards as identified by the United States Environmental Protection Agency in 40 C.F.R. § 745.65(a) through (c), the agent shall notify the Director of the agency responsible for enforcement of the housing regulations, in writing, within seventy-two (72) hours, that the premises contain lead-based paint or that a lead poisoning hazard exists. The Director of the agency responsible for enforcement of the health regulations shall notify, in writing, the inhabitants and the owner of record of the property that a lead poisoning hazard exists.".

(c) Section 2605.4 (14 DCMR § 707.3-707.7) is amended to read as follows:

"2605.4. (a) The owner of any residential premises in which there resides a child under the age of 8 years or to which a child under the age of 8 years is a regular visitor who spends a substantial portion of his or her time in the premises, shall maintain the interior and exterior surfaces of the residential premises free of lead-based paint hazards as defined by the United States Environmental Protection Agency in 40 C.F.R. § 745.65(a) through (c). The Director of the agency responsible for enforcement of housing regulations shall order the owner of the residential premises in which a lead-based paint hazard was found to:

“(1) Remove all materials containing lead or lead in its compounds from the interior or exterior surfaces to their base surface, under safety conditions approved by the directors of the agencies responsible for the enforcement of the housing and health regulations, and then either cover surfaces with a paint containing not more than six one-hundredths of one percent (0.06%) lead by weight (calculated as lead metal in the total nonvolatile content of the paint) or leave the surfaces in their natural state; provided, that the flame spread rating of the natural state complies with the requirements of the 2000 International Existing Building Code as incorporated into the District of Columbia Construction Codes Supplement of 2003;

“(2) Covering the interior or exterior surfaces with a durable material approved by the agency responsible for the enforcement of health regulations; or

“(3) Eliminate the lead hazard by other methods approved by the agency responsible for the enforcement of health regulations..

“(b) Inaccessible exterior surfaces must be scraped to remove peeling and flaking paint and to make the surface tight.

“(c) No surface which is the subject of a notice pursuant to this section shall be refinishing until a District of Columbia certified inspector or risk assessor has certified in writing that the condition affecting the surface has been abated in accordance with this section.

“(d) Any owner who is served with an order pursuant to this section shall comply with the order within fifteen (15) days of its service upon him or her or shall obtain an extension of the fifteen (15)-day period from the Director of the agency responsible for enforcement of the housing regulations. No extension shall exceed thirty (30) days, but thirty (30)-day extensions may be renewed at the discretion of the Director of the agency responsible for enforcement of the housing regulations.".

(d) A new section 3103.6 (14 DCMR § 201.6) is added to read as follows:

"3103.6. The Director of the District agency responsible for enforcement of the housing regulations shall report to the Director of the agency responsible for enforcement of the health

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regulations the presence of peeling, chipping, flaking, or loose paint observed or lead hazards identified during a routine inspection, on the interior or exterior surface of any housing built before 1978, where a child under 8 years of age resides or is a regular visitor, or is expected to reside or be a regular visitor.".

Sec. 5. Applicability.

Section 2(l) and (m) shall apply upon publication in the District of Columbia Register by the Mayor of a list of civil infraction fines and a recommended schedule of fines or penalties for the Superior Court of the District of Columbia to consider.

Note,
§§ 8-115.12,
8-115.13

Sec. 6. Fiscal impact statement

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia