

## *PRELIMINARY STATEMENT*

1. After an extensive environmental impact review which included public hearings, the City Council of the City of Rochester found, in part, that: Lead poisoning poses a serious public health threat to children and adults in the City of Rochester; that a small amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six (6); exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans; and that therefore it is essential to the overall health of persons in the City of Rochester, and particularly for children younger than six (6) years of age, that they be protected from exposure to lead-based paint hazards. A copy of the FINAL Generic Environmental Impact Statement to Assess Lead Poisoning Prevention Ordinance Alternatives for the City of Rochester is attached hereto as **Exhibit "3"**.

2. The City Council of the City of Rochester passed Ordinance No. 2005-393 entitled, *Lead-Based Paint Poisoning Prevention*, which amended the Property Conservation Code of the City of Rochester. A certified copy of the Ordinance is attached hereto as **Exhibit "2"**.

3. The Lead-Based Paint Poisoning Prevention Ordinance was passed by the City Council of the City of Rochester on December 20, 2005 and approved by the Mayor of the City of Rochester and deemed duly adopted on December 22, 2005.

4. The policy and intent of the City Council in passing the Lead-Based Paint Poisoning Prevention Ordinance was 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 non-residential 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.

**OUTLINE OF THE LEAD-BASED PAINT  
POISONING PREVENTION ORDINANCE**

5. Ordinance No. 2005-393 amended Chapter 90 of the Municipal Code of the City of Rochester entitled, *Property Conservation Code*, by renumbering Article III as Article IV, renumbering Sections 90-45 and 90-46 as Sections 90-70 and 90-71, and by adding a new Article III.

6. Article III is divided into the following sixteen (16) sections entitled:

- a. §90-50. Policy and intent.
- b. §90-51. Legislative findings.
- c. §90-52. Definitions.
- d. §90-53. Presumptions and obligations.
- e. §90-54. Violations.
- f. §90-55. Inspections for violations.
- g. §90-56. Remedy for violations.
- h. §90-57. Standards for clearance examination and report.
- i. §90-58. Lead-safe hazard reduction and control.
- j. §90-59. Occupant protection and worksite preparation.
- k. §90-60. Safe work practices.

- l. §90-61. Emergency actions, weather conditions.
- m. §90-62. Exemptions.
- n. §90-63. Prohibition of retaliatory action.
- o. §90-64. Notification to County of violations.
- p. §90-65. Database for properties.

***THE CITY COUNCIL FOUND THAT THE CITY OF ROCHESTER  
HAS SPECIAL FACTORS WHICH WARRANTS THE  
LEAD-BASED PAINT POISONING PREVENTION ORDINANCE***

7. It is commonly held that lead-based paint is to be found in homes constructed prior to 1978. This commonly accepted presumption is based on the fact that the U.S. Consumer Product Safety Commission banned the use of lead based paint in that year. See 1-1 of the FINAL Generic Environmental Impact Statement to Assess Lead Poisoning Prevention Ordinance Alternatives for the City of Rochester, New York, attached hereto as EXHIBIT "3".

8. Approximately ninety-five percent (95%) of the City of Rochester's housing stock was constructed prior to 1980, eighty-nine percent (89%) of which were occupied in 2000. *Id.*

9. Childhood lead poisoning is a serious public health threat in the City of Rochester and has been identified by the Monroe County Department of Public Health as one of the County's highest priority public health issues. *Id.*

10. In 2001, the Monroe County Department of Public Health screened 13,259 children for blood levels. Of those screened, 1,179 or 8.9%, had blood lead levels at or above 10 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ), a concentration that is above the

Centers for Disease Control and Prevention's acceptable level for young children (CDC 2005). *Id.*

11. This percentage of 8.9% of children with higher than acceptable lead levels is a significantly higher rate than the state wide average which was only 2.7% in 2001. *Id.*

12. According to the 2000 Census, there were approximately 7,425 low-income renter households in Rochester with children under the age of six (6). The majority of these low-income renters reside in unassisted, privately owned housing.

***THE REMEDIATION STANDARDS IN THE LEAD-BASED  
PAINT POISONING PREVENTION ORDINANCE CONFORM  
TO ACCEPTED STANDARDS***

13. A review of the Lead-Based Paint Poisoning Prevention Ordinance reveals that substantially all of the remediation standards stated therein are Federal standards established by the Environmental Protection Agency which have been incorporated into the City's Ordinance by reference.

14. The City of Rochester's Lead Poisoning Prevention Ordinance contains similar standards found in other cities. See 2-12 of the FINAL Generic Environmental Impact Statement to Assess Lead Poisoning Prevention Ordinance Alternatives for the City of Rochester, New York, attached hereto as EXHIBIT "3".

15. The City of Rochester's Lead Poisoning Prevention Ordinance is consistent with Federal, State and Local laws, policies, and regulations. *Id.* at 7-1.

***ECONOMIC IMPACT STATEMENT***

16. The Final Generic Environment Impact Statement to Assess Lead

Poisoning Prevention Ordinance Alternatives for the City of Rochester, New York, contains a very detailed analysis of the potential economic impact of the Lead-Based Paint Poisoning Prevention Ordinance.

17. Rather than restating this detailed analysis here, the State Fire Prevention and Building Code Council is respectfully referred to Pages 5-1 through 5-28 of EXHIBIT "3".

***A COMPARISON OF THE LEAD-BASED PAINT  
POISONING PREVENTION ORDINANCE AND THE  
NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE***

18. It is respectfully submitted that the New York State Uniform Fire Prevention and Building Code does not specifically address the prevention of lead poisoning and the Building Code Council can determine that no further approval is needed. Lead poisoning is a significant health concern and the City of Rochester has taken the appropriate action to deal with this health crisis within its borders. Enforcement of these new health-based provisions in Rochester will not alter the significance or enforcement of the State Code.

19. The following sections of the Lead-Based Paint Poisoning Prevention Ordinance do not have comparable sections in the New York State Uniform Fire Prevention and Building Maintenance Code:

- a. §90-50. Policy and intent.
- b. §90-51. Legislative findings.
- c. §90-52. Definitions.
- d. §90-53. Presumptions and obligations.

- e. §90-54B. Bare soil violation.
- f. §90-55. Inspections for violations.
- g. §90-56. Remedy for violations.
- h. §90-57. Standards for clearance examination and report.
- i. §90-58. Lead-safe hazard reduction and control.
- j. §90-59. Occupant protection and worksite preparation.
- k. §90-60. Safe work practices.
- l. §90-61. Emergency actions, weather conditions.
- m. §90-62. Exemptions.
- n. §90-63. Prohibition of retaliatory action.
- o. §90-64. Notification to County of violations.
- p. §90-65. Database for properties.

20. **The only provision of the Lead-Based Paint Poisoning Prevention**

**Ordinance which overlaps with the New York State Property Maintenance Code is §90-**

**54A.**

21. Section 90-54A entitled, *Deteriorated paint violation*, provides:

The interior and exterior of any residential building for which a Certificate of Occupancy is required pursuant to Section 90-16, on which the original construction was completed prior to January 1, 1978, and the exterior of any non-residential 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.

22. The applicable standards in the New York State Property Maintenance Code are found in Chapter Three entitled, *Minimum Conditions*, and include §303.2, §304.3 and §304.4.

23. Section 303.2 entitled, *Protective treatment*, provides in the applicable part:

All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decaying resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted ...

24. Section 304.3 entitled, *Interior surfaces*, provides in relevant part:

All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered ...

25. Section 304.4 entitled, *Stairs and walking surfaces*, provides:

Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

26. It is important to note that the City intends to continue to enforce Chapter Three of the New York State Property Maintenance Code in instances when there are deteriorated paint surfaces found on a premises that do not meet the standards set forth in §90-54A of the City's Property Conservation Code.

27. Thus, Section 90-54 of the City's Property Conservation Code is not a lesser standard than Chapter III of the New York State Property Maintenance Code. Rather, it is a health-based provision that establishes when certain additional remedial

standards must be used to insure that the lead paint in the deteriorated surfaces is properly removed and does not result in the poisoning of our citizens. Without these additional provisions, the remedy for peeling, clipping, flaking or abraded paint (a State Code violation) may actually create a more serious lead hazard than the peeling paint itself, as the use of unsafe work practices will result in the spread of poisonous dust throughout a premises.

28. Significantly, whether the City's enforcement staff cites a "peeling paint" violation under Chapter Three of the New York State Property Maintenance Code or §90-54A of the Lead-Based Paint Poisoning Prevention Ordinance, the violation will only be removed once the entire deteriorated paint surface has been corrected.

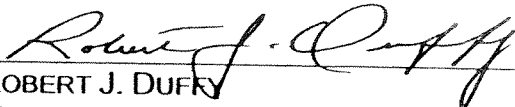
29. If the Rochester Lead-Based Paint Poisoning Prevention Ordinance is deemed to be more restrictive than the State Code, the City respectfully submits that these standards are reasonably necessary due to the high prevalence of lead-based paint in residential units in the City and the high incidence of unacceptable blood lead levels in children in the City.

#### **CONCLUSION**

Pursuant to §379 of the New York State Executive Law, the City of Rochester respectfully requests that the State Fire Prevention and Building Code Council for the Incorporation of More Restrictive Local Standards adopt the City's Lead-Based Paint Poisoning Prevention Ordinance as a more restrictive local standard because it is reasonably necessary due to the prevalence of lead-based paint in the housing stock in the City of Rochester and the high incidence of unacceptable blood lead levels in

children in Rochester. In the alternative, the City of Rochester seeks a determination that its Lead-Based Paint Poisoning Prevention Ordinance is not a matter addressed in either the Fire Prevention or the Property Maintenance Code.

DATED: January 18, 2006

  
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ROBERT J. DUFFY  
MAYOR OF THE CITY OF ROCHESTER