

2004 CITY OF ROCHESTER **LEAD POISONING PREVENTION CODE** (LPPC)

[For more background on the preparation and design of the proposed LPPC, see [Questions and Answers](#) starting on, p. 42.]

The LPPC is divided into four substantive Articles, in addition to an enforcement article to be prepared later which will include the mechanisms and penalties to enforce the code. The four substantive Articles are as follows:

Article 1 establishes the mechanisms for determining what housing must be inspected, and how inspections will be carried out.

Article 2 sets the criteria for when housing will be considered hazardous and the requirements for removing the hazards safely – including the use of lead-safe work practices and notification to anyone who might be at risk if the work were not done properly.

Article 3 addresses shortcomings in the federal “disclosure” law which, in theory, should advise housing purchasers and renters of any lead hazards but, in practice, often falls short because of gaps in the way the federal law works.

Article 4 deals with occupancy protections and is designed to ensure that occupants of housing who are attempting to make sure their apartments are lead safe will not be discouraged from doing so because of fear of retaliation. This article also incorporates provisions that are designed to make existing state laws function more effectively, and to provide a way for families exposed to lead hazards to go to court directly to have their housing made safe without having to rely exclusively on the city’s own limited code enforcement resources.

The Lead Poisoning Prevention Code seeks to implement a systemic, proactive, “primary prevention” strategy by:

- 1) Requiring owners of housing identified as “target housing” to obtain and file a “Certificate of Lead Poisoning Prevention Code Compliance,” prepared by an EPA certified lead paint inspector or risk assessor,
 - within 120 days of having been notified by the city that the filing of such a certificate is required for their property, or
 - upon the citation for peeling or deteriorated paint in properties built prior to 1978, or
 - upon the expiration of a current Certificate, the duration of the Certificate depending upon the risk posed by the property.¹

¹ Drafter Note: An additional category regarding inspections of properties rented to households in receipt of public assistance had been originally proposed pursuant to prior discussions with the City. That category has been deleted by the Housing Committee, with the intent that the Coalition should pursue the issue of inspection requirements for public assistance households through a mechanism other than the local ordinance. The description had read: “. . . prior to occupancy of a property in the city by any household in receipt of public assistance, unless the property has already been

- 2) Adopting a highly targeted code enforcement model that will first address those properties posing the greatest risks, based upon the criteria and methodology described in the 2002 Center for Governmental Research report, "Lead Poisoning Among Young Children in Monroe County," and using the CGR methodology, identifying the order and timing for the implementation of this Chapter's inspection requirements; and in addition, requiring inspections by certified personnel upon the request of an occupant or neighbors who might be harmed by a lead-paint hazard, to determine whether any such hazards are present;
- 3) Establishing licensing and notification requirements to assure use of "lead-safe work practices" for the control of lead hazards, including notice to occupants, and when exterior work is required, notice to neighbors of the property on which lead hazard removal activities are about to take place;
- 5) Assuring that lead hazard controlled properties are maintained on an ongoing basis so that they remain free of lead hazards;
- 6) Assuring compliance with federal requirements regarding the disclosure of known lead hazards at the time of sale, leasing, and other specified transfers or activities; and expanding the applicability of those requirements to additional properties;
- 7) Promoting enforcement of disclosure requirements and the other provisions of this ordinance through a series of sanctions for non-compliance, and by permitting affected persons to sue to compel compliance with the provisions of this Chapter;
- 8) Creating a Housing Registry of lead-safe properties to encourage landlords to make their properties lead-safe and to assist the public in locating lead-safe housing;
- 9) Facilitating access to public records to ensure that dwelling occupants, prospective occupants, and the general public have access to the most recent information that is available regarding lead safety with respect to individual residential properties;
- 10) Ensuring that tenants asserting enforcement of their rights with respect to this law and other local laws, state laws, and federal laws addressing lead poisoning hazards have an effective mechanism for doing so, and are protected from any retaliatory action for having asserted their rights under this Chapter; and
- 11) Coordinating local enforcement efforts with existing state and federal laws.

CHARTER AND CODE OF THE
CITY OF ROCHESTER, NEW YORK

Chapter 67A
LEAD POISONING PREVENTION CODE

Article 1: General Requirements: Certificates of Lead Paint Review; Lead-Safe Housing Standards.

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- § 67A-104. Covered Housing; Requirement to Obtain and File a “Certificate of Lead Poisoning Prevention Code Compliance”
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Article 2: Notification, Lead Safe Work Practices, and Ongoing Maintenance Requirements.

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- § 67A- 404. Designation of Uncorrected Lead Hazardous Conditions as Rent Impairing Violations; Notice to Owner and Tenants.
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ARTICLE 1

General Requirements: Certificate of Lead Poisoning Prevention Code Compliance; Lead-Safe Housing Standards

Contents:

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§ 67A-105.	When a Certificate Must Be Obtained and Filed; Substitutes for Filing of Certificates; Duration of Certificate.
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§ 67A-110.	Emergency Actions, Weather Complications, Case-by-Case Waivers.
§ 67A-111.	Failure to Comply with Certificate Filing Requirement
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§ 67A- 101. Title.

Chapter 67A of the Code of the City of Rochester shall be known as the "Lead Poisoning Prevention Code of the City of Rochester, New York" (LPPC).

§ 67A- 102. Findings, purpose and structure.

A. The Council finds as follows:

- (1) Lead poisoning poses a serious health threat to adults and children in the City of Rochester.
- (2) Children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing and since they are more likely to ingest lead-contaminated dust through hand-to-mouth contact. Fetuses are also vulnerable to the effects of lead paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
- (3) Low levels of lead in a fetus or young child can lead to reduced intelligence and attention span, learning disabilities, hearing impairment, and behavior problems.
- (4) Children living in older poorly maintained homes are disproportionately at risk for lead-based paint hazards.

- (5) Childhood lead poisoning causes enormous societal costs, including medical costs and special education costs.
- (6) A minute amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children age six years of age and younger.¹
- (7) Lead hazards, including paint, soil and dust hazards both from deteriorated lead-based painted and from lead-based paint on friction, impact and chewable surfaces, as well as from soil, are the primary cause elevated blood lead levels and irreversible developmental damage in children.
- (8) Properties built before 1978 are the most likely to contain lead-based paint hazards.
- (9) Residential properties, both rental and homeowner, are more likely than are non-residential properties to be a cause of elevated lead blood levels in young children.
- (10) The existence of lead-based paint hazards in the City of Rochester is most common, and presents the most serious risk, for young children in rental housing built before 1978. Lead-based paint poses health hazards to adults as well as children.
- (11) Lead-based paint poses health hazards to adults as well as children.
- (12) It is in the public interest for all persons to know whether lead-based paint hazards in a property have been controlled so that occupants can make informed housing decisions about the health hazards to which they, their families and guests may be exposed.
- (13) It is essential to the overall public safety of persons in the City of Rochester, and particularly for children six years of age and younger, that they be protected from lead-based paint hazards including lead-based paint that is deteriorated, or present in chewable surfaces, friction surfaces, or impact surfaces, and that they be protected from other exposures to lead in the environment, such as soil, that can result in adverse human health effects.

B. Purpose and structure.

- (1) This Article establishes a requirement that certain housing, identified as “target housing” will subject to examination for lead-based paint hazards and will be required to obtain a “Certificate of Lead Paint Poisoning Prevention Code Compliance” upon a determination by EPA certified lead assessors, inspectors, or technicians that the housing has made this code’s requirements for demonstrating that no lead-based paint hazards are present.
- (2) The requirement to obtain an examination will be triggered by notices sent by the City to owners of the housing identified as the most likely to contain lead hazards, including housing determined in a regular Property Code inspection under Chapter 90 to have damaged or deteriorated paint in buildings constructed prior to 1978. The City will sent notices in a systemic code enforcement model, with notices first to be sent to target housing located in the census tracts which have been identified in the Center for Governmental Research’s 2002 report “Lead Poisoning Among Young

¹ *[Drafter note: HUD and EPA use “under six years of age” as the relevant age for special treatment, but in 2003 the Court of Appeals declared that NYC had violated the State Environmental Quality Review Act by reducing protections of its local ordinance from covering children age 6 and under to “children under age 6” without providing findings that there would be no adverse effect from the coverage already afforded by NYC’s prior local law. The Housing Committee has recommends that we follow the New York City model and apply our local requirements to children ages six and under].*

Children in Monroe County,” as those with the highest risk of containing lead-based paint hazards.

- (3) The examination standards to be used to determine whether lead-based paint hazards are present are those used for “clearance testing” as established in federal regulations at 24 CFR Part 35, Subpart R, as modified by this Code, in addition to an initial visual assessment. Dust wipe samples shall be taken of bare soil and of porches in order to determine the presence, regardless of source, of lead-based paint hazards.
- (4) Once a lead-based paint hazard has been identified, that condition is to be remedied in accordance with lead-safe work practice and notification requirements set out in Article 2.

§ 67A- 103. Definitions. [*§ 35.110*]²

The following terms used in this Chapter or in materials referenced by this Chapter are defined in Appendix 1:

Abatement; Bare soil; Certified; Certified Lead Inspector; Certified Lead Assessor; Chewable surface; Clearance examination; Common Area; Component; Composite sample; Deteriorated paint; Department; Dry sanding; Dust-lead hazard; Dwelling unit; Encapsulation; Enclosure; Environmental intervention blood lead level; Evaluation; Expected to reside; Friction surface; g, mg and µg; Hazard reduction; HEPA vacuum; Impact surface; Inspection; Interim controls; Interior window sill; Lead-based paint; Lead-based paint hazard; Lead-based paint inspection; Lead hazard screen; Mortgagee; Mortgagor; Multifamily property; Occupant; Owner; Paint; Paint testing; Paint removal; Painted surface; Permanent.; Play area; LPPC; Reevaluation; Rehabilitation; Replacement; Residential property; Risk assessment; Single-family property; Single room occupancy (SRO); Soil-lead hazard; Standard treatments; Substrate; Target housing; Tenant; Unit; Unit turnover; Visual assessment; Wet sanding or wet scraping; Window trough; Worksite; Zero-bedroom dwelling.

[Drafter note: extraneous definitions will be omitted after review of final draft].

§ 67A- 104. Covered Housing; Requirement to Obtain and File a “Certificate of Lead Poisoning Prevention Code Compliance”

A. Requirement to Obtain and File Certificate.

Subject to the implementation priorities established by the City and other triggering circumstances described in § 67A-105, all owners of target housing as described in Paragraph B will, by January 1, _____ be required to file with the Department a “Certificate of Lead Poisoning Prevention Code Compliance” as described in paragraph C.

B. Target Housing.

(1) Included housing.

Except as provided in paragraph (2), for the purposes of this Chapter, target housing includes all residential rental housing in the City of Rochester constructed prior to 1978, and all owner-occupied residential units constructed prior to 1960, except that with respect to

- owner-occupied housing,
- or housing designated by a state or federal housing program as having been developed for the elderly or for persons with disabilities, and

² Bracketed information refers to HUD regulation used as source material from 24 CFR Part 35.

- “zero bedroom” housing,

such housing is not considered target housing unless a child who is 6 years of age or younger resides in or is expected to reside in such housing, or is likely to play in or around such housing. “Zero bedroom” housing is an efficiency or studio apartment, or any other unit in which the living area is not separated from the sleeping area.

Target housing includes mixed-use (residential and non-residential) properties, provided however, that with respect to the non-residential portions of such properties, the standards described in § 67A-106 apply only to spaces such as entryways, hallways, corridors, passageways, stairways, or other common areas that serve the residential portions of those properties.

(2) Non-included housing.

Target housing does not include

- dormitory housing, institutional housing, other group quarters, or
- the rental of individual rooms in residential dwellings,
- unoccupied residential property that is to be demolished, provided that the property is to remain unoccupied until such demolition, and provided further that if the property has remained unoccupied for more than 120 days an owner or occupant of an adjacent property or any neighborhood organization may request the Department to require the filing of a “Certificate of Lead Poisoning Prevention Code Compliance” with respect to the exterior portions of such property. In such a case the Department shall require the filing of the Certificate unless the demolition is scheduled to be completed pursuant to the terms of a fully executed contract to perform such demolition within 60 days of the request to the Department.

C. Content and Scope of a “Certificate of Lead Poisoning Prevention Code Compliance.”

(1) “Certificate of Lead Poisoning Prevention Code Compliance.” [§35.1340]

A “Certificate of Lead Poisoning Prevention Code Compliance” is a certification on a form prescribed and made available by the Department, executed by a certified lead inspector, or lead-based paint risk assessor confirming that an examination of the property has been made and that as of the date of the certification the examiner found the property to be in compliance with the standards described in § 67A -106. In order to minimize the costs of obtaining Certificates, the City encourages the training and EPA certification of “lead-sampling technicians” to perform the functions authorized for such technicians under applicable requirements and regulations.

A “technician” for the purposes of this Code, is a person who has successfully completed a training course for sampling technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State for training in lead-based paint inspection or risk assessment, *provided* a certified risk assessor or a certified lead-based paint inspector approves the work of the sampling technician and signs the report of the clearance examination. A technician may not perform clearance examinations after abatement activities.

The term technician shall also include a person licensed or certified by EPA or a State to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector, *provided* that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by a such a licensed or certified sampling technician shall not be performed using random sampling of dwelling units or common areas in

multifamily properties, except that a clearance examination performed by such a licensed or certified sampling technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) Limitations and Content of Certification.

The "Certificate of Lead Poisoning Prevention Code Compliance" shall specifically provide that the review was conducted in accordance with the requirements of the Rochester Lead Poisoning Prevention Code, for the purpose of decreasing the risk of exposure to lead hazards. The Certificate shall state that the issuance of the Certificate does not assure that the property will remain free of lead hazards after the date of the issuance of the Certificate. The Certificate shall additionally include the statement that in order to provide maximum protection from lead hazards it is essential that property be maintained so that paint is kept in a non-deteriorated condition, and that friction, impact and chewable surfaces that contain lead-based paint be regularly washed and treated as described in the EPA pamphlet "Protect Your Family From Lead in Your Home" and a copy of that material shall be provided with the Certificate.

(3) Non-interference With Other Laws.

The "Certificate of Lead Poisoning Prevention Code Compliance" shall additionally state that it has been issued solely for the purpose of compliance with the filing requirements of the Rochester Lead Poisoning Prevention Code, and that the property remains subject to any additional requirements regarding property maintenance, lead poisoning prevention and disclosure of known or possible hazards that are imposed by any other local, state, or federal laws.

(4) Identification of Property Covered by Certificate.

A "Certificate of Lead Poisoning Prevention Code Compliance" may be issued for an entire building or for an individual housing unit within a building, provided however, that the Certificate shall clearly identify the unit or units inspected and to which the Certificate is applicable and shall cover all units for which a Certificate of Occupancy has been issued pursuant to Chapters 39 and 90 of this Code. The review for lead hazards shall include an examination of all common areas accessible to the covered unit(s) and the Certificate shall describe the common areas examined.

(5) Requirement to Post Notice.

The Department shall make available a notice to occupants of all properties subject to the Certificate requirement advising them of the hazards of lead paint exposure and describing the requirements of the Lead Poisoning Prevention Code. The owner (or other responsible party) shall post the notice in a location readily visible to unit occupants (such as the inside of a closet door, provided the notice will not be obscured). The notice shall be securely affixed in a manner that will reduce the likelihood that it will be removed or damaged. The notice shall specifically advise occupants of the procedures, including a phone number for assistance, to request the Department to require a further inspection for lead hazards.

§ 67A-105. When a Certificate Must Be Obtained and Filed; Substitutes for Filing of Certificates; Duration of Certificate.

A. Except as provided for in paragraph B below, owners (including purchasers) of target housing are required to file with the Department the "Certificate of Lead Poisoning Prevention Code Compliance" described in § 67A-104 upon the occurrence of any one of the following:

- (1) The Department has sent the owner or responsible party a "Notice to File a Certificate of Lead-Poisoning Prevention Code Compliance." Such notices shall advise the owner or responsible party that the Certificate must be filed within 120 days of the date of the issuance of the Notice. The Notice shall provide the recipient with information describing how to obtain a current list of qualified EPA certified lead paint inspectors or risk assessors who are registered with the Department as qualified to issue the Certificate;

(2) Upon citation of the property for peeling or deteriorated paint under the Property Code of the City of Rochester (Chapter 90 of this Code), or of the Property Maintenance Code for New York State, or of the New York State Public Health Law, or other applicable law. In such cases, the Certificate shall be obtained within 60 day of the notice of violation unless a shorter time period is deemed appropriate based upon the severity of the hazard; or

(3) Upon transfer of a single-family house to an owner-occupant when the purchasing household includes a child six years of age or younger and the property had previously been subject to a Certificate requirement, but the prior owner had exercised the option to file a Homeowner Statement in lieu of a Certificate pursuant to Paragraph B below. When housing is subject to a Certificate requirement by virtue of such a transfer, it shall be the obligation of the purchaser, not the seller, to obtain the Certificate, and such Certificate shall be obtained within 120 days of the date of closing.

(4) Upon transfer of a single-family house where the unit is to be occupied as rental property and the property had previously been subject to a Certificate requirement, but the prior owner had exercised the option to file a Homeowner Statement in lieu of a Certificate pursuant to Paragraph B below. . When housing is subject to a Certificate requirement by virtue of such a transfer, it shall be the obligation of the purchaser, not the seller, to obtain the Certificate, and such Certificate shall be obtained within 120 days of the date of closing.

(5) Upon the expiration of a Certificate as provided in Paragraph D below.

B. In lieu of the filing of a “Certificate of Lead Poisoning Prevention Code Compliance,” an owner or responsible party may file with the Department:

(1) A certification by lead paint inspector or risk assessor that the property has been determined in a lead-based paint inspection conducted in accordance with the federal regulations at 24 CFR §35.1320(a) not to contain lead based paint provided however that the property has been inspected pursuant to those requirements within the last 12 months. In such case, the results of additional test(s) by a certified lead-based paint inspector or risk assessor may be used to confirm or refute a prior finding. **[§35.115]**

(2) A certification by a lead paint inspector or risk assessor that all lead-based paint in the property has been identified, removed, and clearance has been achieved in accordance with federal regulations found at 24 CFR §§35.1320, 35.1325 and 35.1340, provided however that the property has been inspected pursuant to those requirements within the last 12 months. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of hazard control. **[§35.115]**

(3) A certification by the Rochester Housing Authority or other state or federal supervising agency which regulates an assisted housing program stating that the property is in compliance with the inspection and clearance requirements of the state program or, with respect to federally assisted housing, the requirements of 24 CFR Part 35, provided however that with respect to the federal Housing Choice Voucher program the property has been inspected pursuant to those requirements within the last 12 months.

(4) With respect to single-family, owner-occupied units homeowners may, in lieu of the Certificate, file a notarized statement, sworn under penalty of perjury, that no child age six or under resides in or spends substantial time at the dwelling.

[Drafter note: Should we add public assistance inspection provision here regarding “move-in, move-out inspections?]

C. Duration of Certificate.

The duration of a “Certificate of Lead Poisoning Prevention Code Compliance” is as follows:

(1) When a unit has been determined to contain no lead-paint hazards, the duration of the Certificate shall be one year. Prior to the expiration of that time, a new Certificate shall be obtained, and thereafter Certificates at the property shall have a duration of three years. If in

the course of any further examinations the unit is determined to contain lead-hazards, the Certificate duration shall then be shortened as provided in sub-paragraph 2 below.

(2) When a unit is found to contain lead-paint hazards, a plan for controlling the hazards using lead-safe work practices shall be prepared and controls put in place within sixty (60) days. If the unit fails a clearance examination a new plan requiring hazard controls shall be implemented within thirty (30) days. Once the dwelling passes a clearance inspection, a Certificate with a six-month duration shall be issued. Thereafter new Certificates shall be renewed at six month intervals until such time as the unit passes clearance without the need for new controls. At that point the unit will be issued first a one-year Certificate and then three-year Certificates as provided for in paragraph 1.

C. Duration of Certificate [ALTERNATE PROVISION]

The duration of a “Certificate of Lead Poisoning Prevention Code Compliance” is as follows:

(1) Properties passing clearance standards.

When a unit has been determined to contain no lead-paint hazards, the duration of the Certificate shall be one year. Prior to the expiration of that time, a new Certificate shall be obtained, and thereafter Certificates at the property shall have a duration of three years. If in the course of any further examinations the unit is determined to contain lead-hazards, the Certificate duration shall then be shortened as provided in sub-paragraph 2 below.

(2) Properties failing to pass clearance standards; reevaluation requirements.

When a unit is found to contain lead-paint hazards, a plan for controlling the hazards using lead-safe work practices shall be prepared and controls put in place within sixty (60) days. Once the unit has passed the clearance examination, a Certificate shall be issued subject to the requirement that a reevaluation shall be conducted no later than two years from completion of lead hazard reduction. Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two year intervals must be conducted without finding lead based paint hazards or a failure of an encapsulant or enclosure. If however, a reevaluation finds lead based paint hazards or a failure, at least two more consecutive reevaluations conducted at such two year intervals must be conducted without finding lead-based paint hazards or a failure.

D. Prioritization for Issuance of Notices.

In implementing this section, the Department shall send its Notices prioritized by the risk categories identified in the 2002 Center for Governmental Research report, “Lead Poisoning Among Young Children in Monroe County,” and using the CGR methodology, shall identify the order and timing for the sending of the notices, with the highest priority being given to the census tracts and types of housing identified as the housing most likely to pose risks of lead-poisoning hazards. The Department shall issue the Notices in a manner and at a rate calculated substantially to comply with the City’s goal to eliminate childhood lead poisoning by the year 2010. The Department shall direct its highest monitoring and enforcement initiatives at properties which have been identified in public health records as having housed more than one child with an elevated blood lead level of higher than 10 µg/dcl.

§ 67A-106. Standards for Issuance of Certificate. *[Mostly from 24 CFR §35.1340, "Clearance"].*

In order to be eligible for issuance of a "Certificate of Lead Poisoning Prevention Code Compliance", the following standards and procedures must be complied with:

- A. Qualified personnel. A certification of compliance with the standards for issuance of a "Certificate of Lead Poisoning Prevention Code Compliance" shall be performed by:
- (1) A certified risk assessor;
 - (2) A certified lead-based paint inspector;
 - (3) A person who has successfully completed a training course for sampling technicians (or "sampling technicians," or other description of a discipline with a similar purpose and title) that is developed or accepted by EPA and that is given by a training provider accredited by the EPA for training in lead-based paint inspection or risk assessment, provided a certified lead-based paint inspector approves the work of the sampling technician and signs the report of the clearance examination.
- B. **Examination requirements.**
- (1) Examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If examinations are being performed for more than ten dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purposes of examinations may be conducted in accordance with the provisions established for clearance examinations in 40 CFR 745.227(e)(9).
 - (2) A visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint or visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination, except elimination of deteriorated paint is not required if it has been determined, through paint testing or a lead-based paint inspection, that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed.
 - (3) Dust samples shall be wipe samples and shall be taken on floors, including porches, and, where practicable, interior windowsills and window troughs, **and bare soil**. Dust samples shall be collected and analyzed in accordance with 24 CFR § 35.1315.
- C. Report.
- The Certificate examiner shall ensure that an examination report is prepared that provides documentation of the examination, as well as any hazard reduction or maintenance activity that has taken place. When abatement is performed, the report shall be an abatement report in accordance with 40 CFR 745.227(e)(10). Otherwise, the report shall include the following information:
- (1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.
 - (2) The following information:
 - (a) The date(s) of the examination;
 - (b) The name, address, and signature of each person performing the examination, including certification number;
 - (c) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
 - (d) The results of the analysis of dust samples, in µg/sq.ft, **including soil samples**, by location of sample; and

- (e) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).
- (3) If hazard reduction or maintenance activity has taken place:
 - (a) The start and completion dates of the hazard reduction or maintenance activity;
 - (b) The name and address of each firm or organization conducting the hazard reduction or maintenance activity and the name of each supervisor assigned;
 - (c) A detailed written description of the hazard reduction or maintenance activity, including the methods used, locations of exterior surfaces, interior rooms, common areas, and/or components where the hazard reduction activity occurred, and any suggested monitoring of encapsulants or enclosures; and
 - (d) If soil hazards were reduced, a detailed description of the location(s) of the hazard reduction activity and the method(s) used.

D. Clearance Standards.

Where a lead hazard had been identified, the clearance standards in 24 CFR §35.1320(b) (2), including soil-lead hazard standards, shall be met before a “Certificate of Lead Poisoning Prevention Code Compliance” may be issued and filed. With respect to porches, the standard required for clearance shall be 400 µg/sq. ft, provided however, that if a porch is found to contain more than 40 µg/sq. ft. the inspector, assessor or technician shall advise the occupants of the unit that the porch constitute a potential lead-paint hazard that requires continued caution and that the occupants should read and follow closely the information in the EPA brochure regarding lead safe maintenance practices such a frequent washing, and that brochure shall be provided to the occupants with the relevant passages highlighted.

E. Clearance failure.

All surfaces represented by a failed clearance samples shall be recleaned or treated by hazard reduction, and retested, until the applicable clearance level set in 24 CFR §35.1320(b)(2) and this Code are met.

F. Requirement to Avoid Conflict of Interest Regarding Clearance Inspection.

All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities. No examinations shall be performed by the owner or an employee of the owner.

§ 67A- 107. Reviews of Denials of Certificates.

Whenever a “Certificate of Lead Poisoning Prevention Code Compliance” has been denied, the owner or other responsible party may request the Department to conduct an inspection of the property to establish that the property complies with the requirements of § 67A-106. In the event the Department confirms that the property does not comply with those standards the Department shall send a written notice to the owner specifying that it has determined that a “Certificate of Lead Poisoning Prevention Code Compliance” has properly been denied and stating the action that must be taken prior to authorization for issuance of the Certificate. The Department’s action with respect to this determination shall be reviewable in an Article 78 proceeding pursuant to the Civil Practice Law and Rules (CPLR) for the State of New York

§ 67A-108. Inspection by Department; Enforcement.

A. The Department itself shall conduct or cause to be conducted an inspection for lead paint hazards utilizing the standards described in § 67A-106 upon the request of any lawful occupant of a building other than the owner of rental property, or with respect to potential exterior hazards, by an adjoining property owner or occupant or any other person who may be affected by an exterior lead hazard. In addition, the Department upon its own initiative, or as part of a program for systematic code enforcement, or upon sufficient cause having been shown to believe that a lead hazard exists, may conduct or authorize a lead-hazard inspection by an EPA certified lead inspector or certified lead

assessor. If the owner of the property does not voluntarily consent to an inspection and a current occupant of the property does not authorize the inspection, a warrant shall be obtained.

“Sufficient cause” for the purposes of this section shall include, but not be limited to, information obtained from any certified lead hazard inspector or assessor, any professional housing contractor, or any social services worker or health care professional offering credible information that a potential lead paint hazard exists. The Department shall provide forms for such persons to submit to the City their basis for belief that a lead hazard is present.

- B. The City shall defend any City employee who is sued for negligence, error, omission, misfeasance, malfeasance or nonfeasance arising out of the employee's duties in enforcing this code. The City shall indemnify such employee in the event any judgment is recovered against such employee arising out of the employee's duties in enforcing this code, unless the employee's conduct is determined to be willfully or grossly negligent.

§ 67A-109. City Review for Compliance with Other Laws. [§35.150]

If the City determines that a state or federal law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of the LPPC, and that adherence to the requirements of the LPPC, would be duplicative or otherwise cause inefficiencies, the City may by general written waiver signed by the Commissioner or her / his designee, modify or waive some or all of the requirements of the LPPC in a manner that will promote efficiency while ensuring a comparable level of protection.

§ 67A-110. Emergency Actions, Weather Complications, Case-by-Case Waivers. [§35.115 and 35.160]

A. For emergency actions necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption applies only to repairs necessary to respond to the emergency. The requirements of this Chapter apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

B. Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this Chapter may be delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities, provided however, that this limitation shall continue only for the period in which work cannot be performed in the work safe manner as provided for herein.

C. On a case-by-case basis the Department, subject to limitations on its legal authority to do so, may waive any provision of the LPPC. Any such waiver must be in writing on a form prepared by the Department and signed by the Commissioner or her / his designee.

§ 67A- 111. Failure to Comply with “Certificate of Lead Poisoning Prevention Code Compliance” Filing Requirement

No owner subject to the filing requirements of § 67A-105 shall lease a vacant rental unit for occupancy unless he or she has filed with the Department the required “Certificate of Lead Poisoning Prevention Code Compliance”. A violation of this provision shall be enforceable as provided for in Articles 4 and 5 of this Chapter.

§ 67A- 112. Records. [§35.175]

The responsible party, as specified in the LPPC, shall keep a copy of each notice, evaluation, and clearance or abatement report prepared pursuant to or in connection with the requirements of this

Chapter shall be kept for three years, and any records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for review by the City or public until at least three years after such activities are no longer required.

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Article 2: **Notification, Lead-Safe Work Practices, and Ongoing Maintenance Requirements.**

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§ 67A-201. Definitions. *[New Orleans Sec. 82-311]*

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accredited laboratory means a laboratory that operates within the EPA National Lead Laboratory Accreditation Program.

Adjacent properties means properties that adjoin the regulated area of the property in question, including at the corners of lot lines.

Certified means that the State of New York has identified an individual as having completed training and other requirements to permit the safe execution of lead risk assessments and inspections, or lead hazard reduction and control work.

Chemical removal of paint shall mean the removal of paint by paint strippers containing a hazardous substance designated by the Consumer Product Safety Commission (CPSC), the Occupational Safety and Health Administration (OSHA), or the U.S. Environmental Protection Agency (EPA) in any way that is not in compliance with the most current CPSC, OSHA, or EPA guidelines, set forth in 16 C.F.R. § 1303.1, 29 C.F.R. § 1926.62, and 40 C.F.R. § 261.3, § 261.32, and 40 C.F.R. § 745.223, respectively.

Containment barriers means measures that prevent the migration of lead paint contaminants. Containment barriers shall be at least as effective at protecting human health and the environment as those contained in the most recent HUD Guidelines, as defined below.

Contractor means any person who undertakes, or offers to undertake or purports to have the capacity to undertake to or submits a bid to take, or does by himself or herself or by or through others take, any action that may or will disturb or remove paint. For purpose of this article, "contractor" shall also include subcontractors.

Director means, for purposes of this article, the Director of the NET office.

Disturb or remove paint means any action that creates friction, pressure, heat or a chemical reaction upon any lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. This term shall include all surface preparation activities that are performed upon a surface containing lead-based paint.

Excessive airborne lead concentrations shall be defined according to regulations promulgated by the United States Occupational Safety and Health Administration. "Excessive airborne lead concentrations," for the purposes of this article, shall be those defined by the Occupational Safety and Health Administration at 29 C.F.R. 1926.62 which are currently defined as lead concentrations exceeding the permissible exposure limit (PEL) of 50 mcg/m³ as a time-weighted average over eight hours. Airborne lead concentrations exceeding the action level of 30 mcg/m³ as a time-weighted average trigger additional personal protective equipment and practices.

Excessive lead-containing dust is lead in surface dust including but not limited to dust on interior window sills, window troughs, floors, and soil as defined according to regulations promulgated by the United States Environmental Protection Agency at 40 C.F.R. § 745.227. These standards are currently defined as 250 micrograms per square foot (µg/sq.ft) for interior window sills, 400 µg/sq.ft for window troughs, 40 µg/sq.ft for floors, 400 parts per million for bare soil in play areas, and 1200 parts per million for soil in non-play areas of a yard. In addition, Article 1 of this Code establishes a standard of 400 µg/sq.ft. for porches (any entry-way that would not be included as part of an interior inspection).

Exterior means the outside of a building or metal structure and the areas around it within the boundaries of the property, including the outside of any detached structures, including but not limited to, outside and common walls, stairways, fences, light wells, breeze ways, sheds and garages.

Heat removal of paint shall mean the removal of paint by open flame or by the use of a heat gun or other device generating temperatures equal to or more than 1100 degrees Fahrenheit (40 C.F.R. § 745.227).

HEPA vacuum means a high efficiency particulate air filter capable of filtering 99.7 percent of fine particles of dust of 0.3 microns or larger in size.

HUD guidelines means the most recent Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing promulgated by the United States Department of Housing and Urban Development (HUD), issued pursuant to 42 U.S.C. § 1017 (1994).

Interior means the inside of a building or a partially enclosed exterior surface such as porch or balcony areas that are readily accessible to children, ages six and under.

Lead-based paint testing means testing of surfaces to determine the presence of lead-based paint performed by an independent certified risk assessor/inspector, in accordance with the HUD Guidelines, or EPA lead hazard regulations at 40 C.F.R. § 745.227. Where testing includes bulk paint samples, such samples are analyzed by an accredited laboratory.

Lead-based substances means any plaster, putty, paint, varnish, shellac or other coating on surfaces with lead in excess of 1.0 mg/cm² (milligrams per square centimeter) as measured by x-ray fluorescence (XRF) detector or laboratory analysis or in excess of 0.5 percent by weight, also expressed as 5,000 ppm (parts per million), 5,000 µg/g (micrograms per gram), or 5,000 mg/kg (milligrams per kilogram) as measured by laboratory analysis or as currently defined by state or federal standards.

Manual scraping is the practice of removing paint via hand tools that predominantly creates paint chips as opposed to dust.

Metal structure means any structure that is not a building and which has exterior surfaces made of steel or other metal, such as bridges, billboards, walkways, water towers, steel tanks, and roadway or railway overpasses.

Occupant means any person, especially children, living, sleeping, cooking, eating in, or actually having possession of a building, except that a guest will not be considered an occupant.

Other methods of paint removal shall include, but not be restricted to, the removal of paint via confined power washing, sanding with a HEPA-vacuum attachment and abrasive blasting.

Owner means any person or agent of the owner who alone, jointly, or severally with others, shall have:

- (1) Legal title to any premises or building, with or without accompanying actual possession therefore; and/or
- (2) Charge, care, or control of any premises or building as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner.

Person means a natural person, his or her heirs, executors, administrators or assigns, and to the extent allowable by law, a firm, joint stock company, business concern, association, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid, or other legal entity.

Power washing is the practice of cleaning painted surfaces or removing paint via a pressurized stream of water.

Prohibited practices means work practices prohibited under this article.

Qualified laboratory means an academic research laboratory with a record of peer review publications on the topic of lead. A homeowner, contractor, or other individual may submit samples to a qualified laboratory to determine the presence of lead.

Readily accessible means when, in the judgment of the Director of the department of health, or his designated representative, a lead-based substance is in a flaking, peeling or chipping condition on a surface from which it may be chewed or ingested by children who inhabit or frequent the premises.

Regulated area means an area in which work is being performed that disturbs or removes paint, and to which access is restricted in order to prevent migration of paint contaminants. "Regulated area" shall also include any area contaminated with lead paint contaminants as a result of a breach or lack of containment barriers or a violation of the containment requirement set forth in section 317(a).

Responsible party means either: (1) the owner of the property where the owner or the owner's employees or persons otherwise under the control of the owner are performing the activities regulated under this article; or (2) the owner and the contractor where the owner has entered into a contract with another to carry out the activities regulated under this article.

Surface means the outermost layer up to one-eighth inch of the superficial area of a building, including, but not limited to, the outermost layer of superficial areas of the walls, ceilings, floors, stairs, windows, window sills, window frames, window sashes, doors, door frames, baseboards, and woodwork of a building.

Unconfined power sanding or grinding shall mean the use of electric or hydraulic powered sanding or grinding tools for the removal of paint that do not have attachments that while sanding or grinding paint simultaneously vacuum dust and chips into a HEPA filtered vacuum device along with ground cover or otherwise contain and control chips and dust from being released into the environment.

§ 67A-202. Applicability. *[New Orleans Sec. 82-316]*

A. Generally.

No person shall disturb or remove lead paint, or in any other way generate excessive, lead containing dust or excessive airborne lead concentrations as defined in § 67A-201 during work on the interior or exterior of any existing building or structure except in accordance with the requirements of this article with respect to occupant protections, worksite preparation, and safe work practices.

B. Exemptions.

This article shall not apply to activities that disturb or remove paint where those activities are being performed on buildings on which construction was completed after December 31, 1977 or on new construction.

C. Presumption of Lead Paint.

(1) For purposes of this article, all paint on the interior or exterior of any residential building on which the original construction was not completed prior to January 1, 1978, shall be presumed to be a lead-based substance.

(2) For purposes of this article, all paint on the exterior of any non-residential structure completed prior to January 1, 1978 shall be presumed to be a lead-based substance. Any person seeking to rebut this presumption shall establish through lead-based paint testing or other means satisfactory to the Director, that the paint on the building or structure in question is not lead-based paint.

§ 67A-203. Notification requirements. *[New Orleans Sec. 82-318]*

A. Contents of notice.

Except as exempted by this Article, prior to the commencement of work that will involve disturbing or removing lead-based paint (or presumed lead-based paint), the owner or other person acting on his or her behalf, shall provide written notice to the Director either in person, by certified mail, or by fax, describing the:

- (1) Location of the project;
- (2) Scope of work;
- (3) Methods and tools for paint disturbance and/or removal;
- (4) Approximate age of the building;
- (5) Anticipated job start and completion dates for work subject to this article;
- (6) Use and tenure of the building (residential or nonresidential, and whether it is owner-occupied or rental property);
- (7) Dates by which the responsible party has or will fulfill any tenant or adjacent property notification requirements as described in § 67A-203 pars. D, E, and F below; and
- (8) Name, address, telephone number, and if available, fax and pager number, of the party who will perform the specified work;
- (9) The identifying information regarding the Lead Safe Work Practices course taken by the persons performing the work, including the date of completion and the name of the person or agency who provided the training;

- (10) Containment procedures to be used;
- (11) Relocation procedures and options for occupants, if any.

B. Form of notice.

The Director shall make available to the public a form that complies with the requirements of § 67A-203, par. A, and contains blank spaces for the required information.

C. Sign required when exterior lead-based paint (or presumed lead-based paint) is disturbed:

Not later than the commencement of any activity subject to this article, the owner, or the contractor when the owner has entered into a contract with a contractor to perform work on the exterior of a building or structure, that is subject to this article, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD WORK IN PROGRESS

**PUBLIC ACCESS TO
WORK AREA
PROHIBITED**

**POSTED IN ACCORDANCE WITH CHAPTER 67A, ARTICLE 2,
OF THE CITY OF ROCHESTER LEAD POISONING PREVENTION CODE**

FOR FURTHER INFORMATION, PHONE: -----

The sign required by this subsection shall be not less than 24 inches square, and shall be in large boldface capital letters no less than one-half inch in size. The Director shall make available to the public a sample form that complies with these requirements and states the required information in English and Spanish. The sign required by this subsection shall remain in place until the time that the work subject to this subsection has been completed.

Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner, or where the owner has entered into a contract with a contractor to perform work subject to this article, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

D. Notice to tenants.

Where work subject to the requirements of this article is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before work subject to this article is to commence, the owner shall provide the following information:

- (1) Contents of notice.

Provide written notice to tenants of the building on which the work is being performed that lead-related work is being performed. This notice shall be in the compliance with the EPA pre-renovation notification rules set forth in 40 C.F.R. § 745, including the “acknowledgement and certification statement” procedures described therein, and shall include notice in the form of a sign, letter, or memorandum; and shall prominently state the following:

"Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint. The persons performing this work are required to follow federal, state, and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these

laws, by calling the Director of the NET Office at _____. The owner of this property is also required to provide tenants with a copy of the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead in Your Home."

The Director shall make available to the public a form that states the required information in English and Spanish.

(2) Availability of pamphlet.

The owner shall provide to all tenants in the building, the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead in Your Home."

E. Notice by contractor.

Where work subject to the requirements of this article is being performed by a contractor, the contractor shall at least three business days prior to the commencement of work on residential property subject to this article, notify the property owner of potential lead hazards during the project by delivering the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead in Your Home."

F. Early commencement of work by owner.

A property owner may commence, or may authorize a contractor to commence, work subject to this article less than three business days after providing notices required above when the property owner determines that such work must be commenced immediately to correct an emergency condition when a delay would pose an immediate threat to the safety or well-being of the building's occupants or to correct life-safety hazards.

G. Early commencement of work requested by tenant.

Upon written request of a tenant, an owner may commence or authorize a contractor to commence, work subject to this article on that tenant's premises less than three business days after providing notices required in subsections § 67A-203 par. D and E above.

H. Notice by paint retailer, tool or equipment supplier.

Sellers, retailers of paint, or anyone(including tool libraries) renting or selling tools or equipment that is commonly used for purposes that disturb painted surfaces shall be required to post a sign which informs the purchasers of paint as follows:

For buildings or structures constructed prior to 1978, Article 2 of the City of Rochester Lead Paint Poisoning Prevention Code, (Chapter 67A of the Code of the City of Rochester) requires, that in the course of removing or disturbing old paint, you use certain containment measures such as ground cover when scraping paint from surfaces and/or a HEPA vacuum attachment when power sanding lead paint from surfaces. You must also notify the City of Rochester via a form provided by the City available from this retailer or by calling _____.

I. Notifying bidders.

In any instance where a property owner or contractor is requesting bids for work that is subject to this article, the property owner or contractor shall notify all bidders of any paint inspection reports verifying the presence of any lead-based paint in the regulated area of the proposed project.

§ 67A-204. Occupant protection and worksite preparation [HUD regs, 24 CFR §35.1345]

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during certain hazard reduction activities.

A. Occupant protection.

(1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite), until after hazard reduction work has been completed and clearance, if required, has been achieved.

(2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

(a) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;

(b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;

(c) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or

(d) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

(3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

B. Worksite preparation.

(1) The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

(2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or, for an exterior hazard reduction activity, where it is easily read 20 feet (6 meters) from the edge of the hazard reduction activity worksite. Each warning sign shall be as described in 29 CFR 1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§ 67A-205. Safe work practices [§35.1350]

A. Prohibited methods.

Methods of paint removal listed in 24 CFR §35.140 shall not be used.

B. Occupant protection and worksite preparation.

Occupants and their belongings shall be protected, and the worksite prepared, in accordance with §67A-204. A person performing this work shall be trained on hazards and either be supervised or have successfully completed one of the specific courses in accordance with 24 CFR §35.1330(a)(4). [Note: reflects 3/21/04 amendment to HUD reg]

C. Specialized cleaning.

After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

D. *De minimis* levels.

Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

- (1) 20 square feet (2 square meters) on exterior surfaces;
- (2) 2 square feet (0.2 square meters) 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 window sills, baseboards, and trim.

§ 67A-206. Ongoing lead-based paint maintenance and reevaluation activities. [§35.1355]

A. Ongoing Maintenance.

- (1) Once a unit has been determined to have lead-based paint hazards, maintenance activities shall be conducted in accordance with paragraphs A(2)-(6) of this section. [reflects 6/21/04 amendment to HUD reg].
- (2) Owners shall visually inspect for deteriorated paint at unit turnover and every twelve months.
- (3) (i) *Deteriorated paint.* All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with standards set out in 24 CFR §35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

(ii) *Bare soil.* All bare soil shall be treated with standard treatments in accordance with §35.1335(d) through (g), or interim controls in accordance with §35.1330(a) and (f); except for any bare soil that a current evaluation has found is not a soil-lead hazard.
- (4) Safe work practices, as required by § 67A-205, shall be used when performing any maintenance or renovation work that disturbs paint that is known to be, or presumed to be, lead-based paint.
- (5) Any encapsulation or enclosure of lead-based paint or lead-based paint hazards which has failed to maintain its effectiveness shall be repaired, or abatement or

interim controls shall be performed in accordance with 24 CFR §§35.1325 or 35.1330, respectively.

- (6) Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with 24 CFR §35.1340.
- (7) Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact. The language of the notice shall be in accordance with 24 CFR §35.125(c)(3). The designated party shall respond to such report and stabilize the deteriorated paint or repair the encapsulation or enclosure within 30 days.

B. Reevaluation.

Reevaluation shall be conducted in accordance with this paragraph, and the designated party shall conduct interim controls of lead-based paint hazards found in the reevaluation.

- (1) Reevaluation shall be conducted if hazard reduction has been conducted to reduce lead-based paint hazards found in a risk assessment or if standard treatments have been conducted, except that reevaluation is not required if any of the following cases are met:
 - (a) An initial risk assessment found no lead-based paint hazards;
 - (b) A lead-based paint inspection found no lead-based paint; or
 - (c) All lead-based paint was abated in accordance with 24 CFR §35.1325, provided that no failures of encapsulations or enclosures have been found during visual assessments conducted in accordance with 24 CFR §35.1355(a)(2) or during other observations by maintenance and repair workers in accordance with 24 CFR §35.1355(a)(5) since the encapsulations or enclosures were performed.
- (2) Reevaluation shall be conducted to identify:
 - (a) Deteriorated paint surfaces with known or suspected lead-based paint;
 - (b) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;
 - (c) Dust-lead hazards; and
 - (d) Soil that is newly bare with lead levels equal to or above the standards in 24 CFR §35.1320(b)(2).
- (3) Each reevaluation shall be performed by a certified risk assessor.
- (4) Each reevaluation shall be conducted in accordance with the following schedule if a risk assessment or other evaluation has found deteriorated lead-based paint in the residential property, a soil-lead hazard, or a dust-lead hazard on a floor or interior windowsill. (Window troughs are not sampled during reevaluation).:
 - (a) The first reevaluation shall be conducted no later than two years from completion of hazard reduction.
 - (b) Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days.
- (5) To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two-year intervals must be conducted without finding lead-based paint hazards or a failure of an encapsulation or enclosure. If, however, a reevaluation finds lead-based paint hazards or a failure, at least two more consecutive reevaluations conducted at

such two year intervals must be conducted without finding lead-based paint hazards or a failure.

(6) Each reevaluation shall be performed as follows:

- (a) Dwelling units and common areas shall be selected and reevaluated in accordance with 24 CFR §35.1320(b).
- (b) The worksites of previous hazard reduction activities that are similar on the basis of their original lead-based paint hazard and type of treatment shall be grouped. Worksites within such groups shall be selected and reevaluated in accordance with §35.1320(b).

(7) Each reevaluation shall include reviewing available information, conducting selected visual assessment, recommending responses to hazard reduction omissions or failures, performing selected evaluation of paint, soil and dust, and recommending response to newly-found lead-based paint hazards.

- (a) *Review of available information.* The risk assessor shall review any available past evaluation, hazard reduction and clearance reports, and any other available information describing hazard reduction measures, ongoing maintenance activities, and relevant building operations.
- (b) *Visual assessment.* The risk assessor shall:
 - (i) Visually evaluate all lead-based paint hazard reduction treatments, any known or suspected lead-based paint, any deteriorated paint, and each exterior site, and shall identify any new areas of bare soil;
 - (ii) Determine acceptable options for controlling the hazard; and
 - (iii) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.
- (c) *Reaction to hazard reduction omission or failure.* If any hazard reduction control has not been implemented or is failing (e.g., an encapsulant is peeling away from the wall, a paint-stabilized surface is no longer intact, or gravel covering an area of bare soil has worn away), or deteriorated lead-based paint is present, the risk assessor shall:
 - (i) Determine acceptable options for controlling the hazard; and
 - (ii) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.
- (d) *Selected paint, soil and dust evaluation.*
 - (i) The risk assessor shall sample deteriorated paint surfaces identified during the visual assessment and have the samples analyzed, in accordance with 40 CFR 745.227(b)(3)(4), but only if reliable information about lead content is unavailable.
 - (ii) The risk assessor shall evaluate new areas of bare soil identified during the visual assessment. Soil samples shall be collected and analyzed in accordance with 40 CFR 745.227(d)(8)-(11), but only if the soil lead levels have not been previously measured.

- (iii) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with 24 CFR §35.1320(b). At least two composite samples, one from floors and the other from interior windowsills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(8) The risk assessor shall provide the designated party with a written report documenting the presence or absence of lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

- (a) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.
- (b) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.
- (c) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

C. Response to the reevaluation.

(1) *Hazard reduction omission or failure found by a reevaluation.* The designated party shall respond in accordance with paragraph B(7)(c)(i) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) *Newly-identified lead-based paint hazard found by a reevaluation.* The designated party shall treat each:

- (a) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with 24 CFR §35.1340.
- (b) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with 24 CFR §35.1340.

§ 67A-207. Non-Compliance. [from *New Orleans Sec. 82-318*]

A. Complaints.³

Any person who believes that an activity is being carried out in violation of this article may orally or in writing notify the Director that he or she believes such violation is taking place. The Director shall cause a written record to be made of the complaint, which record shall be retained and made available for public inspection.

³ [Not in New Orleans ordinance, but necessary to make sense of the next paragraph calling for a "response."]

B. Response to complaint.

Upon receiving a complaint, the Director shall:

- (1) Review the complaint;
- (2) Determine whether a valid notification form has been filed, if required, for the property in compliance with the requirements of § 67A-203; and
- (3) Where deemed necessary by the Director, conduct an inspection at the job site to determine the validity of the complaint.

C. Evaluation of complaint.

When determining the validity of a complaint, if the Director or his or her designee is not able to observe the actual performance of any work practices constituting violations of the performance standards of § 67A-203, the Director shall investigate and consider the following:

- (1) The containment measures and work tools being used by the responsible party;
- (2) The color(s) of paint being disturbed or removed by the responsible party;
- (3) The color(s), quantities, nature, and locations of alleged visible lead paint contaminants;
- (4) The colors, locations, and conditions of paint on adjacent properties to determine if such paint could be a source of the alleged visible lead paint contaminants;
- (5) Any work being performed on adjacent properties which could be a source of the alleged visible lead paint contaminants; and
- (6) Any other relevant evidence that the Director determines in the exercise of his or her discretion would help to determine whether a violation of this article has occurred.

§ 67A-208. Enforcement of Lead Safe Work Practice Requirements. [from *New Orleans Sec. 82-320*]

In addition to the enforcement authority provided in Article 5, the Director is authorized as follows:

A. Authority of Director to sample.

Subject to limitations on entry and inspections referenced in paragraph D below, the Director may collect paint, dust, and soil samples from, or apply an X-ray fluorescent (XRF) analyzer to, the property where the work is being performed and from adjacent properties in order to determine the validity of a complaint.

B. Enforcement authority.

The Director may, following issuance of a notice of violation, require as a condition of resuming work, that the responsible party conduct a special inspection by a certified risk assessor in order to establish that the regulated area is in compliance with this article.

C. Stop work orders.⁴

The Director may stop any work that is disturbing or removing lead paint or otherwise generating lead paint contaminants in violation of this article or the construction, alteration or repairs

⁴ New Orleans provision revised to parallel Rochester 39-211 provision.

of any metal structure or building subject to the requirements of this article when, in the opinion of the Director, such work is being done in violation of any of the provisions of this article. The Director shall notify the owner of the property or the owner's agent to suspend all work, and any such persons shall forthwith stop work and suspend all building activities until the stop-work has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served either by delivering it personally or by posting it conspicuously where the work is being performed and sending a copy of it by mail. The work shall be stopped immediately and shall not be resumed without authorization. Violations of stop-work orders may be referred to the Municipal Code Violations Bureau.

D. Remediation/specific performance.

The Director shall have the authority to immediately issue an order:

- (1) To the owner or occupants to eliminate the hazard within a reasonable and specified period of time, after the issuance of such order when it is determined that, after an investigation, any location at which lead dust, lead chips or other lead-contaminated wastes are, or were handled, or otherwise came to be located, may create a danger to public health or the safety of any person or to the environment;
- (2) Remove any workers, except those needed to abate the hazard, from the project work area until the condition is corrected in order to prevent further project activity;
- (3) Evacuate appropriate portions of the site and vicinity until the condition is corrected.

E. Authority to enter upon property or inspect.

The Director or her/his designee is authorized to enter upon properties for and inspect for the purposes of enforcement of this Article in the same manner and subject to the same procedures applicable to enforcement of the Chapter 90, the Property Maintenance Code.

§ 67A-209. Penalties and procedures for violations. [Par. B from *New Orleans Sec. 82-321*]

A. Violations of this Article are subject to the enforcement penalties and procedures provided for in Article 5 of this Chapter.

B. Alternative penalty.

A court of in which a judicial enforcement proceeding is pending, or the Municipal Code Violations Bureau in an administrative proceeding, may suspend any penalty imposed upon the condition that the responsible party attend and complete a training course approved by the state in lead-safe work practices. Any such course must be taken and completed within 30 days of the hearing held pursuant to this Code. The failure of the responsible party to submit proof of attendance and satisfactory completion of the course, including certification from the instructor or provider of the course, shall result in the penalty and any fees becoming immediately due and payable. This alternative remedy shall only be available to persons who have not previously completed such a training course, and who have not been previously found by the Director to be in violation of this article.

Article 3:

Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Contents:

§ 67A-301.	Purpose and Goal
§ 67A-302.	Definitions
§ 67A-303.	Education and Outreach
§ 67A-304.	Disclosure Obligations Prior to the Transfer of Real Property
§ 67A-305.	Disclosure Obligations Upon Receiving Notice of Lead Paint in a Rental Unit
§ 67A-306.	Continuing Obligation to Report Conditions in Rental Properties; Right to Vacate Hazardous Units Upon Disclosure and Failure to Correct.
§ 67A-307.	Enforcement; Private Right of Enforcement.

§ 67A-301. Purpose and Goal.

A. Purpose.

In 1992 the United States Congress enacted The Residential Lead-Based Paint Hazard Reduction Act, 42 USC 4852d, (commonly known as “Title X”), to address the problem of lead-based paint hazards in our nation’s homes. Section 1018 of Title X requires disclosure of known information about lead-based paint or lead-based paint hazards for most residential properties constructed before January 1978. The purpose of the federal disclosure requirements is to educate the public about the nature of the dangers posed by those hazards and to inform individuals about the existence of potential lead hazards in the properties in which they may reside.

This Article augments the disclosure requirements of the federal lead paint hazard disclosure law as follows:

- (1) by extending the definition of properties subject to the disclosure requirement (“target housing”),
- (2) by clarifying the applicability of that law to certain types of tenancies, particularly oral month-to-month tenancies,
- (3) by requiring disclosure with respect to additional types of transfers (including transfers other than sale, i.e., involuntary transfers, transfers among family members and other transfer that do not involve “consideration”, and specifically including sales in foreclosure and property deeded in lieu of foreclosure), and
- (4) by establishing mechanisms to assure compliance with the provisions of state, federal and local hazard disclosure requirements through local sanctions for violations.

In addition, this Article establishes a “private right of enforcement” available to purchasers, lessees (including all tenants and occupants of a property), neighbors, community organizations and any

other persons or organizations affected by the failure to disclose the existence of lead-based paint and known lead-based paint hazards as required by this Article.

B. Goal.

The goal of this Article is to reduce lead poisoning for all persons in the City of Rochester and, in particular to immediately reduce, and by the year 2010 eliminate, incidents of lead poisoning in children in the City of Rochester.

C. Scope and Applicability.

- (1) The requirements of this Article apply to all housing covered by Title X ("target housing" as defined at 24 CFR §35.86) and, in addition, to:
 - (a) Properties acquired through foreclosures and other involuntary transfers including but not limited to private foreclosures, bank foreclosures, tax foreclosures, dispositions in bankruptcy proceedings, and non-judicial foreclosures, and deeds in lieu of foreclosure;
 - (b) Rentals subject to short fixed-term leases (i.e. leases of a fixed duration of 100 days or less with no provision for renewal)
 - (c) Renewals of tenancies, regardless of the date of the inception of the tenancy, where the landlord has not yet disclosed the existence of lead-based paint or known lead hazards or the landlord has come into new information regarding the presence of lead-based paint or lead-based paint hazards;
 - (d) Rental units intended as "housing for the elderly" and housing for "persons with disabilities;" and
 - (e) Efficiency ("0-bedroom") dwellings;
 - (f) Any other transfer of residential property which was built prior to January 1978, or is known to contain lead-based paint or lead-based paint hazards, regardless of whether that transfer was for legal consideration (including gift transfers and bequeathed property).

(2) Exemptions.

This Article shall not apply to:

- (a) Properties that are certified lead-based paint free by a certified lead inspector.
- (b) Properties that are used for dormitory housing, unless children six years of age or under reside in such housing or are expected to reside there.
- (c) Nursing homes or assisted living facilities.

§ 67A-302. Definitions. *[was § 67A- 30c].*

The definitions found in the implementing regulations for Title X of the federal Department of Housing and Urban Development at 24 CFR §35.86 shall apply except that the term "target housing" shall be read to include the housing identified in § 67A-301 and the term "Lessee" shall be specifically construed to include all "month-to-month" tenancies and tenancies in all target housing regardless of whether those tenancies were created by written or oral leases.

In addition, for the purposes of this requirements added to the federal law by this Article, the following terms shall have the following meanings:

Agent means any party who enters into a contract with a seller or lessor, for the purpose of selling or leasing pre-1978 housing.

Certified Lead Inspector means a person who is certified by the EPA to conduct inspections for lead-based paint.

Certified Risk Assessor means a person who is certified by the EPA to conduct risk assessments.

Certified Sampling technician means a person as described in 24 CFR § 35.1340 as a person qualified to perform clearance examinations, that is, a person who is “a technician licensed or certified by EPA . . . to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector, *provided* that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by a such a licensed or certified sampling technician shall not be performed using random sampling of dwelling units or common areas in multifamily properties, except that a clearance examination performed by such a licensed or certified sampling technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

Common Area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry, and recreational rooms.

Department means the Department of Community Development of the City of Rochester.

Director means the Director of NET of the City of Rochester or his or her legally designated representative.

Lead-Based Paint means paint or other surface coating containing lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-Based Paint Free means pre-1978 housing that has been found by a Certified Lead Inspector to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-Based Paint Hazard means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse health effects, including lead based paint hazards as defined by EPA regulations (40 C.F.R. § 745.65), which provide numerical standards for lead in dust, soil, and paint.

Lead Hazard Evaluation Report means any reasonably obtainable records and reports pertaining to lead-based paint and/or lead-based paint hazards in pre-1978 housing.

Lead-Based Paint Inspection means a surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822],

Lead Poisoning Prevention Settlement means a cash contribution or in-kind service to a project designed to advance primary prevention of lead poisoning, which a party agrees to in partial settlement of an enforcement action, but which the party is not otherwise legally obligated to perform.

Lead Poisoning Prevention Code Certificate means a certificate obtained in accordance with Article 1 of this Code.

Lead Safe Work Practice means the methods and standards designed to avoid the creation of lead-based paint hazards during work that disturbs painted surfaces in pre-1978 housing, including

refraining from unsafe practices that generate lead-contaminated dust and incorporating measures to protect occupants and workers and minimize the dispersal of lead-contaminated dust and including the requirements of Article 2 of this Code.

Lessee means any person or entity that enters into an agreement to lease, rent, or sublease housing built before 1978.

Lessor means any individual or entity that offers housing built before 1978 for lease, rent, or sublease.

Purchaser means any person who acquires residential property that was built before 1978 or that is known to contain lead-based paint or lead-based paint hazards, regardless of whether that property was gifted, sold, or in any other manner transferred.

Risk Assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (1) Information gathering regarding the age and history of the housing and occupancy by children age 6 and under;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Seller in addition to the persons described in the definition at 24 CFR § 35.86 includes any person transferring title to target housing as defined in § 67A-301, regardless of whether consideration is provided for the transfer.

Tenant means any occupant of a leased or sub-leased property. When a distinction is intended to limit the applicability of this Article to the named Lessee of a residential unit, the term “Lessee” shall be used

Violation means an individual’s failure to comply with any requirement of this Article, and each failure to comply with any provision of this Article constitutes a separate violation.

§ 67A-303. Education and Outreach.

A. Information⁴

The Department shall inform the public, including owners of residential property being sold or leased, their agents, and child care providers of their rights and responsibilities under this Article, and shall prepare a lead hazard “Evaluation Upon Sale” checklist and an “Evaluation Upon Leasing” checklist to be made available to all sellers, lessors, or other transferors of title or interests in real property which shall be used to comply with the requirements of § 67A.304 below.

B. Pamphlet

The Department shall make available the EPA educational pamphlet entitled “Protect Your Family From Lead in Your Home.” The Department shall prepare and distribute an insert to

⁴ [Drafter note: inspection list is to be designed to put seller on notice of potentially hazardous conditions, including specifically deteriorated paint conditions-- particularly in windows and other impact or chewable surfaces—and should be similar in format to the HUD Section 8 Housing Quality Standards inspection form, but focusing on potential paint hazards. The form checklist should include in the heading the year the property was built, or best estimate of that date.]

accompany the EPA pamphlet. The insert shall summarize the provisions of this Article as well as any other applicable lead poisoning prevention laws and shall be provided in the same language as the EPA pamphlet.

§ 67A-304. Due Diligence and Disclosure Obligations Prior to the Sale or Lease of Residential Property.

A. Due Diligence Obligations.

(1) Sellers.

Prior to the sale, or other transfer of title of any residential property built prior to 1978 or other property that is known to contain lead-based paint or lead-based paint hazards, the seller, or transferor, or agent acting on his or her behalf, shall inspect the property, or cause an inspection to be made of the property using the "Evaluation Upon Sale" checklist prepared and made available by the City pursuant to § 67A.303 to determine whether any deteriorating paint conditions exist, including chalking, chipping, flaking, cracking, peeling or otherwise damaged or deteriorated paint, and if so, whether any bare soil is reasonably proximate to the deteriorating paint, and whether paint dust or paint chips are visible, provided however, that properties for which a Lead Poisoning Prevention Code Certificate has been obtained pursuant to Article 1 of this Code shall be exempt from this inspection requirement. The checklist prepared pursuant to this provision is to be signed and dated by the seller and the person completing the inspection together with sufficient information to identify and contact that person. An original of the completed checklist is to be provided to the purchaser or other transferee, and a copy of the checklist signed by the purchaser or transferee, acknowledging receipt of the checklist, is to be retained by the seller.

(2) Lessors.

Prior to the leasing or subleasing of any residential property built prior to 1978 or other property that is known to contain lead-based paint or lead-based paint hazards, the lessor or sub-lessor or agent acting on his or her behalf, shall inspect the property, or cause an inspection to be made of the property using the "Evaluation Upon Leasing" checklist prepared and made available by the City pursuant to § 67A.303 to determine whether any deteriorating paint conditions exist, including chalking, chipping, flaking, cracking, peeling or otherwise damaged or deteriorated paint, and if so, whether any bare soil is reasonably proximate to the deteriorating paint, and whether any paint dust or paint chips are visible, provided however, that properties for which a Lead Poisoning Prevention Code Certificate has been obtained pursuant to Article 1 of this Code shall be exempt from this inspection requirement. The checklist prepared pursuant to this provision is to be signed and dated by the lessor and the person completing the inspection together with sufficient information to identify and contact that person. An original of the completed checklist is to be provided to the lessee, and a copy signed by the lessee, acknowledging receipt of the checklist, is to be retained by the lessor.

B. Disclosure Obligations

Before a purchaser or tenant is obligated under any contract to purchase or lease target housing, the seller or lessor shall:

- (1) Provide the purchaser or tenant with the EPA lead hazard information pamphlet and an insert as prescribed by the Department; and
- (2) Disclose to the purchaser or tenant, both orally and in writing, the presence of any known or presumed lead-based paint and/or lead-based paint hazards; including specifically the presence of any conditions identified in the evaluation required by paragraph A above, and
- (3) Provide the purchaser or tenant with a copy of any lead hazard evaluation reports or other records or reports pertaining to the dwelling which evidence the existence of

lead-based paint or lead-based paint hazards, and the evaluation checklist described in paragraph A above; and

- (4) Disclose to the purchaser or tenant whether a Lead Poisoning Prevention Code Certificate was required for the property pursuant to Article 1 and, if so, whether the Certificate has been obtained; and
- (5) Allow the purchaser or tenant at least 10 days to conduct a risk assessment or lead-based paint inspection of the property.

C. Acknowledgment

All contracts or oral agreements for the purchase or leasing of property constructed prior to 1978 or other properties which are known to contain lead-based paint or lead based paint hazards must be accompanied by a written copy of the federal Lead Warning Statement and an Acknowledgment signed by the purchaser or tenant.

The Acknowledgment must state that the purchaser or tenant has:

- (1) Read the Lead Warning Statement and understands its contents; and
- (2) Received an EPA lead-hazard information pamphlet and the locally supplemented Insert; and
- (3) Received oral and written disclosure from the seller, lessor, or their agent concerning any known lead-based paint and/or lead-based paint hazards; and
- (4) Received any lead hazard evaluation reports and other required information; and
- (5) Had at least 10 days to conduct a risk assessment or inspection for the presence of lead-based paint and/or hazards in the property before becoming obligated under the contract to purchase or lease the housing.

D. Lead Warning Statement

- (1) Every contract for sale of target housing shall contain the federal Lead Warning Statement in large type on a separate sheet of paper attached to the contract. The Lead Warning Statement shall state as follows:

“Every purchaser of any interest in residential real property on which a residential dwelling was build prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.”

- (2) Every contract for lease of target housing shall contain the federal Lead Warning Statement in large type on a separate sheet of paper.

The Lead Warning Statement shall state the following:

“Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

- (3) In addition, with respect to leases of target housing, the federal Lead Warning Statement shall be supplemented with the following statements:

“As a tenant, you are entitled to protections under federal, state, and local laws. Your landlord cannot prevent you from enforcing your rights by threatening to evict you, by refusing to renew your lease, by threatening to raise your rent, or by taking any other action in retaliation for your contacting the city or a federal or state, agency to enforce your rights. If your landlord fails to tell that your house or apartment contains lead paint or has lead paint hazards, or takes or threatens to take any action in retaliation for you having attempted to enforce your right to lead-safe housing, you have the right to make sure your landlord complies with the law and to be compensated for any financial damages you suffer if he or she has not complied with the law, including the cost of obtaining a lead paint inspection by an person certified to do lead paint inspections.

“All tenants whose landlords are required to be given this notice have rights under the City of Rochester’s “Lead Poisoning Prevention Code” (Chapter 67A of the Rochester City Code, available at the public library). Those protections, under certain circumstances, include having your obligation to pay rent “abated” (suspended) if your landlord fails to remove any lead-based paint violations within six months after having been cited by the city’s code enforcement authorities to remove those hazards. A court may later determine that your rent obligation is suspended until those violations are remedied, but you do not have an absolute right to withhold your rent and you should not withhold your rent unless you have first obtained advice from a lawyer. Legal Assistance may be available at no charge to you by calling _____. Even if you may be entitled to withhold your rent, in order to raise a claim for rent abatement in a court action or other proceeding you may be required to deposit all of your rent due with the Court until the issue can be decided by a judge. In addition, if you or any residents or guests in your apartment have caused or contributed to creating the hazardous condition, you may lose all or a portion of your claim to a reduction of rent.

“In addition to the rights provided under state law and otherwise provided by the Rochester Lead Poisoning Prevention Code, if lead hazards in your house or apartment are not controlled within 60 days after you have been told about those hazards, you may, but are not required to, vacate the dwelling unit without being liable for any further obligations under your oral or written lease agreement.”

E. Disclosure to Agents.

A seller or lessor shall disclose to any agent working on behalf of the seller or lessor all known information about lead-based paint and/or lead-based paint hazards.

F. Agents.

- (1) Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing target housing, the agent, on behalf of the seller or lessor, must inform the sellers of their obligations under this Article and ensure compliance with the requirements of this Article.
- (2) This section shall apply to any agent working on behalf of a buyer or tenant that receives all or partial compensation from a seller or lessor.
- (3) Agents who have complied with their duties under this section shall not be liable for a purchaser or lessor’s failure to disclose lead-based paint or lead-based paint hazards, so long as the lead hazards were not disclosed to the agent.

§ 67A-306. Continuing Obligation to Report Conditions in Rental Properties; Right to Vacate Hazardous Units Upon Disclosure and Failure to Correct.

A. Continuing Obligation of Lessors

Upon obtaining information subsequent to the leasing of a subject residential property which pertains to the existence of lead-based paint or the presence of lead-based paint hazards that has not been previously disclosed or was not previously available, the lessor shall provide written notification to all building occupants regarding such conditions.

B. Right of Tenants to Vacate Hazardous Units Upon Failure to Correct.

In addition to the rights provided under state law and otherwise provided by the Rochester Lead Poisoning Prevention Code, if lead hazards in the dwelling unit are not controlled within 60 days after disclosure takes place, the tenant may, but is not required to, vacate the dwelling unit without violating the lease agreement.

§ 67A-307. Enforcement; Private Right of Action.

A. Enforcement by City.

Violations of this Article are subject to enforcement as provided in Article 5. With respect to the claims related specifically to violations of this Article, however, no fines shall be assessed unless it has been proved that the property owner's violation of this Article was willful, and the court or Municipal Code Violations Bureau is to be lenient in assessing fines with respect a first time violation unless it is shown that the property owner's violation was in willful disregard of the disclosure requirements of this Article. Additionally, no fine is to be assessed under this Article until such time as the City has made available the materials required to be provided under § 67A-303.

B. Enforcement by private parties.

In conjunction with a private enforcement action or proceeding as authorized by §67A-408, a person aggrieved by a violation of this Article shall have available all of the remedies that would be available in a private right of enforcement action or proceeding commenced under the Title X, 42 USC §§ 4852d(b)(3) and (5); but extended to the types of housing covered by this Article and the additional disclosure requirements contained herein.

[Drafter note: The provisions from the April 1 draft regarding Child Care Facilities have been deleted. It was the belief of the workgroup that those provisions should be addressed in a later amendment to the Lead Poisoning Prevention Code.]

Article 4:

PROTECTIONS FOR OCCUPANTS; RIGHT TO VACATE PREMISES; PRIVATE RIGHT OF ENFORCEMENT; HOUSING REGISTRY

Contents:

- § 67A- 401. Purpose.
 - § 67A- 402. Prohibition of Retaliatory Action.
 - § 67A- 403. Notification to County of Lead Hazardous Conditions.
 - § 67A- 404. Designation of Uncorrected Lead Hazardous Conditions as Rent Impairing Violations; Notice to Owner and Tenants.
 - § 67A- 405. Notice to Tenants of Right to Have Premises Free of Conditions That Are Detrimental to Health and Safety.
 - § 67A- 406. Documentation of Conditions.
 - § 67A- 407. Right to Vacate.
 - § 67A- 408. Private Right of Enforcement of Lead Poisoning Prevention Code.
 - § 67A- 409. Database of Lead Safe Properties.
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§ 67A- 401. Purpose.

It is the purpose of this Article to assure that residents of rental properties are protected from any form of retaliation or other adverse consequences as a result of asserting their rights (or having others assert protections on their behalf) under the City of Rochester's Lead Poisoning Prevention Code or under any other local, state or federal law intended to provide protections against lead poisoning, and to further assure that mechanisms are available for enforcement of those laws.

It is the further purpose of this Article to facilitate the effectiveness of existing state laws governing the use and occupancy of rental properties to the extent to which those laws may be available for purposes related to the prevention of lead poisoning, including Social Services Law §143-b, Real Property Law §§223-b and 235-b, and Real Property Actions and Proceedings Law §755.

Finally, this Article provides mechanisms to help tenants obtain lead-safe housing by increasing the availability to the public of information regarding lead-safe properties, and under certain circumstances, permitting tenants to vacate property that may be unsafe. This Article advances that purpose by making sure that courts are provided with information regarding lead-based paint related conditions to facilitate the effective enforcement of local, state, and federal protections related to lead safety in the prosecution or defense of judicial proceedings.

For the purposes of this Chapter, laws and code protections regarding damaged or deteriorated paint in buildings constructed prior to 1978 shall be deemed to be complaints related to laws intended to facilitate the prevention of lead poisoning.

§ 67A- 402. Prohibition of Retaliatory Action.

A. It is unlawful for an owner, or any person acting on his or her behalf, to take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the Department. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including rent increases and non-renewals) or interfere with the occupants' use of the property.

B. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the Department or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.

C. The provisions of this section shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

§ 67A- 403. Notification to County of Lead Hazardous Conditions.

With respect to households in which renters are in receipt of assistance through the Monroe County Department of Health and Human Services, the City of Rochester shall send notices to the County, to the tenant, and to the City Court describing any lead hazardous conditions that have been identified (including the existence of any damaged or deteriorated paint in a dwelling built prior to 1978), and to include in the content of such notices the information necessary to facilitate implementation of the protections afforded to residents under Social Services Law § 143-b.

§ 67A- 404. Designation of Uncorrected Lead Hazardous Conditions as Rent Impairing Violations; Notice to Owner and Tenants.⁵

A. Lead hazardous conditions in multiple dwellings (buildings with three or more residential units) that have gone uncorrected for more than six months after notice to the owner constitute "rent impairing violations." The initial notice sent by the Department with respect to any violation of this Chapter relating to conditions in a rental shall be provided to both the the owner and the tenant and shall advise that the violation to which the notice is addressed will constitute a rent impairing violation in the event the lead hazardous condition remains uncorrected for more than six months.

B. If a violation is not cancelled or removed of record within six months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said six months, no rent shall be recovered by any owner for any premises in such multiple dwelling used by a resident thereof for human habitation in which the condition constituting such rent impairing violation exists, provided, however, that if the violation is one that requires approval of plans by the department for the corrective work and if plans for such corrective work shall have been duly filed within three months from the date of notice of such violation by the Department to the owner last registered with the Department, the six-months period aforementioned shall not begin to run until the date that plans for the corrective work are approved by the department; if plans are not filed within said three-months period or if so filed, they are disapproved and amendments are not duly filed within thirty days after the date of notification of the disapproval by the Department to the person having filed the plans, the six-months period shall be computed as if no plans whatever had been filed.

⁵ [Drafter note: The language in this provision parallels the language of Multiple Residence Law 305-a that addresses conditions identified by the State Building Codes Council as "rent impairing." The Council no longer updates that list, which was prepared prior to the enactment state and federal lead-paint statutes].

C. A court in considering whether a violation of this Chapter is to be treated as a rent-impairing violation, shall take into consideration, weather and other conditions which may mitigate against the ability of the property owner to control the lead hazardous condition.

D. If a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling.

E. The provisions of this section shall not apply if (i) the condition referred to in the Department's notice to the owner last registered with the department did not in fact exist, notwithstanding the notation thereof in the records of the Department; (ii) the condition which is the subject of the violation has in fact been corrected, though the note thereof in the department has not been removed or cancelled; (iii) the violation has been caused by the resident from whom rent is sought to be collected or by members of his family or by his guests or by another resident of the multiple dwelling or the members of the family of such other resident or by his guests, or (iv) the resident proceeded against for rent has refused entry to the owner for the purpose of correcting the condition giving rise to the violation.

F. To raise a defense under this section in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent, the resident must affirmatively plead and prove the material facts under this section, and must also deposit with the clerk of the court in which the action or proceeding is pending at the time of filing of the resident's answer the amount of rent sought to be recovered in the action or upon which the proceeding to recover possession is based, to be held by the clerk of the court until final disposition of the action or proceeding at which time the rent deposited shall be paid to the owner, if the owner prevails, or be returned to the resident if the resident prevails. Such deposit of rent shall vitiate any right on the part of the owner to terminate the lease or rental agreement of the resident because of nonpayment of rent.

G. Nothing in this section shall in any way affect the right of a tenant to proceed with rights secured under any other federal, state, or local law.

§ 67A- 405. Notice to Tenants of Right to Have Premises Free of Conditions That Are Detrimental to Health and Safety.

A. With respect to lead hazardous conditions in all rental properties for which the City has sent the owner a notice of violation, the Department shall notify tenants residing in such properties of that the owner has been cited for such violations, and shall include with that notification the information that the tenant may be entitled to assert protections afforded by the state Real Property Law § 235-b, (the state Warranty of Habitability law) with respect to such violations, and shall be notified of the possibility that the violation may become a rent-impairing violation if it remains uncorrected for more than six months, and of the procedural right to request a stay of any eviction proceeding based upon non-payment of rent as provided for in Real Property Actions and Proceedings Law § 755.

B. The notification sent to the tenant pursuant to paragraph A shall additionally advise the tenant that legal assistance that may be available to assert the protections afforded by the laws described therein. The notice to tenants shall include then name of any law office that has identified itself as a provider of such free legal services, and shall include the contact information provided by that office.

§ 67A- 406. Documentation of Conditions.

A. To further fair and expeditious judicial enforcement of the rights and protections of the City of Rochester's Lead Poisoning Prevention Code and other laws intended to provide protections against lead poisoning, the city shall make available to the City Court (and upon request by a party or by the

court itself, to any other court of appropriate jurisdiction), certified records in a format complying with Rule 4518 of the Civil Practice Law and Rules, to establish:

(1) That a complaint has been filed with the city regarding the property within the protections of the anti-retaliation provisions of this Code or the state Real Property Law §223-b, including the date of the complaint, the name of the person or persons who filed the complaint, and the disposition of that complaint.

(2) That the household includes persons who are in receipt of public assistance and that the Department has notified the County of lead-based paint related conditions at the property that it has determined are dangerous, hazardous, or detrimental to life or health to life or health within the meaning of Social Services Law §143-b;

(3) That the property is a multiple dwelling subject to as that term is defined in §67A-404, and that the owner has been sent a notice by the Department that a lead hazardous condition exists that such violation is now deemed to be a designated rent impairing violation under that law, including certification as to the date of the sending of that notice.

(4) That the owner of a rental unit covered by the state Real Property Law §235-b (i.e., any rental unit) has been sent a notice of a lead-based paint related condition existing in the unit that may be dangerous, hazardous, or detrimental to life, health or safety, including the date of the notification, and date of the Department's most recent determination as to whether the condition has yet been corrected.

B. The notice shall state whether or not the Department has been able to ascertain whether the condition to which the notice was addressed was created by a resident or residents of the unit.

§ 67A- 407. Right to Vacate.

A. Any resident of a rental dwelling unit in which the Department has notified the residents that there is a lead-based paint condition in the unit or common areas that the Department has determined may be detrimental to life, health or safety, shall have the right to vacate that unit, and if the tenant so chooses, may elect to terminate the lease, provided that condition was not created by a resident of the premises. If the tenant elects to terminate the lease for the unit, he or she shall have no future rent obligation under that rental agreement from the date the tenant vacates the unit.

B. No tenant is required to vacate a unit pursuant to this section, and the exercise of the right to vacate shall not affect any right the resident may have to compel repairs to the unit, or to return to the unit under an existing lease should the tenant choose not to terminate the lease. The Department shall ensure that tenants who have been advised that a condition exists that may be detrimental to their health and safety are additionally advised of the risks associated with remaining on the premises, and shall be provided the EPA educational pamphlets available with respect to lead safety.

§ 67A- 408. Private Right of Enforcement of Lead Poisoning Prevention Code.

A. Any person aggrieved by violations of this Chapter, including but not limited to any purchaser (or intended purchaser) of target housing, any tenant (or intended tenant) of target housing, any neighbor of the target housing, or organization whose purposes encompass the enforcement of health and safety laws related to lead-based paint poison prevention, may bring an action or proceeding in a court of competent jurisdiction for damages and for injunctive relief, including specific performance with respect to the requirements of this Chapter. Any person initiating a judicial action or proceeding under this provision who substantially prevails in such action or proceeding, shall be entitled to treble damages, as well as costs and attorneys' fees reasonably expended in prosecuting that action or proceeding.

B. The remedy provided by this section shall be in addition to those provided for under federal law by 42 USC § 3545; by Title X, 42 USC §§ 4852d(b)(3) and (5); and by the Toxic Substances Control Act, 15 USC § 2601.

§ 67A- 409. Database of Properties for Which A Rochester Lead Poisoning Prevention Code Certificate Has Been Filed; Voluntary Registry.

A. The Department shall establish and maintain a database identifying all properties for which a Lead Poisoning Prevention Code Certificate is required to be filed under Article 1 of this Chapter, which shall indicate whether or not such Certificate has been filed and the date of filing. In addition, an owner who has voluntarily obtained such a Certificate may have his or her property added to the database.

B. In addition to the database described in Paragraph A, the City shall create and maintain, either directly or by contract, a Voluntary Housing Registry to which shall be added, on request of the owner, the address and contact information for any property for which the owner demonstrates that an EPA certified lead assessor, inspector, or technician affirms that a lead hazard clearance examination has been conducted and that, as of the date of that examination (which shall be provided in the Registry), there were no lead hazards detected.

C. Any owner of a property constructed on or after January 1, 1978 shall be entitled to have the description (address) and contact information for that property included in the Voluntary Housing Registry created in Paragraph B.

D. The databases created to pursuant to this section shall be kept available for “walk-in” inspection by the public and shall be made available on the internet. No person requesting access shall be required to complete a Freedom of Information Request in order to view this database or be required to submit any other forms which might deter access.

[Drafter Note: we have to make sure we get the City Court administrative judge to agree to a mechanism for making these notifications retrievable by the court – such as a computer database that the City will maintain that is accessible by the court in the manner used by the NYC Civil Court.]

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Article 5:

Enforcement

[To be added: Provisions to parallel those used for Part 90, but encouraging leniency with respect to first time offenses and taking into consideration the newness of the law and special circumstances related to the expense of compliance, the availability of funding and technical complexities]

QUESTIONS AND ANSWERS REGARDING THE PROPOSED LEAD POISONING PREVENTION CODE

1. Q. Who prepared the draft code?

A. The proposed **Lead Poisoning Prevention Code (LPPC)** for the City of Rochester is based primarily upon the work of the Coalition to Prevent Lead Poisoning's "Housing Committee." The draft Code is to be submitted for the approval of the Coalition's Board of Directors on July 20, 2004, and if approved, will then be submitted to the City for consideration. The members of the Coalition's Housing Committee include community advocates, certified lead-paint risk assessors, landlords, and attorneys.

2. Q. How does the draft code work?

A. The proposed code is designed as a new Chapter to be added to the Charter and Code for the City of Rochester. The new Chapter is designated as "Chapter 67A" in accordance with the city's alphabetical protocols for the designation of new chapters. Designation of the proposal as a new chapter recognizes that the LPPC is more than a building maintenance code – it is a comprehensive proposal to eliminate lead poisoning in the City of Rochester through a variety of mechanisms designed to implement a "primary prevention" strategy.

The purpose of the LPPC is to establish the simplest and most economical safeguards that will assure that we find and remove lead hazards without relying on children as "lead detectors." Adoption of this Code will replace the limited inspection procedures available currently under the Public Health Law which rely primarily on examining properties only once a child has been found to have an elevated blood lead level, and is thus permanently injured.

Establishing the LPPC as a chapter separate from the city's Chapter 90 "Property Code" recognizes that the system of cross-connected provisions is not a simply an amendment to a "building code." For that reason, and because lead-paint hazard regulation is not an area addressed in the New York State Uniform Fire Prevention and Building Code, and the LPPC is not pre-empted by the state under Executive Law §379. That is, the city is authorized to proceed with such legislation under authority separate from the state uniform code.

3. Q: Does the proposed code differ materially from the framework discussed in meetings with city staff in October of 2003?

A: The framework discussed with the city in October of 2003 included a few concepts which have been modified during the drafting and review by the Housing Committee in order to accommodate the practical needs of property owners while reducing demands on limited city resources.

For example, the original model we discussed would have required the City to issue a **permit** whenever lead-based paint would be disturbed, and would have required **licensing** of any workers who would be doing that work. Responding primarily to delay and cost issues raised by those on the Committee familiar with landlord concerns, the Committee revised its initial drafts regarding the "permit and licensing" approach. Instead, a new Article 2 was substituted, which is based upon a model that has been adopted in New Orleans.

The New Orleans model relies upon formal **notification** to the city (rather than permits), and upon currently available **certification and training** programs in lead-safe work practices (rather than licensing). This simplified approach eliminates 1) the need for property owners to prepare an application, 2) review by the City of each application, and 3) the need for the City to issue a permit for each work project. Resources are thus conserved, and delays are eliminated; yet assurances of lead-safe work practices are provided by the requirement that a plan must be submitted to the city showing how the work will be done safely by trained workers. Consequently, city personnel don't even need to "touch" the paperwork other than to receive it for filing, but in the event a neighbor or

occupant fears that work is not being done properly, the city can quickly determine whether a lead-safe work plan has been filed, and take appropriate measures to make sure it is followed.

4. Q. How is the Code structured?

A. The LPPC is divided into four substantive Articles, in addition to an enforcement article to be prepared later which will include the mechanisms and penalties to enforce the code. The four substantive Articles are as follows:

Article 1 establishes the mechanisms for determining what housing must be inspected, and how inspections will be carried out.

Article 2 sets the criteria for when housing will be considered hazardous and the requirements for removing the hazards safely – including the use of lead-safe work practices and notification to anyone who might be at risk if the work were not done properly.

Article 3 addresses shortcomings in the federal “disclosure” law which, in theory, should advise housing purchasers and renters of any lead hazards but, in practice, often falls short because of gaps in the way the federal law works.

Article 4 deals with occupancy protections and is designed to ensure that occupants of housing who are attempting to make sure their apartments are lead safe will not be discouraged from doing so because of fear of retaliation. This article also incorporates provisions that are designed to make existing state laws function more effectively, and to provide a way for families exposed to lead hazards to go to court directly to have their housing made safe without having to rely exclusively on the city’s own limited code enforcement resources.

5. Q. What are the models used for the LPPC?

A. The LPPC is an amalgam of a variety of “best practices” used to fight lead hazards. The Housing Committee began its work last fall by reviewing state and local laws from all over the country and focused on those that meet Rochester’s needs best.

Article 1’s concept of using a “Certificate” process to make sure target housing is inspected is a modification or an idea used in target neighborhoods in Milwaukee.

Article 2’s “Notification” procedures come from the approach used successfully in New Orleans, and also incorporated into both Article 1 and Article 2 are standards and safeguards that have been adopted in federal housing program regulations which were adopted after years of study and input. These federal standards, of course, had to be adapted so they could be used with the “Certificate” model we have proposed, and modified to address the different circumstances faced by private owners of non-federally assisted housing.

Article 3, the expanded “Disclosure” provisions is based primarily on the Model Disclosure Law prepared by the national experts in the field, the Alliance for Healthy Homes.

Article 4, the “Occupant Protections” is actually pretty much our own local model. Rather than starting from whole cloth, however, we incorporated existing state law code enforcement mechanisms rather than attempting to create new substantive and procedural protections. That is, we set out to simply make the existing state laws function more effectively by making sure that persons intended to be protected by those laws know about them and how to use them.

5. Q. Will the LPPC require all housing in the City to be inspected?

A. No, the Code will *not* require all properties in the City to be inspected, only housing identified as “target housing” in the Code. Even within the class of “target housing” the requirement will not apply to all properties at one time, but will depend upon a staggered implementation, depending upon where the property is located. That is, the LPPC is structured so that resources are targeted where they will most be needed. From the work done by the Center for Governmental Research in its 2002 report prepared for the Monroe County Health Department we know that approximately 1000 children will be poisoned by lead each year unless we do something, and we have a pretty good idea of where those kids live.

The LPPC will draw upon that knowledge, using the areas designated by the CGR report as areas of “Extreme Risk”, “High Risk”, “Moderate Risk” and “Low Risk” to identify which housing will be the focus of inspection and enforcement requirements. The city has twelve census tracts identified as “Extreme Risk” yet, unbelievably, there is presently no mechanism in place to assure that housing in those tracts are subject to systematic inspection. Unfortunately, there are no “Low Risk” census tracts in the City, so ultimately the LPPC must reach all areas. Not all properties will be inspected, however, since the Code follows the federal model of identifying “target housing” which excludes housing built after 1977. Also, many homeowner properties and housing where safeguards are already in place, such as the huge inventory of federally assisted housing will not be subject to inspection requirements.

In addition to the City’s identification of geographic areas using the CGR criteria, occupants of housing where a hazard is suspected can request a city inspection and if a pre-1978 unit is identified as having deteriorated paint, the property will be required to pass the clearance standard set in Article 2 for obtaining a certificate of compliance with the LPPC.

6. Q. So what are the inspection standards used? Will there be a full-blown “risk assessment” for all private housing?

A. The object of the proposal was to come up with the least burdensome, least expensive, inspection model that could be administered effectively while assuring the lead-paint hazards will be identified and safely addressed.

By adopting a “Certificate” model, we have addressed the reality that the City does not currently have the staffing of certified lead assessors, inspectors and technicians that would be necessary to reach all of the units that should be examined. Instead, the LPPC draws upon a model like the inspection requirements for automobile registration. Just as car owners must periodically and voluntarily go to get their cars inspected by certified auto mechanics, the LPPC will require that property owners have their housing examined by certified personnel. Since the EPA already has a certification system in place, it is not necessary for the city to set up its own procedures to certify examiners – the LPPC relies upon the EPA certified personnel who have already been trained under federal requirements.

The starting protocol examined was the “visual assessment” model used in the federal Section 8 “Housing Choice Voucher” program. In that program (as described in regulations at 24 CFR Part 35, Subpart M), there is an initial visual assessment of the property, which is followed by taking dust wipe samples if deteriorated paint is found. The Committee was impressed with the practicality of this model, but felt that additional protections are needed to address what we believe to be the “riskier” housing stock of non-Section 8 properties. There are general “housing quality” requirements in the Section 8 program which, together with more a more sophisticated and perhaps more conscientious pool of property owners, make Section 8 properties more likely to be of higher quality and to be better maintained.

Based upon their daily experience in identifying the most likely sources of hazards in the severely distressed housing in the city’s high risk areas, the lead hazard professionals on the Committee proposed that we require lead dust wipe sampling of all at risk housing, including soil samples and sampling on porches which are often the source of lead

contamination. This level of inspection is a compromise between the Section 8 visual assessment approach and a complete “risk assessment” under the EPA protocols. The standards to be used for issuance of the Certificate by the examiner are based on the lead contamination standards established as “clearance standards” in the federal regulations, (24 CFR Part 35, Subpart R and EPA regulations at 40 CFR Part 745). Accordingly, the LPPC adopts a modified Section 8 model, but one that recognizes that the children poisoned in Rochester by lead paint are not living in Section 8 units and are likely to be living in units where it is crucial that presence and the sources of the lead contamination be identified.

7. Q. Won't it be prohibitively expensive to require this level of examination of all of the pre-1978 rental properties in each of the high-risk census tracts? How can the costs be kept lower?

A. No, but it *is* prohibitively expensive to *fail* to address the hazards in these properties. As the reports on the Coalition's website show, the cost of failing to address lead poisoning in terms of the expense to the education system, the costs in the juvenile justice system, the cost to the health care system and the accumulated economic loss from lost earning potential and loss of contribution to our society, far outweigh the cost of putting in place the economical lead hazard control strategies that have been developed. As a city identified as one of the ten highest lead-hazard risk areas in the country, we have no choice but to initiate proactive, systemic inspections and do to make sure the protocols followed are sufficient to find the lead hazards we know exist in these properties.

In order to reduce the cost of inspections – with the collateral benefits of involving the affected community – the LPPC incorporates the specific goal of using trained “technicians.”

8. Q. What are the federal “Disclosure” requirements, and if the federal law already includes “Disclosure” requirements that cover private housing, why do we need additional requirements here in Rochester?

A. The federal “Title X” disclosure requirements do cover private housing, but unfortunately, there are limits in the federal requirements and in the ability of the federal government to enforce those requirements that make them “more honored in the breach than in the observance.”

Here's how it's supposed to work: Title X requires that whenever a landlord rents out an apartment that was built before 1978, he or she is supposed to inform the tenant whether there are any known lead hazards and to give them federal information brochures that tell them why they need to pay attention to lead poisoning dangers and things they can do to keep their children safer. Unfortunately, there are three key problems with this law. First, many landlords don't know the law applies to them. Second, some landlords know the law applies to them but duck their responsibilities by taking advantage of a loophole in the law so that they don't have to warn tenants about hazards. Third, many property owners believe that there is no realistic chance they will be penalized for not complying with the law.

With regard to point one, knowing that the law applies: Many apartments in Rochester are rented under oral, month to month leases. Many owners mistakenly believe that the disclosure requirements don't apply because the leases are not in writing or because the term of the lease is less than 100 days. There is an exemption in the federal law for units rented for a fixed period of less than 100 days, provided that no renewal is anticipated. That exemption does not apply to renewable month-to-month leases. Moreover, the fact that a lease is oral, rather than written, does not exempt it. The LPPC addresses these problems by clarifying applicability to oral, month-to-month tenancies.

With regard to point two, the “loophole”: the federal law allows the property owner to check an “I don't know” box on the Disclosures statement. This, we believe, is likely to be an “exception that swallows the rule” since a property owner under federal law is not required to inspect the property. The proposed LPPC addresses this problem by requiring a room-by-room visual inspection by the landlord using a checklist to be supplied by the City, so that

when deteriorated paint is present the landlord will not be able to claim no knowledge of the condition.

With regard to point three, enforcement: the LPPC provides (as does the federal law) for a “private right of enforcement.” That is, if a property owner is ignoring the law, a tenant or other affected person can bring an enforcement proceeding to require compliance. The LPPC makes this prospect more likely by providing establishing the requirement as a matter of local law that when accompanied by the education campaign the will accompany the adoption of the LPPC is significantly more likely to result in enforcement actions in local courts. (We are unaware of any federal enforcement actions having been initiated in the Rochester area).

Additionally the Article 3 Disclosure provisions go beyond the content of the information that must be provided under the federal law by requiring that tenants be advised how to request lead hazard inspections if they believe there is a problem, and tell tenants about their rights under state laws, such as the “warranty of habitability,” that may give them rent with-holding and rent abatement protections if lead paint hazards go uncorrected.

9. Q. Would the new law do anything to help families with children to locate housing that is “lead-safe”?

A. Yes, Article 4, the portion of the proposed Code that sets up the anti-retaliation provisions and is designed to increase awareness of occupancy protections currently available under state law also contains a provision to establish a database of housing that is “lead-safe.” Under these provisions the City would maintain (or contract to maintain) a list of all properties for which a Certificate has been issued under Article 1. In addition, the list would identify federally assisted housing (other than Section 8 Housing Choice Vouchers, unless the owner elect to list a Voucher unit). Property owners who have not obtained a Certificate would be permitted and encouraged to add their properties to the list if they can show that the housing falls into a category that demonstrates that it is lead-safe.

The information in the registry would be made available on a walk-in basis and we expect will ultimately be provided on a website.

10. Q. Isn’t this new law likely to penalize landlords unfairly if they aren’t aware of all of the new provisions or until they learn what requirements apply to them?

A. The LPPC will include specific enforcement provisions to provide guidance on enforcement that will encourage leniency for first time offenders and provide forgiveness of any penalties assessed provided that compliance is promptly obtained. It is the hope and expectation that the City fully and creatively use its experience with the “carrots and sticks” approach to code enforcement that will combine access to and information about lead hazard control programs and financial assistance with its code enforcement efforts.