

**Testimony of Kathryn Garcia, Senior Advisor for Citywide Lead Prevention**

**New York City Council**

**Oversight – LeadFreeNYC and the enforcement of the City’s lead laws**

**Committee on Health; Committee on Education; Committee on Housing and Buildings;  
Committee on Public Housing**

**November 13, 2019**

Good morning Speaker Johnson, Chairs Levine, Treyger, Ampry-Samuel, and Cornegy, and members of the Committees on Health, Education, Public Housing, and Housing and Buildings. I am Kathryn Garcia, and I am testifying before you today in my capacity as Senior Advisor for Citywide Lead Prevention. I would like to thank you, on behalf of the de Blasio Administration, for the opportunity to provide updates on LeadFreeNYC and the enforcement of New York City’s lead laws.

I am joined by Dr. Oxiris Barbot, Commissioner for the New York City Department of Health and Mental Hygiene (Health Department); Corinne Schiff, Deputy Commissioner for Environmental Health (Health Department); Louise Carroll, Commissioner for the New York City Department of Housing Preservation and Development (HPD); and AnnMarie Santiago, Deputy Commissioner for Enforcement and Neighborhood Services (HPD). Also here today are colleagues from the Department of Education (DOE), the School Construction Authority (SCA), the New York City Housing Authority (NYCHA), the Department of Parks and Recreation (Parks), the Department of Buildings (DOB), and the Department of Environmental Protection (DEP).

Mayor de Blasio appointed me as the Senior Advisor for Citywide Lead Prevention in October 2018, and since that time, I have worked with elected officials, advocates and my Administration colleagues to develop and launch LeadFreeNYC, a comprehensive program to eliminate lead exposure for New York City children. In developing this program, we employed a twofold approach: (1) proactively prevent exposure to lead hazards and (2) respond quickly and comprehensively when a child has an elevated blood lead level (EBLL). Through the groundbreaking initiatives that comprise LeadFreeNYC, we are increasing screening and support services for children, working to eliminate lead-paint hazards and exposure to dangerous consumer products, managing water and soil hazards despite their low risk, and conducting expansive public outreach. I look forward to discussing the LeadFreeNYC plan and the progress we have made.

I would like to thank this Council and you personally, Speaker Johnson, for your dedication to strengthening the protections and procedures of our City’s local lead laws. In LeadFreeNYC, we committed to lowering the threshold for the amount of lead in paint and dust that triggers remediation and abatement, and legislation spearheaded under your leadership codified these

more-protective standards — the strongest in the nation. These new thresholds empower City agencies to go further to protect children from even lower levels of exposure.

Every day, with the full force of our City agencies, we're recommitting ourselves to finding every child who has been exposed to a lead hazard and to identifying every potential source of that child's exposure. We're doing more to educate parents – and everyone who cares for our City's children. We are unwavering in our commitment to reach zero childhood lead exposure in New York City and are using every resource at our disposal to make that goal a reality.

### **Striving Towards Zero**

New York City has long been a national leader of protective policies to reduce childhood lead exposure. In 2004, the New York City Council enacted Local Law 1, granting the City expansive powers to hold landlords accountable for addressing lead paint hazards. The new legislative powers spurred dramatic declines in childhood lead exposure in New York City; since 2005, the City has seen a 90 percent decline in children with elevated blood lead levels of 5 micrograms per deciliter or above. I am pleased to report that in the first half of 2019, New York City witnessed a further 10 percent citywide decline in the number of children with elevated blood lead levels when compared to the same period the year before.

But we know that the only acceptable number of children exposed to lead in our city is zero. Elevated blood lead levels can cause irreversible developmental effects in children, including adversely affecting physical and mental growth and causing learning and behavioral problems. Fortunately, lead exposure is preventable, and through LeadFreeNYC, we have the resources and policies in place to identify and eradicate lead health risks at their source. We will continue to engage all stakeholders until no child is exposed to lead hazards in our City.

### **Ensuring Safe Homes, Schools and Work Sites**

Lead paint constitutes the most commonly identified source of childhood lead exposure in New York City. When lead paint deteriorates, young children—who explore the world with their hand and mouths—can ingest lead paint or the dust it turns into. Local Law 1 requires landlords to determine if a child under the age of six resides in an apartment, and if so, to inspect for and fix any lead paint hazards. The Law also requires landlords to ensure that apartments are free of lead-paint hazards upon turnover. Because landlords are the first line of defense in ensuring that lead-based paint stays intact in their buildings, and remains safe for children, HPD has conducted extensive outreach to property owners. HPD is ramping-up these efforts as we approach January 2020, when owners conduct their annual notice and annual inspections, including the Get Ahead of Lead campaign which started at the beginning of November.

Under LeadFreeNYC, we committed to increasing the enforcement and scope of Local Law 1 in order to address lead hazards in more places and at lower levels of lead. As previously mentioned, through our partnership with this Council, we successfully lowered the definitions of lead paint

and lead dust. The change has enabled the Health Department to take additional enforcement actions in places that were previously outside our reach, and HPD will expand its work once XRF machine technology is certified.

### *Building Lead Index*

HPD and the Health Department worked to create a Building Lead Index in order to prioritize audits, proactive inspections, and outreach efforts. HPD's rules go into effect in December and HPD will immediately begin demanding building records. The criteria for selection include testing positive for lead paint and receiving violations for deteriorated sub-surfaces – such as mold and leaks. HPD will also randomly select buildings based on geographic areas with a prevalence of children with elevated blood lead levels. As part of these audits, HPD will begin issuing violations for turnover and failure to conduct the annual notice and annual inspection processes.

### *Exemption Requirements*

HPD is clarifying that landlords can apply to receive exemptions from Local Law 1 requirements as either “Lead Safe” or “Lead Free.” Exemptions can be granted for individual dwelling units or for an entire building. The lead-free exemption requires submission of testing and documentation that the unit or building no longer contains lead-based paint. The lead-safe exemption requires submission of testing and documentation that lead-paint surfaces have been contained or encapsulated.

### *Construction-Site Sweeps*

Under LeadFreeNYC, we committed to an aggressive increase in our oversight of construction work to ensure it is being done safely. Common renovation activities, such as sanding, cutting, and demolition can create lead dust and paint chips that can be a hazard if not controlled using safe work practices. In March 2019, the Health Department and the Department of Buildings (DOB) began sending inspectors to conduct surprise, joint inspections of construction sites—sometimes accompanied by the federal Environmental Protection Agency—in order to identify work that poses a lead-dust hazard. To date, the agencies have conducted 63 joint inspections, identifying unsafe work practices at 11 of the sites and issuing 39 violations and 10 Stop Work Orders.

### *NYCHA XRF testing*

Ensuring that lead-paint hazards are addressed in public housing and City housing programs constitutes another vital component of LeadFreeNYC. More than 400,000 New Yorkers live in public housing, and the City has developed a robust plan to inspect these homes and address identified lead paint hazards.

NYCHA has launched an unprecedented \$101 million initiative to test more than 134,000 apartments for the presence of lead-based paint using high-tech XRF analyzers by the end of 2020. Testing began this spring at Harlem River Houses, and as of November 12, nearly 21,000

apartments across all five boroughs have been tested – about 16 percent of the total goal. Residents are receiving testing results for their apartment, and results are being posted on the NYCHA website.

### *DOE Lead-Paint Testing*

Protecting the health and safety of our youngest New Yorkers is a core principle of our LeadFreeNYC work. This commitment to child welfare has informed the Department of Education’s enhanced protocols and increased transparency around lead paint inspections. Over the summer, custodians and independent inspectors retained by the School Construction Authority (SCA) conducted visual inspections in 8,438 rooms across all five boroughs and successfully remediated 1,860 impacted rooms. This year, independent contractors will inspect, XRF-test, and remediate cafeterias and libraries serving 3-K, Pre-K, Kindergarten, and 1st grade students.

As of October 5, SCA consultants and contractors visually inspected and, as necessary, XRF tested and stabilized any deteriorated lead-based paint in the cafeterias and libraries of all 880 school buildings that were built before 1985 and are attended by children under the age of six. As part of the DOE’s enhanced protocols, inspections will now include gymnasiums, auditoriums, and bathrooms. Inspections, stabilization, and remediation of these additional spaces will begin next month.

In an effort to increase oversight and transparency of this important work, the DOE has taken proactive steps to closely track and clearly communicate remediation efforts with staff and families, including logging paint findings in applicable rooms three times throughout the year and posting the results online. In addition, Ernst + Young is conducting a review of the DOE’s protocols and procedures to ensure they are as strong as possible. The review will be completed by the end of the calendar year.

## **Protecting and Supporting our Children**

### *Coordinated Nurse Care*

As part of the Health Department’s lead-prevention work, the agency monitors all blood lead test results for the city’s children and conducts an environmental investigation for all children with an elevated blood lead level. The investigation includes a comprehensive risk-assessment interview with the child’s family designed to identify potential sources of lead exposure so that all possible sources can be addressed. To ensure that children with EBLL receive timely follow-up blood lead tests and developmental and nutritional assessments and services, every family is connected with a Department nurse to coordinate care. By reducing the threshold for investigation and care coordination to 5mcg/dL, the Department is now protecting thousands more children.

### *Increasing Blood Lead Testing*

New York City has a very high testing rate, but under LeadFreeNYC, we are working to drive the number even higher. Multiple new initiatives aimed at encouraging blood lead testing have already shown success. The Health Department is now matching birth records and blood lead testing information to identify children who missed their one-year-old or two-year-old test and is sending those families reminder letters. Data from the first eight months of the program show an approximately 1,800 additional children tested. To promote the importance of blood lead testing for children under age three, the Health Department launched a citywide media campaign earlier this year, and — thanks to new local laws enacted by the Council — multiple agencies now have Health Department educational materials to distribute to the families they serve.

As of April 2019, when an HPD inspector identifies a lead paint hazard in an apartment with a child under age six, the inspector helps the tenant immediately connect to the Health Department to check the child's testing history and refer to a health care provider, as needed. The Health Department speaks with about 200 New Yorkers a month through these on-the-spot referrals.

### **Eliminating Dangerous Consumer Products**

Unsafe consumer products — including certain ceramics, jewelry, cosmetics, toys, and spices sourced from other countries — constitute the second most frequently identified source of lead exposure for children in New York City, behind paint. Through LeadFreeNYC, we committed to increasing regulations and raising awareness about lead levels in consumer products. In addition to creating a “Lead Products Index” to educate business owners and shoppers about products that may contain lead and are banned from sale, the Health Department is developing a consumer products awareness training, expanding its proactive consumer-product sweeps, and — last spring — launched a media campaign to educate the public about contaminated products that resulted in approximately 28,000 monthly visits to DOHMH's hazardous lead products webpage.

### **Managing Water and Soil Hazards**

Health Department data shows that, even with the lower blood lead level for intervention, lead paint and consumer products remain, by far, the most commonly identified sources of childhood lead exposure. The Health Department's most recent analysis of data from investigations of approximately 1,500 children under the age of 18 with elevated blood lead levels demonstrates that 64 percent of these children were exposed to lead-based paint hazards, and 10 percent were identified as at-risk for exposure to detectable lead in consumer products, such as food, spices, toys, pottery, cosmetics or medications.

Crucially, the data indicates that less than one percent of the children in the analysis were potentially exposed to lead in soil or water, and for all of these cases, there were other risk factors and/or a lead-based paint hazard also identified. We are confident that the Health Department's risk-based approach to investigating lead exposure sources, coupled with coordinated care for families and children with elevated blood lead levels, will enable us to continue to reduce the number of children with elevated blood lead levels in New York City.

### *Lead Service-Line Map*

As the data from the Health Department and the Department of Environmental Protection (DEP) confirms, New York City's water supply is safe and delivered virtually lead-free to buildings. Our water is tested over 600,000 times each year at various points throughout the system. However, in order to address the small risk posed by privately-owned water service lines and internal building plumbing and fixtures that contain lead, LeadFreeNYC implemented a lead service line map and pilot service line replacement program for low-income homeowners. This map, which is available on the LeadFreeNYC website, promotes greater transparency and clarifies for owners and tenants whether their building uses a lead-service line. DEP also provides free water testing kits for residents that are concerned about lead.

### *Service Line Replacement for Low-Income Homeowners*

DEP is currently developing a pilot program, in partnership with the State Department of Health, to leverage grant funding to replace lead-service lines for low-income, single-family homeowners. About 300 homeowners applied to the program, and DEP is securing a vendor to begin replacement work next month.

### *Water Fountain Testing and Remediation*

The Department of Parks and Recreation tested all of its approximately 3,500 water fountains and fixtures in park facilities citywide. Fountains with lead exceedances were immediately taken offline and scheduled to be remediated, and the agency posted a publicly accessible online map with fountain locations and testing results. After this process, fewer than ten fountains remain offline for long-term lead-related repairs. Parks will test one-fifth of its fountains each year moving forward.

### *Soil Education*

As I stated, soil is rarely identified as a potential source of lead exposure for children with EBLs. To mitigate soil risks, there are simple steps parents can take including, hand washing after playing in soil or gardening, leaving dirty toys or tools outside, mulching garden paths, and growing fruits and vegetables in raised beds. LeadFree worked with community gardens to develop signage about these strategies.

### **Making LeadFreeNYC a Reality**

Through our continued partnership – and the implementation of strong laws, policies, and programs – I am confident that New York City will remain at the forefront of protecting children from lead exposure. With your help, we will continue to educate New Yorkers about lead hazards and prevention strategies as we work to make a lead-free New York City a reality.

Thank you. We are happy to take your questions.



**THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER**

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**TESTIMONY OF NEW YORK CITY COMPTROLLER  
SCOTT M. STRINGER**

**TESTIMONY TO THE LEADFREENYC OVERSIGHT HEARING**

**November 13, 2019**

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Good morning. Thank you, Chairs Levine, Cornegy, Ampy-Samuel and Treyger and your respective committees for the opportunity to testify today. I am grateful that the Council is continuing to shine light on this incredibly important issue.

In September, I issued an investigative report that revealed how a systemic breakdown in the City's bureaucracy allowed thousands of buildings to go uninspected for lead-paint hazards, even though the City knew those buildings were home to lead-exposed children.

The core of this breakdown involved two agencies — the Department of Health and Mental Hygiene (DOHMH), and the Department of Housing Preservation and Development (HPD).

By law, the Health Department receives and reviews thousands of blood tests every year showing the exact location of children suffering from lead exposure.

Yet for years DOHMH didn't share most of this information with HPD, the agency responsible for actually inspecting private buildings to prevent lead exposure.

One hand didn't know what the other knew.

The result is that some 9,671 buildings were not visited by HPD lead inspectors, even though DOHMH had blood test data showing that those buildings were home to 11,972 children with elevated blood lead levels. These included 503 buildings where at least three children with elevated blood lead levels lived.

It is nothing short of tragic. The City had all the information it needed to target resources at lead exposure hot spots, but instead HPD waited for resident complaints to be phoned in before launching an inspection.

Because the **City's approach to lead inspection was often flat-footed and almost always reactive — instead of proactive**, HPD never inspected as many as two-thirds of the buildings that were under its jurisdiction and associated with a case of child lead exposure.

It was an approach that left us ill-equipped to protect New Yorkers. Our report revealed this massive failure. It should be a roadmap for meaningful reform

Because the agency that is supposed to turn over every stone and follow every lead, to root out lead paint was instead searching for the light switch in the dark. They were never notified of the blood-lead tests of children and therefore missed **two-thirds of the buildings** that were home to kids who had been exposed to lead.

Our findings exposed how crucial it is for City agencies to take a coordinated, proactive, and aggressive approach if we truly want to eliminate childhood lead poisoning in our City.

Our investigation provided the City with a roadmap to reform, and I am glad to report that because of our investigation the City has committed to begin proactively reaching out to the residents of over 8,000 previously uninspected buildings we identified in our report.

That includes inspections and audits of hundreds of buildings my office identified as being tragically associated with multiple cases of lead exposure.

Previously, the City had only committed to targeting about 200 buildings a year.

There is still much more we can be doing to protect our children from lead in their homes, their schools, their playgrounds, and their daycare centers. But by heeding the recommendations in our investigation, the City is taking a positive step forward.

Last week my office met with many of the officials that testified today. I look forward to receiving updates on the progress they are making towards the goal of a City where no child is made to suffer from lead exposure.

I want to reiterate the critical reforms we must embrace for the City to achieve that goal.

Let's start with real enforcement. Our investigation found buildings that were home to 15, 16, or 17 lead-exposed children, but in the five-year period we studied, the City didn't issue a single fine or penalty to any landlord for failing to follow two key provisions of the law.

First, requiring landlords to remove lead paint hazards from apartments at turnover; and second, to check apartments where young children live at least once a year for lead hazards.

That's got to change. These laws exist to remediate lead in homes. The City must hold landlords accountable to following them.

Last week, I also requested documents from the Department of Education—to find out whether and how effectively that agency has been inspecting its classrooms and other areas of our schools that serve young children—those who most need the City's protection from lead exposure.

We now know that upwards of 20% of Pre-K to first grade class rooms tested positive for lead conditions in the past few months and required remediation.

Parents deserve to know how serious DOE has been about protecting children. As a public school parent of a second grader and first grader, Chair Treyger, and the Committee on Education, I appreciate your work asking DOE for lead inspection data, and I commend you for demanding necessary answers to ensure the health of our children.

There is nothing more important that we can do as public servants than to protect the health of our children. We cannot accept that any child could face the risk of lead poisoning in his or her own home or school because our City government failed to do its part to protect that child.

I hope that the changes the City is making in response to our investigation will help spare thousands of children from the threat of lead exposure. I won't waver in my focus on this issue until we've done absolutely all that we can to eliminate the threat of lead paint from our city.

Thank you, and I am happy to answer any of your questions.



NEW YORK CITY COMPTROLLER  
**SCOTT M. STRINGER**

Bureau of Audit and Investigation  
Bureau of Policy



**September 2019**

# **New York City Comptroller Scott Stringer's Investigation into Child Lead Exposure**



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# Executive Summary

Fifteen years after the passage of landmark legislation designed to eliminate the scourge of lead poisoning in New York City (Local Law 1 of 2004), thousands of children across the five boroughs remain at risk of exposure to lead paint and the severe, irreversible health consequences it can inflict. While Local Law 1 has helped to dramatically drive down rates of lead poisoning, the City has failed to achieve the goal it set out at the time of the law’s passage, namely “the elimination of childhood lead poisoning by the year 2010.” Between January 1, 2013 and October 10, 2018 alone, 26,027 children under the age of 18 tragically tested positive for elevated blood lead levels of 5 micrograms per deciliter (5 mcg/dL) or greater, the current benchmark for public health action recommended by the United States Centers for Disease Control and Prevention (CDC).<sup>1</sup>

This investigative report by Comptroller Scott M. Stringer examines how City agencies charged with eradicating childhood lead poisoning for years missed crucial opportunities to protect children from the immense harms associated with lead exposure. At its core, the investigation exposes a clear failure by the City to leverage its own data related to lead exposure and utilize that data to precisely and methodically inspect buildings and areas most likely to pose a threat to children.

Specifically, the Comptroller’s Office found that for years, the City allowed crucial data—namely thousands of children’s blood lead test results collected by the Department of Health and Mental Hygiene (DOHMH)—to remain siloed within DOHMH, rather than using the data to proactively pinpoint lead exposure hotspots for inspection by the Department of Housing Preservation and Development (HPD). Instead, the City allowed HPD to rely almost exclusively on a reactive, complaint-driven inspection protocol, all but ignoring the hard, actionable data in possession of a sister agency. In retrospect, the absence of a coordinated, interagency strategy between DOHMH and HPD to eliminate lead paint hazards constitutes a missed opportunity to protect children and create a safer, healthier city.

In January 2019, while this investigation was in progress, the City issued its *LeadFreeNYC* plan, alongside a number of related laws enacted by the City Council. These efforts are designed to advance the goal of eliminating lead poisoning in the City and are to be commended. However, unless the City acts with urgency to address how HPD prioritizes inspections and makes use of DOHMH data, children could still be put at risk. The City’s protocol relating to inspections of buildings with lead paint is still primarily reactive, with a goal of only 200 proactive HPD inspections and audits per year. Moreover, to date, the City has added only 36 percent of the funding it stated was necessary to implement *LeadFreeNYC*. With thousands of known buildings across all five boroughs associated

with multiple cases of child lead exposure, the City must fully fund the resources necessary to enforce Local Law 1 and prevent new cases of children's lead exposure.

The Comptroller's investigation, examining the City's response to lead in the period between January 1, 2013 and October 10, 2018, includes a number of findings that demonstrate the need for increased coordination in the City's fight against lead exposure:

- DOHMH received blood-lead test results detailing the names and addresses of hundreds of thousands of children across the City, yet at no time during the period examined did DOHMH share that information with HPD. In the absence of a City policy to use that data to target HPD's lead-enforcement efforts, 9,671 buildings under HPD jurisdiction, housing 11,972 children diagnosed with lead exposure (5 mcg/dL or greater), were not inspected by HPD lead inspectors. Indeed, HPD did not send lead inspectors to 503 buildings under its jurisdiction that DOHMH data showed had **three or more children** with blood levels at or above the 5 mcg/dL CDC action level.

It is true that the City's standard lagged behind the federal benchmark of 5 mcg/dL during the period examined and did not require a city lead inspection unless a child registered a much higher blood lead level of 15 mcg/dL. That said, the City's stated goal was the elimination of child lead exposure, and it had powerful tools available—including relevant data in DOHMH's possession—that it failed to use. By coupling DOHMH data with HPD enforcement power, the City could have targeted buildings where it had good reason to suspect that children may have been exposed to lead paint hazards. Having now adopted the more stringent federal benchmark for lead exposure, the City must commit to inspecting these 9,671 buildings identified in this report and make homes across the five boroughs safer for children.

- Of the 11,972 lead-exposed children (blood lead levels at or above 5 mcg/dL) in HPD-jurisdiction buildings that went uninspected for lead paint, 2,749 tested positive for lead exposure even **after** another child in the same building had done so, based on an analysis of information in DOHMH's Childhood Blood Lead Registry. In retrospect, DOHMH's accumulated blood test data should have served as a clear warning sign that children were being exposed to lead paint hazards, possibly in their own homes, sufficient to warrant action of the part of HPD, which potentially could have prevented future instances of lead exposure.

Even as HPD undertook a total of 153,516 lead paint inspections during the time period examined, mostly in response to tenant complaints, those inspections never reached nearly two-thirds—63 percent—of the buildings that were both under its jurisdiction and associated with a case of child lead exposure.

- In cases where HPD’s lead unit did complete at least one inspection in a building with a documented case of child lead exposure, the inspections yielded 7.6 violations per building on average – showing the value of concentrating inspection activities in clear lead exposure hotspots.
- Of the 9,671 buildings that went uninspected for lead paint by HPD and were associated with at least one case of child lead exposure, 572 were in NYCHA complexes. According to HPD officials, in properties where another government agency, such as NYCHA, is involved in managing housing it is that agency’s responsibility to address lead issues. Accordingly, lead paint complaints that NYCHA residents made through the City’s 311 system were routed to NYCHA and were not addressed by HPD. Consequently, during the period examined by this report, NYCHA was allowed to police its own compliance with the New York City Childhood Lead Poisoning Prevention Act, also known as Local Law 1 of 2004 (LL1).
- The Comptroller’s investigation revealed that by responding only to resident complaints rather than proactively seeking out lead exposure hotspots, HPD’s enforcement resources did not align with areas with high levels of lead exposure. For instance, the borough of Manhattan registered a rate of 13 inspections per child with lead exposure, versus only four inspections per case in Brooklyn—even though DOHMH records showed that Brooklyn had *six times more lead exposed children* than Manhattan during the period examined.
- During the period under examination, 1,561 buildings within New York City were home to three or more children diagnosed with elevated blood levels, 1,420 of which were under HPD’s jurisdiction. One Brooklyn apartment building had 17 individual children diagnosed with elevated blood lead levels. DOHMH records show that the 50 buildings with the highest number of children who tested positive for elevated lead levels were home to 547 children. Ultimately, 35 percent of buildings associated with three or more children with lead exposure were never visited by an HPD lead paint inspector.
- While LL1 mandates that landlords take proactive measures to prevent lead poisoning, the City failed to use its statutory authority to enforce compliance. Over the period studied in this report, HPD issued zero violations for building owners’ failures to comply with LL1’s turnover requirements and zero violations for their failures to perform mandated annual inspections, two key provisions of the law that obligate landlords to regularly inspect the vast numbers of rental housing units with potential lead-based paint hazards—a task for which HPD does not have unlimited capacity. Those enforcement gaps have left the preventive goals of LL1 unfulfilled and diverted limited City resources, resulting in the City’s enforcement of LL1 remaining on an entirely complaint-driven basis.

- Official statistics are likely to significantly understate the extent of child lead poisoning and exposure in New York City. In 2017 approximately 22,000 children—20 percent of all children who *should have been* tested—under the age of three had *not been tested* for lead poisoning as required by New York State law, according to DOHMH’s data. The proportion of untested children has increased markedly, from a low of 7 percent in 2009 to a high of 20 percent in 2017.

While lead exposure can occur through contact with contaminated toys, water, soil, or other sources, evidence suggests that the primary source of childhood lead exposure in the United States is lead paint in older, deteriorating housing.<sup>2</sup> This suggests that the City should focus fact-finding efforts—such as lead-hazard investigations, inspections, and audits—on buildings where children with elevated blood lead levels are known to reside, and particularly in older buildings where lead-based paint hazards are more likely to persist. In such cases, City investigators should also determine whether building owners complied with their obligations under applicable laws and regulations, and enforcement actions should be pursued purposefully and aggressively in cases of non-compliance to spur safe and effective preventive actions by all responsible owners.

The Comptroller offers a series of additional policy recommendations in keeping with the City’s goal of helping to eliminate childhood lead exposure:

- **Coordinate agency responses.** The City must take a more proactive approach to eliminating the dangers posed by lead paint. HPD and DOHMH should fully coordinate their efforts and leverage every tool and data resource in their arsenal to identify and remedy potential lead paint hotspots before children are put at risk. The City should start by conducting full investigations in the 9,671 buildings identified in this report as having been associated with cases of elevated blood lead levels in children, any buildings with presumed lead paint content in high-lead exposure zones, and buildings with common ownership and/or management with buildings with histories of lead-based paint hazards. The City’s *LeadFreeNYC* plan includes the creation of a “Building Lead Index” that will target a limited number of buildings each year based on the building’s history of violations and whether the building is located in an area with high rates of child lead exposure. While compiling a Building Lead Index is a first step towards a more proactive approach to inspections, the City should as a matter of urgency do more to investigate the buildings most linked to actual cases of lead exposure.
- **Fully fund *LeadFreeNYC*.** *LeadFreeNYC* now tasks HPD with doing much more to police LL1 requirements, including more inspections and audits. The City estimates the cost of these enforcement actions at \$25 million for FY2020 through FY2023.<sup>3</sup> However, the City’s FY2020 Budget includes a total of only \$9 million allocated over that period. If the City is committed to its own plan, the City must fully fund the entire HPD component of *LeadFreeNYC*.

- **Improve enforcement of Local Law 1.** HPD must better enforce provisions of LL1, including (1) landlords' obligations to annually inspect for, identify, and remediate lead-based paint hazards in the apartments and common areas of the multiple dwellings built before 1960 and certain other buildings where children under age 6 reside; and (2) landlords' obligations to remove lead-based paint hazards when apartments turn over, before a new tenant moves in.
- **Test every child.** DOHMH must ensure all children have their blood tested at ages 1 and 2 as required by law. With testing rates well below full compliance, DOHMH should mobilize more resources to reach out to families with children in buildings with known histories of lead contamination to ensure they are tested.

# Introduction

## The Dangers of Lead-Based Paint and Dust

Lead is a naturally occurring element and a well-known human neurotoxin that can irreversibly damage the developing brains and nervous systems of infants and young children.<sup>4</sup> People can come into contact with lead through both their indoor and outdoor environments, including water, soil, air, household products, and, most commonly, lead-based paint and dust.<sup>5</sup> Young children’s hand-to-mouth behavior increases their exposure.<sup>6</sup> Research indicates that “70% of children’s lead exposure is from lead-based paint in the home.”<sup>7</sup> As noted on DOHMH’s website, “The most common source of lead poisoning for children in New York City is peeling lead paint and its dust.”<sup>8</sup>

## What We Investigated

The Comptroller’s Office conducted an independent investigation, initiated in July 2018, to look into the City’s procedures under LL1 for addressing lead poisoning hazards affecting children, primarily those residing in privately owned, multi-family buildings. The findings are based on analyses of data provided by the Department of Housing Preservation and Development (HPD), the Department of Health and Mental Hygiene (DOHMH), and publicly available sources including NYC Open Data, as well as interviews with City officials and testimony obtained from experts and other community members. The investigation focused primarily on a period of just under six years, from January 1, 2013 through October 10, 2018. For additional detail on how this investigation was conducted, please refer to the methodology section of the report.

While some information regarding the New York City Housing Authority is presented in this report, it is not the focus of this investigation given ongoing monitoring by the United States Attorney for the Southern District of New York and NYCHA’s independent monitor into NYCHA’s record on lead and lead remediation. Additionally, while any case of child lead exposure within public or private housing is unacceptable, research suggests that the rate of children testing positive for elevated blood lead levels is twice as high in privately owned housing citywide than in NYCHA developments.<sup>9</sup>

Anonymized data that DOHMH provided to the Comptroller’s Office shows that 26,027 individual children tested with venous blood lead levels at or above 5 mcg/dL, the CDC reference level, from January 1, 2013 to October 10, 2018, including 9,234 children who tested above that level two or more times. As many as 1,844 children had blood lead levels exceeding 15 mcg/dL, three-times the CDC’s reference standard.

## Local Law 1

In 2004, New York City enacted the New York City Childhood Lead Poisoning Prevention Act, also known as Local Law 1 of 2004 (LL1). The law was intended to eliminate lead hazards before children were exposed, naming “primary prevention” as the “essential tool” to combat childhood lead poisoning.<sup>10</sup> Even though rates of childhood lead poisoning have greatly decreased in the 15 years since LL1’s enactment, children are still being lead-poisoned; regrettably, the law’s goal of eradicating this disease by 2010 was not achieved.<sup>i</sup>

The majority of LL1’s provisions are applicable to multiple dwellings, with specific provisions imposing obligations on the owners of multiple dwellings that were built before 1960, or before 1978 if the owner knows that lead paint is present, where a child under age 6 resides.<sup>11</sup> The law establishes the presumption that paint within any multiple dwelling erected before January 1, 1960 is lead-based.<sup>12</sup> In some cases the law extends to owners who rent out their one- and two-family homes to tenants.

Generally, LL1 specifies actions that property owners must take to prevent children’s exposure to lead, and gives enforcement responsibilities to two City agencies—HPD and DOHMH. Property owners are responsible for ensuring that the residences of young children are safe from lead hazards by performing annual visual inspections, remediating all lead-based paint hazards, and removing or permanently covering lead paint on friction surfaces, such as doors and window frames when apartments turn over, and always adhering to safe work practices when performing any work that will disturb lead-based paint.<sup>13</sup>

According to City officials interviewed during the investigation, the City has pursued a multi-pronged approach to address the problem of childhood lead poisoning. As relevant to LL1, broadly speaking, DOHMH for years intervened in cases where a child’s blood lead level exceeded the threshold established by LL1—15 mcg/dL for the five-plus year period we reviewed. Effective August 2019, LL1 sets a lower threshold for DOHMH intervention—a blood lead level of 5 mcg/dL or higher, aligned to the CDC reference standard.<sup>14</sup> DOHMH is responsible for investigating the source of the child’s lead poisoning, ensuring that the conditions creating the elevated blood level are addressed, and providing the child’s family with medical referrals for treatment and testing. HPD, broadly speaking, receives complaints that potentially involve lead-based paint hazards in multiple dwellings, conducts inspections, and remediates lead hazards when landlords fail to do so.

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<sup>i</sup> Some of LL1’s provisions were amended in 2019. Although the amendments were not in effect during the period covered by this investigation, where specific amendments relate to significant issues identified in this investigation, they are noted in this report.

For additional details on the respective roles and responsibilities of DOHMH and HPD under LL1, see the appendix to this report.

### The City's Lead Standard Lagged behind the Federal Government's

In May 2012, the CDC set as its standard for remedial action a blood lead level of 5 mcg/dL or greater in any child.<sup>15</sup> For children testing at or above that level, the CDC recommended—and continues to recommend—an environmental assessment to identify potential sources of lead exposure.<sup>ii,16</sup> Unfortunately, DOHMH standards for a hands-on response by the City lagged behind that clear-cut benchmark for years and, up until recently, the City seemed to offer a hodgepodge of often conflicting numbers and enforcement criteria.

- From 2004 to 2018, LL1 required DOHMH to conduct environmental investigations only when children tested with blood lead levels of 15 mcg/dL and above, a level much higher than the CDC standard.
  - As of 2012, CDC recommended an “environmental assessment of [the child’s] detailed history to identify potential sources of lead exposure” when a child’s blood lead level tested in the range of 5 mcg/dL to 9 mcg/dL (“level 5” for this analysis). In conjunction with the environmental assessment, the CDC also recommended an “environmental investigation including [a] home visit to identify potential sources of lead exposure” when a child’s blood lead level was in the range of 10 to 19 mcg/dL (“levels 10 to 19”).<sup>17</sup>
  - Under LL1, through mid-2018, DOHMH’s environmental investigations, initiated at levels of 15 mcg/dL and above, included a home visit and inspection by a certified public health sanitarian using an x-ray fluorescence (XRF) analyzer to determine whether lead paint hazards existed in the lead-exposed child’s home.<sup>18</sup>
  - At levels of 15 mcg/dL and above, DOHMH policy was to conduct a comparatively rigorous investigation that appears to have more than satisfied CDC’s summary recommendation.
- However, although DOHMH’s specific *form* of investigation was rigorous, the threshold at which the agency *initiated* its investigation was significantly higher—a greater concentration of lead in a child’s blood—than that recommended by the CDC.

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<sup>ii</sup> As used in this report, “lead exposure” is synonymous with an elevated blood lead level of 5 mcg/dL or greater.

- Moreover, DOHMH’s, and LL1’s, high minimum threshold for direct City/DOHMH investigation may have left a wide swath of childhood lead exposure cases uninvestigated by the City—tens of thousands of children who tested at level 5 and above—while DOHMH’s threshold for hands-on action remained at level 15.
- In its 2012 annual report to the City Council, DOHMH did acknowledge CDC’s adoption of a “reference blood lead level” of 5 mcg/dL but nevertheless defined “elevated blood lead level” as “a blood lead level of 10 mcg/dL or greater,” or double the CDC’s standard at that time.
  - It took until DOHMH’s annual report in 2017 before the City began to define an elevated blood lead level as one of “5 mcg/dL or above.”
  - Finally, in July 2018, the City announced that DOHMH would conduct home inspections for all children under 18 years of age with blood levels of 5 mcg/dL or greater—in effect matching the benchmark recommended by CDC, albeit after a six-year lag.<sup>19</sup>

Other actions by DOHMH suggest that even before the agency had instituted the recommended CDC standard for a lead-exposure investigation, it tacitly recognized that public health interventions were warranted at lower levels. For example, the agency conducted a pilot program in 2010 in which it inspected the homes of newborns and younger children with blood lead levels below 15 mcg/dL, and between 2015 and 2017 DOHMH also conducted limited home inspections for such newborns and younger children. However, despite the clear scientific consensus that lead levels at or above 5 mcg/dL constituted a risk to children, that program was not expanded at that time.

### **City’s Progress in Reducing Childhood Lead Poisoning**

While the Comptroller’s analysis focuses on children’s blood lead tests conducted from January 1, 2013 to October 10, 2018, it is important to acknowledge that rates of elevated blood lead levels have declined significantly since the passage of LL1. By DOHMH’s estimate, the number of children under six years of age with elevated blood lead levels of 5mcg/dL or greater has declined by 89 percent since 2005.<sup>20</sup> The marked decrease in lead exposure rates is commendable and is due to the work of committed physicians, the City, and growing public awareness about the dangers of lead exposure. However, despite progress the City has failed to achieve the stated goal of LL1—the elimination of childhood lead poisoning in New York City by 2010.<sup>21</sup>

# Investigative Findings

## Two Agencies, Zero Communication

As a result of the siloing of data between the City’s DOHMH and HPD, thousands of buildings where lead-exposed children lived went uninspected for lead paint hazards by HPD from 2013 through 2018. Specifically, the Comptroller’s investigation showed that between January 1, 2013 and October 10, 2018, HPD’s lead inspection unit neither performed nor attempted to perform a lead inspection in 9,671 buildings where, according to DOHMH’s own Childhood Blood Lead Registry, 11,972 children with elevated blood lead levels at or above 5 mcg/dL lived.<sup>iii</sup>

Those uninspected buildings constitute 63 percent of the buildings under HPD’s jurisdiction in which one or more children were found to have elevated blood lead levels. They include 503 buildings where at least three children with elevated blood lead levels resided. If buildings where HPD attempted an inspection but could not gain access are included, a total of 12,642 such buildings went uninspected by HPD’s lead unit.<sup>iv</sup>

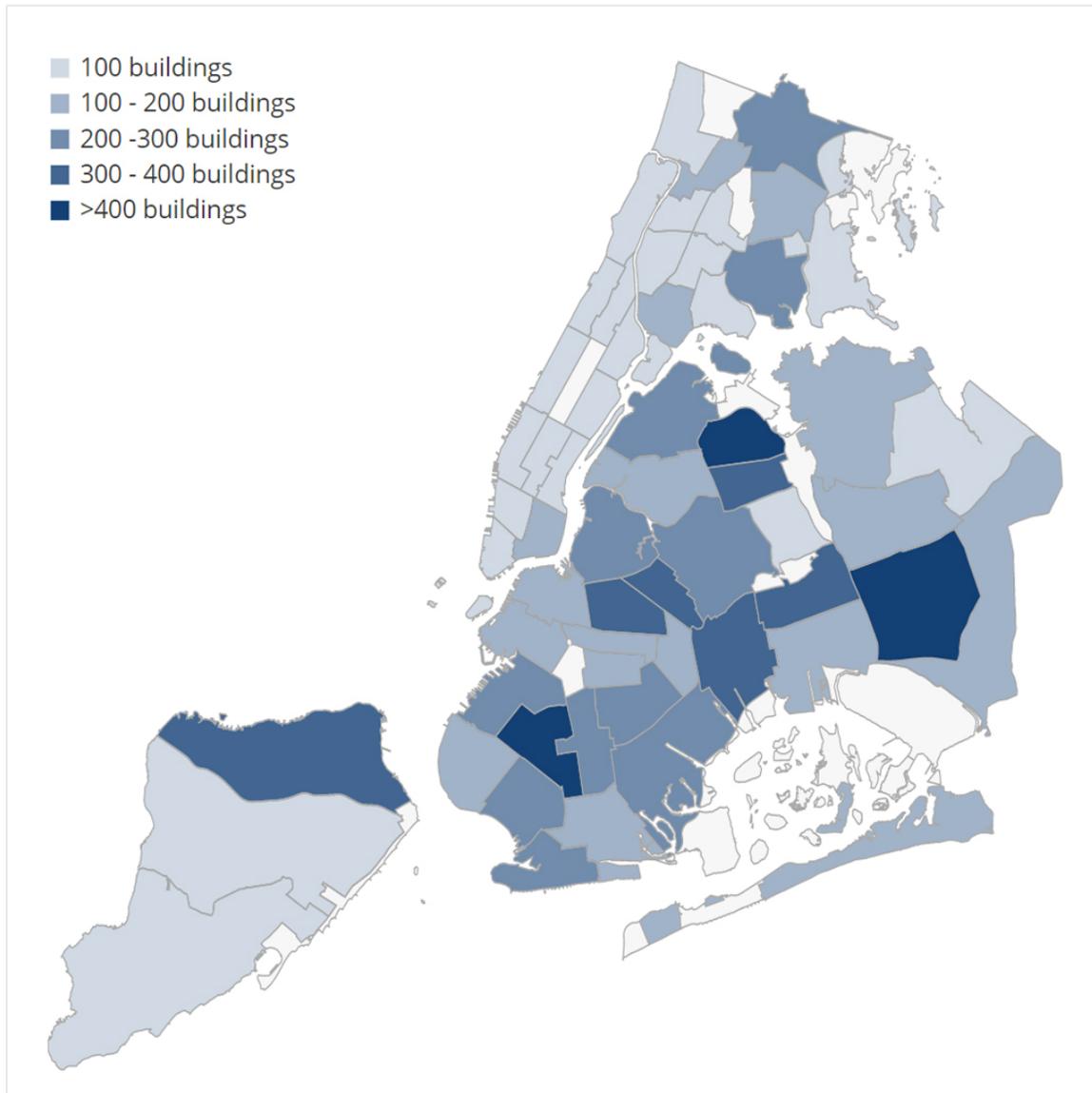
As can be seen in Map 1, these uninspected building are not evenly distributed across the city and are concentrated in specific neighborhoods.

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<sup>iii</sup> Here, the term “inspection” means either a successful inspection (HPD completed the inspection and closed the complaint) or an unsuccessful inspection (HPD attempted an inspection but could not gain access to the location, or could not complete the inspection, or issued a vacate order) performed by HPD’s Lead Based Paint Inspection Program or Alternative Enforcement Program staff in response to either a complaint or a landlord’s failure to provide requested records— for lead-based paint hazards. For inspections performed in response to complaints, all attempts associated with a unique complaint number at a single location were counted as a single inspection. Also, re-inspections at the same location to determine whether violations were corrected were not included.

<sup>iv</sup> Independent analysis of data provided by DOHMH to the Comptroller’s Office identified 26,027 individual children with home addresses in the city and venous blood lead level test results at or above 5 mcg/dL from January 1, 2013 to October 10, 2018.

**Map 1: Uninspected Homes of Lead-Exposed Children**  
(In Buildings Subject to HPD Jurisdiction)



Moreover, 2,749 of the abovementioned 11,972 children lived in buildings that remained uninspected by HPD’s lead unit even after other children in the same buildings had elevated blood lead levels recorded in DOHMH’s Childhood Blood Lead Registry. It is possible that lead-based paint hazards existed in those children’s homes and went undiscovered by City agencies because the data was not used proactively to target inspections. In cases where HPD’s lead unit *did* complete an inspection in a building with a documented case of child lead exposure, the inspections yielded 7.6 violations per building on average – showing the value of focusing efforts on such buildings.

DOHMH historically has shared lead-exposure information with HPD in a relatively narrow category of cases—only after DOHMH found a lead-based paint hazard in a lead-poisoned child’s home and ordered the building owner to remove it by issuing what is known as a Commissioner’s Order to Abate (COTA). HPD was then *required* by LL1 to attempt lead paint inspections in those buildings if the owner did not produce, or produced inadequate, records of such inspections. But the vast majority of DOHMH data on children’s elevated blood lead levels—hundreds of thousands of test results—that the City could have used to identify and investigate possible lead hazards at thousands of residences was not so used. Instead, HPD’s lead inspections were largely driven by complaints – most often made via 311. As a result, HPD missed thousands of buildings where DOHMH data showed that lead-exposed children lived.

### Lead Exposure Hotspots Found Across the City

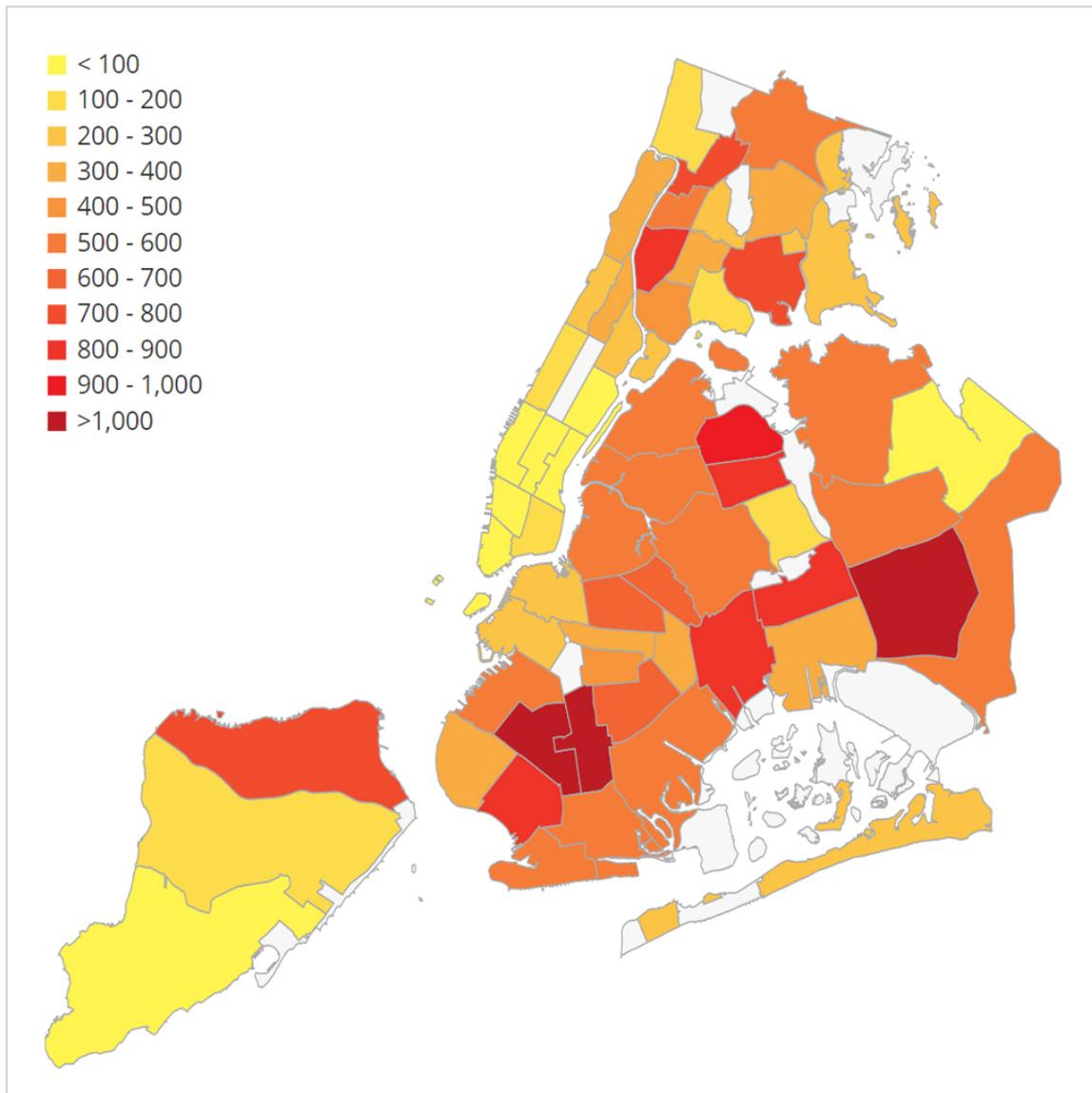
Examination of DOHMH’s Childhood Blood Lead Registry yields a wealth of information about the locations of lead poisoning. The Comptroller’s Office found that 26,027 individual children with elevated blood lead levels (above 5 mcg/dL) listed in DOHMH’s records lived within 19,919 buildings throughout the City.

When looking at childhood exposure to lead throughout New York City, the highest proportion of cases cluster in the outer boroughs, particularly in neighborhoods in Brooklyn and Queens. The following map and table show, by Community District, where children who suffered from elevated blood lead levels resided.

**Table 1: Top 15 Community Districts with the Highest Numbers of Children with Elevated Blood Levels**

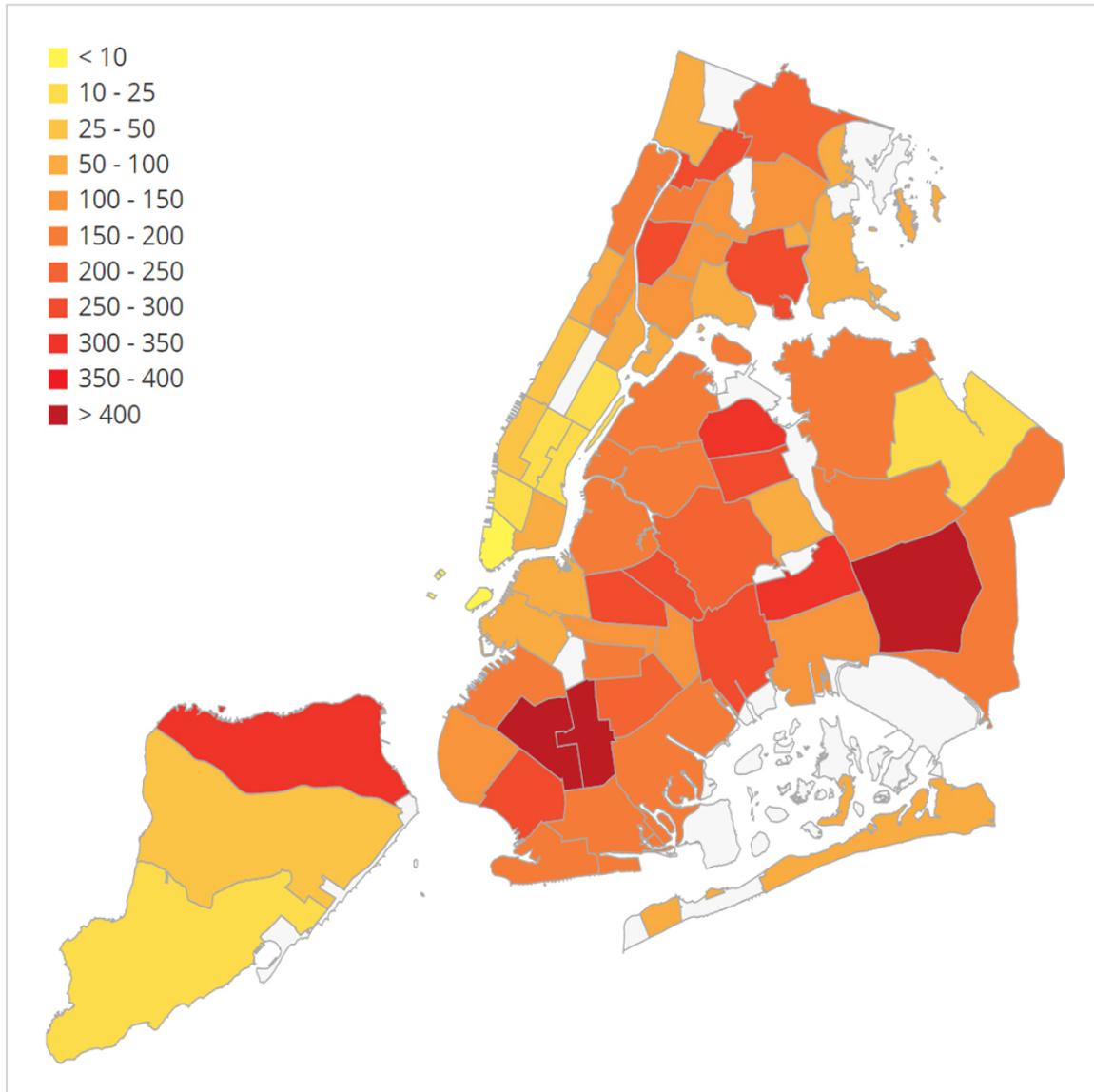
Community District	Total Number of Children
Flatbush and Midwood	1,360
Borough Park	1,339
Jamaica and Hollis	1,092
Jackson Heights	954
Bensonhurst	829
Elmhurst and Corona	827
Kew Gardens and Woodhaven	820
East New York and Starrett City	815
Highbridge and Concourse	812
Parkchester and Soundview	792
St. George and Stapleton	769
Kingsbridge Heights and Bedford	727
Bushwick	692
East Flatbush	678
Bedford Stuyvesant	671

**Map 2: Children with Elevated Blood Levels by Community District**



Just as lead exposure is concentrated in certain communities, instances of elevated blood levels in children cluster in certain buildings. In all, 1,561 buildings within New York City were listed as the home addresses for three or more children whose blood test results showed elevated lead levels between January 1, 2013 and October 10, 2018. The following map shows the relative concentrations of buildings that were home to two or more lead-exposed children throughout the City.

**Map 3: Buildings that Were Home to Two or More Children with Elevated Blood Lead Levels**



In some cases, buildings appear with concerning frequency in testing records. One Brooklyn apartment building was home to as many as 17 individual children who were diagnosed as having elevated blood lead levels. Looking only at the 50 buildings with the highest numbers of children with elevated blood lead levels, DOHMH records show 547 children whose records listed those buildings as home over the five-plus-year period examined.

**Table 2: Distribution of Individual Children with Lead Exposure across New York City Buildings<sup>v</sup>**



In hundreds of buildings, children’s blood lead levels escalated over time. Indeed, the Comptroller’s Office identified 561 buildings associated with one or more test results of at least 5 mcg/dL but under 15 mcg/dL where later tests exceeded 15mcg/dL. One building saw as many as 22 test records at levels below 15 mcg/dL before returning a result above that threshold. The progression of test results in these buildings could have served as a warning to address lead conditions to prevent future cases of exposure.

Individual apartment units and single family homes were also associated with multiple cases of elevated blood lead levels. As many as 727 units were associated with three or more children with elevated blood lead levels, potentially indicating that the same apartment may have been the root cause of multiple cases of lead exposure. For instance, a single apartment in Queens is associated with lead exposure cases involving seven separate children, with at least one positive test for one or more of these children recorded every year between 2013 and 2016. (The anonymized data obtained from DOHMH does not indicate whether these multiple incidents were associated with different members of a single family or involved multiple families.)

The Comptroller’s investigation revealed that HPD’s enforcement activities have not necessarily aligned with areas of the City experiencing high levels of lead exposure. For instance, as outlined in Table 3, the borough of Manhattan registered 13.4 inspections per documented child-lead-exposure case, versus 4.3 inspections per case in Brooklyn—even though Brooklyn recorded nearly six times the number of total child-lead-exposure cases.

**Table 3: Inspections per Documented Child-lead-exposure Case**

Borough	Children with Lead Exposure	HPD Lead Inspections	Inspections per Child with Lead Exposure
Manhattan	1,810	24,313	13.4
Bronx	5,114	68,923	13.4
Brooklyn	10,690	46,533	4.3
Queens	7,682	12,210	1.5
Staten Island	977	1,537	1.5

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<sup>v</sup> The total number of children represented in this chart (27,499) exceeds the number of individual children with elevated blood lead levels at or above 5 mcg/dL (26,027) because some of those children lived in more than one residence in New York City during the nearly six-year period the investigation covered (January 1, 2013 – October 10, 2018).

As the City moves forward with its *LeadFreeNYC* initiative, it should ensure that its data showing the addresses of lead-exposed children is fully leveraged to target strategic enforcement activity by all relevant City agencies.

### Gaps in Testing Resulted in Undercounting NYC’s Lead-Exposed Children

Despite commendable headway in reducing the incidence of elevated blood lead levels, limitations in testing mean that the City is likely to significantly undercount the number of impacted children. As many as half of all children are not adequately tested for lead exposure by health care providers before turning age three, as required by State law.<sup>22</sup> An estimated 30 percent of children receive only one out of the two required lead tests, and 20 percent of New York City children have not been tested at all by age 3 as shown in Tables 4 and 5.

**Table 4: Children Tested for Lead Poisoning Turning Age 3 in 2017**

	Percentage <sup>1</sup>	Number of Children (approximate)
<b>Never tested</b>	20%	22,200
<b>Tested only at age 1</b>	24%	26,600 <sup>2</sup>
<b>Tested only at age 2</b>	6%	6,650
<b>Tested at ages 1 and 2</b>	50%	55,400

Notes:

1. Percentages obtained from DOHMH 2017 Annual Report.

2. DOHMH provided data showing that 26,606 children turning 3 years of age in 2017 were tested at age 1 but not again at age 2.

In addition, the percentage of children who did not receive a lead test increased substantially in 2011. From 2006 to 2010, the percentage of children under age three who never had a blood lead level test ranged from 7 to 11 percent. However, in 2011, the proportion increased to 17 percent and has ranged from 16 to 20 percent through 2017, as Table 5 shows.

**Table 5: Percentages of Children Never Tested By Age 3, 2006-2017**

Lead Blood Level Testing for Children Under 3			
Year	Tested at Ages 1 and 2	Tested Only Once	Never Tested
<b>2006</b>	41%	48%	11%
<b>2007</b>	44%	46%	10%
<b>2008</b>	47%	45%	8%
<b>2009</b>	50%	43%	7%
<b>2010</b>	53%	39%	8%
<b>2011</b>	53%	30%	17%
<b>2012</b>	53%	31%	16%
<b>2013</b>	53%	30%	17%

Lead Blood Level Testing for Children Under 3			
Year	Tested at Ages 1 and 2	Tested Only Once	Never Tested
2014	52%	30%	18%
2015	51%	30%	19%
2016	51%	30%	19%
2017	50%	30%	20%

Given that DOHMH’s investigative response and enforcement cases are based on blood test results, children who are not tested are highly unlikely to receive any City-backed health interventions, including the identification and remediation of the source of the lead. Children may go untested because their healthcare provider fails to order appropriate tests or because children miss medical appointments or do not have access to adequate medical care.<sup>23</sup> Whatever the reason, the data indicates that approximately 55,450 children in New York City were not adequately tested for lead in 2017 in relation to the standard set by State law.<sup>vi</sup>

### HPD Failed to Use Key Enforcement Powers under LL1

Although HPD has substantial statutory authority to proactively investigate, audit, and enforce landlords’ compliance with LL1, the agency has largely failed to use it, missing key opportunities to accelerate the elimination of lead hazards in the City’s residential buildings and prevent children’s exposure.<sup>24</sup> LL1 relies primarily on the City’s landlords, overseen by HPD, to continually investigate for and safely address any lead-based paint hazards in their rental apartments “to prevent a child from becoming lead poisoned.” But HPD’s failure to proactively enforce landlords’ compliance left children exposed to the risk of lead poisoning in their own homes. The specific proactive measures that HPD effectively declined to take are discussed below.

### HPD Performed No Discretionary Sample Audits Permitted by LL1

LL1 specifically grants HPD proactive authority to perform discretionary sample audits to check landlords’ compliance with their obligation to annually inspect for, identify, notify

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<sup>vi</sup> A gap in the City’s policy for following up on testing results may have left additional children at risk. The preferred method for obtaining an accurate blood lead level reading according to DOHMH’s Healthy Homes Program Protocol is a venous blood sample, and children’s primary medical care providers are instructed by State law to use it to confirm elevated blood lead levels found through a capillary test, also known as a finger-stick test [10 NYCRR §67-1.2(a)(9)]. During the time period examined, DOHMH did not regard a child’s capillary test as adequate proof of an elevated blood lead level and did not initiate cases based on results from unconfirmed finger-stick tests. Moreover, according to DOHMH officials and the agency’s internal policy and procedure, Lead Poisoning Prevention Program, Integrated Case Coordination and Environmental Investigation for Children (February 2017), DOHMH attempted to facilitate a follow-up venous draw only in cases where the finger-stick result was 15mcg/dL or higher. According to summary data provided by DOHMH, in Fiscal Years 2017 and 2018, 126 children tested with an initial capillary blood lead level test result of 15 mcg/dL or higher. Of those children, 9 had follow-up venous tests performed outside of the recommended timeframe, and 12 did not have a follow-up venous test. For any of those 21 children who would have required interventions, services may have been delayed or never received.

tenants of, and remediate any lead-based paint hazards in covered buildings. However, the data HPD provided for this investigation shows that in the five-plus-year period between January 1, 2013 and September 12, 2018, HPD issued *no* violations for a landlord's failure to make the required annual notifications and inspections. Additionally, HPD officials informed the Comptroller's Office that the agency had not conducted the discretionary sample audits that conceivably could have uncovered such violations.<sup>25</sup>

LL1 requires owners of multiple dwellings to conduct annual inspections, and to inspect more often if reasonable care so dictates, for peeling paint, chewable surfaces, deteriorated sub surfaces, friction surfaces, and impact surfaces in:

- units in multiple dwellings erected prior to January 1, 1960 where a child under six resides;
- units in multiple dwellings erected on or after January 1, 1960 and before January 1, 1978 where the owner has actual knowledge of the presence of lead-based paint and where a child under six resides; and
- common areas of such multiple dwellings.

In addition, LL1 requires the owner to ascertain whether a child under 6 resides in a dwelling unit by providing notice to the occupant at the signing or renewal of a lease and on an annual basis.

The annual notice and inspection requirement, coupled with the owner's responsibility to "expeditiously remediate" all known lead-based paint hazards and the underlying defects that contribute to them, were intended to spur continual checks and safe repairs by landlords to keep pace with wear and tear in aging buildings that contain lead-based paint and where children under age 6 reside.<sup>26</sup> LL1 also requires owners to keep a copy of each investigation report, as well as all records relating to any work performed pursuant to the law, for a period of no less than ten years.<sup>27</sup> HPD's decision to forgo the sample audits that would have monitored and encouraged landlords' compliance left a potentially powerful tool that the City could have employed to prevent childhood lead poisoning in a state of disuse.

Going forward, HPD will be *mandated* to perform additional types of audits. Specifically, effective October 11, 2019, in addition to the audits it conducts after DOHMH issues an abatement order, or COTA, HPD will be required to audit the records landlords must keep under LL1 relating to a minimum of 200 buildings each year. These buildings should be "selected from a random sample of buildings based on data on the prevalence of elevated blood lead levels in certain geographic areas identified by [DOHMH]."<sup>28</sup> An owner who fails to produce a required record in response to a demand by HPD will be liable for a class C immediately hazardous violation and a civil penalty of between \$1,000 and \$5,000.<sup>29</sup>

## HPD Did Not Enforce Landlords' Compliance with Turnover Requirements

Those moments when apartments turn over from one tenant to another are critical opportunities for reducing children's exposure to lead-based paint hazards in their homes, but HPD did little if anything proactively to spur landlords' compliance. The turnover requirements that LL1 imposes on landlords include, among other things, the remediation of "all lead-based paint hazards and any underlying defects" and "the removal or permanent covering of all lead-based paint on all friction surfaces on all" doors, door frames, and windows for pre-1960's multiple dwellings and private homes that are not owner occupied.<sup>30</sup>

Moreover, turnover work must be performed regardless of the ages of former or future occupants.<sup>31</sup> In addition, HPD regulations require owners to certify their compliance with the turnover requirements. For example, "An owner shall certify that he or she has complied...in the notice provided to an occupant upon signing of lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease."<sup>32</sup>

Further, building owners who perform any work pursuant to LL1 are required to retain all related records for 10 years after the work's completion and to make them available to HPD upon the agency's request.<sup>33</sup> That provision would enable HPD to check whether landlords performed the work LL1 requires at turnover.<sup>34</sup>

The turnover provisions were included in LL1 with the intent that all lead-based paint hazards and conditions contributing to them would be eliminated over time as dwelling unit occupancies change.

However, it appears that HPD has not been enforcing LL1's turnover requirements or its own related regulations. Our analysis of violation data provided by HPD found that *no* violations requiring owners to "certify compliance with lead-based paint hazard control requirements during period of unit vacancy" (turnover) were issued between January 1, 2013 and September 12, 2018.<sup>35</sup> Not only were no violations issued for failure to certify, HPD did not issue any violations to property owners for failure to perform required turnover work, nor did HPD compel a property owner to do such work. As a result, the decision was largely left to landlords to follow the City's turnover rules or not, as they faced no direct consequence in the form of HPD enforcement for failing to do so.

HPD's refraining from proactive enforcement of LL1's turnover requirements also neutralized one of the City's few tools to combat the potential sources of lead poisoning in the homes of children whose families reside as tenants in one- and two-family homes. Those residences are otherwise largely exempt from HPD's enforcement of LL1, which generally is limited to multiple dwellings containing three or more housing units.

The absence of any turnover violations in a period of nearly six years suggests that HPD was not proactively checking to find out whether landlords performed the required actions, including providing a certification to the incoming new tenant, when an apartment turns over. Moreover, once the new tenant or occupant moves in, HPD apparently has chosen not to look back to determine whether the landlord complied with the turnover requirement between occupancies.

### **Lack of Oversight for 1- and 2- Family Homes**

Analysis of blood lead testing data shows an additional gap in City oversight—namely, the owner-occupied 1- and 2-family homes to which LL1 does not apply. The DOHMH blood test data revealed that a significant percentage of childhood lead exposure cases—as many as 29 percent—involve children residing in these homes. For instance, one Midwood block housed 28 children across 11 buildings with blood lead levels that ranged from 5 to 24 mcg/dL. As a result of the exclusion of 1- and 2-family homes from many of LL1’s provisions, HPD would not have been required over the period covered in this report to respond to lead paint complaints from tenants in 1- and 2-family homes. These homes were also exempt from turnover provisions within LL1 unless the building was exclusively renter occupied.

The City, as part of its *LeadFreeNYC* initiative, has proposed extending the requirements within LL1 to rental units within 1- and 2-family homes. The City estimates that expanding oversight to this segment of the New York City housing market would “result in an estimated additional 2,500 annual inspections of homes with kids under 6 with potential lead paint.”<sup>36</sup>

### **NYCHA Responsible for Conducting Its Own Lead-Based Paint Inspections**

Some 572 NYCHA buildings—listed by DOHMH as home to 804 lead-exposed children—went uninspected by HPD for lead paint hazards between January 1, 2013 and October 10, 2018. (They are among the 9,671 uninspected buildings discussed above).

HPD does not receive or respond to complaints made by NYCHA residents through 311. Instead, 311 routinely routes those complaints to NYCHA. In a limited number of cases, HPD has been directed by a Housing Court order to take action in responding to a NYCHA complaint. Between January 1, 2017 and June 30, 2018, approximately 295 Housing Court orders required HPD to respond to lead paint complaints within NYCHA buildings according to data HPD provided to the Comptroller’s Office.

Apart from those relatively rare Housing Court cases, LL1 responsibility for lead paint inspection and enforcement in NYCHA developments is left to NYCHA. Consequently, during the period examined by this report, NYCHA was allowed to police its own compliance with LL1.

# Recommendations

In January 2019, while this investigation was in progress, the City issued its current plan to create an interagency data-sharing mechanism and to use its data to prioritize proactive lead inspections. The Comptroller supports the City's *LeadFreeNYC* plan, including its recognition of the need for inspections in one- and two-family homes, increasing compliance with state law mandating blood lead testing for children, and facilitating better data sharing between DOHMH and HPD. The Comptroller offers a series of additional policy recommendations with the goal of helping to eliminate the scourge of lead exposure in New York City:

## 1. Proactively Inspect Lead Hotspots

HPD should leverage DOHMH data to proactively inspect buildings associated with children with elevated blood lead levels, buildings with presumed lead paint content in high lead exposure zones, and buildings with known histories of lead-based paint hazards. Critically, HPD inspection activity should be aligned with anonymized information from DOHMH's Childhood Blood Lead Registry to allow for targeted inspections of the actual buildings associated with past cases of lead exposure.

*LeadFreeNYC* does charge HPD with creating a "Building Lead Index" that can serve as a roadmap for a more proactive inspection regime. This is a positive step but the Index, as outlined in the *LeadFreeNYC* report, fails to measure up to the scope of the lead exposure issue. The Index is specified to include only 200 buildings per year, rather than the thousands of buildings associated with a documented case of a child's lead exposure. Further, while the Index promises to incorporate data "such as prior violations, the age of the building, and whether the building is in an area with higher rates of children with elevated blood lead levels", the City does not specify whether it will deploy DOHMH data to specifically target inspections. While the City may want to consider a variety of factors in triaging buildings for proactive inspections, focusing on buildings associated with known lead exposure cases offers a more precise method of identifying those with lead paint.

HPD should commit to dispatching qualified inspectors to every building that is flagged on an expanded Index. Inspectors should canvas the building and inform tenants – either directly or by leaving pamphlets – of their right to have their apartments inspected at no cost. In areas where culture or language could perhaps impede an inspector from engaging with tenants, HPD should partner with trusted community based organizations to cultivate trust and gain access to buildings with possible lead hazards.

## 2. Fully Fund LeadFreeNYC

The City's *LeadFreeNYC* program is an ambitious reform of the existing public health status quo. By following through on its many provisions, the City can likely drive the number of elevated blood lead level cases closer to zero. However, for the program to function, the City must provide the participating agencies with the funding they need to carry out their new mandate. For instance, HPD is now tasked with doing much more to police LL1 requirements, enforce the law in one and two family home rentals, and proactively audit. The City estimates the cost of these enforcement actions at \$25 million over FY2020 to FY2023.<sup>37</sup> However, the City's FY2020 Budget only includes an increase of \$9 million allocated over that period. If the City is committed to its own plan, the City must fully fund the entire HPD component of *LeadFreeNYC*.

## 3. Fully Enforce Key Aspects of Local Law One

HPD must do more to enforce all aspects of LL1. The findings presented in this report show that among other provisions in LL1, HPD has failed to enforce requirements relating to a landlord's duty to investigate and remediate or abate lead paint when an apartment is about to turn over to a new tenant. Turnover marks a critical moment for advancing the objectives of LL1 and removing the danger of lead paint from all rental apartments.

During any routine inspection, HPD inspectors are required to ascertain whether a child under six years old lives within the apartment.<sup>38</sup> HPD could also determine whether the owner was responsible under LL1 for removing lead paint before the current occupants moved in – that is, whether the family moved in subsequent to LL1 coming into effect in August of 2004. If so, HPD should test for the presence of lead paint in the relevant areas of the apartment, such as door frames, windowsills, and chewable surfaces where a child might become exposed.

If it found that the owner failed to meet LL1's turnover requirements, HPD should issue the appropriate turnover violations—an action it failed to take even once during the five-year-plus period this investigation covered. HPD should also determine whether any false documents, such as a certification of compliance, were created to make it appear that the turnover requirements were met and refer its findings to the appropriate authority.<sup>39</sup>

HPD should further investigate turnover violations using its authority to audit building records—which owners must keep for 10 years—and to inspect other units in the building. If those efforts reveal that owners falsely certified compliance or failed to certify compliance, additional violations should be written.

To facilitate HPD's proactive monitoring of landlords' compliance with turnover requirements, the City should develop a mechanism to either enable HPD to identify, or

require owners to report, vacancies in rental units. Since property owners of multiple dwellings and private dwellings that are not owner occupied are required to annually register their buildings with HPD, the annual registration form could be adapted to include a vacancy disclosure item, for example.

HPD must also do more to enforce the mandate in LL1 that owners investigate for the presence of children under 6 and perform and document inspections for lead hazards at least annually (with the written results of that inspection provided to the occupants and kept for ten years for City audit). The City cannot possibly regularly inspect the hundreds of thousands of units in multiple dwellings built before 1960 where children under 6 reside; therefore it is key that the City leverage its enforcement abilities to ensure that owners themselves fulfill this statutory obligation.

#### **4. Ensure All Children Are Tested**

The City must do more to boost testing rates among children covered by State law, especially those children at highest risk of exposure. One place to start is a proactive campaign by DOHMH to reach out to parents and children in buildings with known histories of lead contamination to ensure all children under the age of three are tested.

# Methodology

The Comptroller's Office initiated an independent investigation in July 2018 to examine the City's procedures as prescribed by LL1 for monitoring and mitigating lead-based paint hazards to protect the health of all children. The investigation, which covered the period from January 1, 2013 through October 10, 2018 (unless otherwise specifically stated in the report), focused on the roles and responsibilities of both HPD and DOHMH.

We obtained background information from HPD's and DOHMH's websites concerning their respective missions, functions, and responsibilities overall and specifically regarding lead paint hazards. Annual reports that DOHMH and HPD prepared pursuant to LL1 were reviewed, along with information the agencies published about lead and lead safety, lead-safe work (construction) practices, instructions for landlords, and guidelines for medical professionals.

Additional background information was obtained from HPD's and DOHMH's sections of the Preliminary Fiscal 2018 Mayor's Management Report, related prior audits performed by the Comptroller's Office, and news sources.

We reviewed LL1 and pertinent sections of the NYC Administrative Code and the Rules of the City of New York. Amendments enacted after the period covered by this investigation and any consequent impacts on the findings and recommendations are noted in the report. We reviewed New York State regulations concerning blood testing for children that bear upon DOHMH's procedures. Additionally, we reviewed information available on the websites of the CDC and the federal Department of Housing and Urban Development (HUD) and from other public websites concerning standards, regulations, and recommendations regarding lead and lead exposure.

We met with officials representing HPD and DOHMH regarding their respective roles, responsibilities, and procedures. The Comptroller's Office sent separate Requests for Information to each agency and received in response documents and data concerning blood test results, interventions, inspections, violations, complaints, policies, procedures, staffing, and qualifications of agency personnel. All documents and data received were reviewed and analyzed. Necessary clarifications were obtained via follow-up emails and conference calls with agency officials.

Entries in the DOHMH and HPD datasets for the period January 1, 2013 through October 10, 2018 were compared to determine the extent to which HPD performed and attempted to perform inspections for lead-based paint hazards in the buildings where, according to DOHMH's dataset, children with elevated blood lead levels of 5 mcg/dL or greater resided. We identified buildings under HPD's jurisdiction using the dataset *Buildings Subject to*

*HPD Jurisdiction* on the NYC Open Data website. Results were mapped using GIS software.

Some records in the abovementioned datasets were excluded from the comparison because of unverifiable addresses. Specifically, of the 62,453 records in the DOHMH dataset listing reports of children having elevated blood lead levels of 5 mcg/Dl or greater, 3,407 records (5.46%) were excluded. Of the 211,921 records in HPD's dataset concerning lead inspections, 790 records (0.37%) were excluded, and the remaining records corresponded to 153,516 unique complaint numbers. Of the 66,670 records in HPD's dataset concerning lead-based paint related violations, 194 records (0.29%) were excluded.

Additional data for analysis was obtained from publicly available sources including NYC Open Data and the NYCHA website.

The Comptroller's Office obtained testimony from concerned members of the public in all boroughs at a Comptroller's hearing and a number of roundtables. Additionally, we met with independent advocates and experts. The advocates provided the Comptroller's Office with various documentation including transcripts of legal cases, interrogatories, and summaries of rules and regulations. We also interviewed Kathryn Garcia, who was appointed Senior Advisor for Citywide Lead Prevention in October 2018, while this investigation was underway, and oversaw the development of the *LeadFreeNYC* plan.

# Appendix: Roles of DOHMH and HPD Under LL1

## HPD Must Respond to Lead Complaints and May Audit for Lead Hazards

Upon receipt of a complaint regarding a potential lead paint hazard such as peeling paint, HPD must inspect and, if warranted, test with an x-ray fluorescence (XRF) analyzer. If a lead-based paint violation is found during inspection, HPD must serve a notice of violation on the owner.<sup>40</sup> The owner has 21 days after service of the notice to correct the condition. HPD conducts an inspection to verify that the violation has been corrected within 14 days of the correction date. Upon determination that the violation has not been corrected, HPD is required to correct a hazardous lead condition within 45 additional days.<sup>41</sup> Lastly, HPD may perform audits—regardless of whether it has received a complaint—to determine property owners’ compliance with the law, and the agency is required to provide annual reports to the City Council on its enforcement of LL1.<sup>42</sup> (An amendment enacted in 2019 and effective in April 2020 will significantly expand the scope of HPD’s annual reporting requirements to include, among other things, the number of investigations and audits HPD conducts to enforce various obligations that LL1 imposes on landlords.)<sup>43</sup>

## DOHMH Must Intervene in Cases of Elevated Blood Lead Levels in Children

During the period covered by this investigation (2013 – 2018), in all cases when a person under age 18 was identified to DOHMH as having a blood lead level (BLL) of 15 mcg/dL or higher, DOHMH was responsible for investigating the source of lead poisoning, ensuring that the conditions creating the elevated blood level were addressed, and providing the child’s family with medical referrals for treatment and testing. (Effective August 2019, LL1 sets a lower threshold for an elevated BLL in a person under age 18 that triggers DOHMH’s investigation—a BLL of 5 mcg/dL or higher).<sup>44</sup> DOHMH also has the authority, under §173.13(d)(2) of the New York City Health Code, to issue a Commissioner’s Order to Abate (COTA), which is an order to a property owner to correct a violation, if lead hazards are found in a child’s residence during DOHMH’s investigation.

## HPD’s Actions Following DOHMH’s Lead-Abatement Orders

DOHMH will notify HPD when a COTA is issued for a dwelling unit.<sup>45</sup> If the property owner fails to remedy the hazards as directed by the COTA, HPD is required to correct the hazard.<sup>46</sup> HPD officials informed us that in such cases, HPD will correct the hazard through its Emergency Repair Program by hiring a certified contractor to perform the work. In

addition, when it receives a COTA for a dwelling unit from DOHMH, HPD directs the property owner to provide all records regarding tenant notification, annual inspections, and work performed, among other records, for the multiple dwelling.<sup>47</sup> If the owner fails to provide such records, HPD must attempt to inspect all dwelling units where a child under six resides to identify any lead violations.<sup>48</sup> If records are provided, HPD must attempt to inspect any dwelling units where a child under six resides where it determines there may be uncorrected lead-based paint hazards.<sup>49</sup>

HPD officials informed us that if the building owner fails to produce the records that HPD demands as part of its COTA response, the agency issues a notice of violation and has done so in numerous cases. Data provided by HPD confirms that from January 1, 2013 through October 10, 2018, HPD issued 505 such violations.<sup>50</sup> Analysis of related HPD data determined that the agency attempted or completed inspections after issuing those violations at all but 12 of the 505 associated buildings.

# Endnotes

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<sup>1</sup> CDC, Childhood Lead Poisoning Prevention Program,

[https://www.cdc.gov/nceh/information/healthy\\_homes\\_lead.htm](https://www.cdc.gov/nceh/information/healthy_homes_lead.htm), accessed July 10, 2019.

<sup>2</sup> American Academy of Pediatrics, *Prevention of Childhood Lead Toxicity*, 138 Pediatrics (1), (2016), at 5 (“Lead-based paint is the most common, highly concentrated source of lead exposure for children who live in older housing.”); CDC, *Preventing Lead Exposure in Young Children: A Housing-Based Approach to Primary Prevention of Lead Poisoning* (2004), at 18 (“Although many sources of lead can affect certain individuals and communities, the primary source of childhood lead exposure in the United States is lead paint in older, deteriorating housing.”).

<sup>3</sup> New York City Independent Budget Office, *Funding Added for LeadFreeNYC, More to Come?*, March 2019, <https://a860-gpp.nyc.gov/bitstream/gpp/1415/1/funding-added-for-LeadFreeNYC-more-to-come-fopb-march-2019.pdf>

<sup>4</sup> U.S. Department of Health and Human Services/National Institutes of Health, *NTP Monograph on Health Effects of Low-Level Lead* (2012),

[https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead\\_newissn\\_508.pdf](https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf), accessed March 6, 2019.

<sup>5</sup> U.S. Environmental Protection Agency, *Learn about Lead*, <https://www.epa.gov/lead/learn-about-lead>, accessed March 14, 2019.

<sup>6</sup> U.S. Department of Health and Human Services/National Institutes of Health, *NTP Monograph on Health Effects of Low-Level Lead* (2012),

[https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead\\_newissn\\_508.pdf](https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf), accessed March 6, 2019.

<sup>7</sup> Abelsohn, A., Sanborn, M. *Lead and Children*, Canadian Family Physician, June 2010

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2902938/#b19-0560531>; Levin, R, Brown, M., et al., *Lead Exposures in U.S. Children, 2008: Implications for Prevention*, Environmental Health Perspectives, October 2008, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2569084/>

<sup>8</sup> NYC Health, *Lead Poisoning*, <https://www1.nyc.gov/site/doh/health/health-topics/lead-poisoning-prevention.page>, accessed August 14, 2019.

<sup>9</sup> NYC Health, *Report to the New York City Council on Progress in Preventing Lead Poisoning in New York City*, August 30, 2018, <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-18.pdf>

<sup>10</sup> LL1 added a new Article 14 to Subchapter 2 of Chapter 2, the Housing Maintenance Code, of Title 27 of the NYC Administrative Code. Most of the provisions covered by this investigation are codified in Article 14; they impose obligations on building owners, occupants, and two City agencies, DOHMH and HPD. LL1 also covers the remediation of lead-based paint hazards in day care facilities that regularly care for seven or more children and that operate more than five hours per week for more than one month of the year. Those provisions, which DOHMH is responsible for administering, are codified at Title 17 (Health)

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of the NYC Administrative Code, Chapter 9 (§§17-900-913). Pursuant to multiple Local Laws passed this year, on August 12, 2019, §§17-900-913 is repealed and new §§910-924 goes into effect. Among other reforms, the 2019 changes expand the range of facilities falling under the scope of the law to include any facility where day care services are provided (without a minimum hours requirement), as well as the exterior of such facilities. (See Local Law 64 of 2019 section 3).

<sup>11</sup> New York City Administrative Code §§27-2056.3, 27-2056.4.

<sup>12</sup> New York City Administrative Code §27-2056.5(a).

<sup>13</sup> New York City Administrative Code § 27-2056.4 (“Owners' responsibility to notify occupants and to investigate”); New York City Administrative Code §§27-2056.3 (“Owners' responsibility to remediate”), further codified in the Rules of the City of New York at 28 RCNY 11-02 (“Owner's Responsibility to Remediate”); New York City Administrative Code § 27-2056.8 (Violation in a Dwelling Unit Upon Turnover); New York City Administrative Code § 27-2056.11 (“Work Practices”), further codified at 11-06 (“Safe Work Practices”) and 28 RCNY 11-01 subsections “ii” (defining “Work”) and “jj” (defining “Work area”).

<sup>14</sup> New York City Administrative Code §27-2056.14, amended by Local Law 66 of 2019 §§6, 1, amendment effective August 12, 2019.

<sup>15</sup> CDC, *Blood Levels in Children Aged 1-5 Years*, April 5, 2013, <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6213a3.htm>, accessed September 18, 2019.

<sup>16</sup> CDC, *Recommended Actions Based on Blood Lead Level*, <https://www.cdc.gov/nceh/lead/advisory/acclpp/actions-blls.htm>, accessed September 18, 2019.

<sup>17</sup> CDC, *Recommended Actions Based on Blood Lead Level*, <https://www.cdc.gov/nceh/lead/advisory/acclpp/actions-blls.htm>, accessed September 18, 2019.

<sup>18</sup> NYC Health, *Lead Poisoning Prevention Program Integrated Case Coordination and Environmental Investigation for Children*, February 6, 2017, pp 4-6.

<sup>19</sup> Press release: *Mayor de Blasio, Speaker Johnson and NYC Health Department Announce New Measures to Further Reduce Lead Exposure*, July 1, 2018, <https://www1.nyc.gov/office-of-the-mayor/news/340-18/mayor-de-blasio-speaker-johnson-nyc-health-department-new-measures-further-reduce>

<sup>20</sup> NYC Health, *Report to the New York City Council on Progress in Preventing Lead Poisoning in New York City*, August 30, 2018, <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-18.pdf>

<sup>21</sup> Mayor de Blasio Announces *LeadFreeNYC*, a Comprehensive Plan to End Childhood Lead Exposure, January 28, 2019, <https://www1.nyc.gov/office-of-the-mayor/news/061-19/mayor-de-blasio-LeadFreeNYC-comprehensive-plan-end-childhood-lead-exposure#/0>, accessed August 14, 2019.

<sup>22</sup> NYS Regulations for Lead Poisoning Prevention and Control - NYCRR Title X, Part 67, 67-1.2 (a) (3).

<sup>23</sup> Schneyer, J, Pell, M., *Millions of American children missing early lead tests, Reuters finds*, June 9, 2016, <https://www.reuters.com/investigates/special-report/lead-poisoning-testing-gaps/>

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<sup>24</sup> NYC Administrative Code Section 27-2092 gives HPD broad and substantial investigative power to enforce the Housing Maintenance Code, including LL1. It states, “For the purpose of enforcing the provisions of this code . . . the department shall have power to conduct inspections, to hold public or private hearings, to subpoena witnesses, administer oaths and take testimony, and compel the production of books, papers, records and documents.” Further, HPD has promulgated regulations to carry out its responsibilities under LL1, which, among other things, give the agency authority to “undertake any inspection or enforcement action authorized by law where an owner refuses or fails to produce any of the records required to be kept pursuant to article 14 of the housing maintenance code [where much of LL1 is codified], these rules, and other applicable law.” [28 RCNY 11-11(b)].

<sup>25</sup> These findings are confirmed by independent analysis of HPD violation data. Violation code number 619 directs a landlord to “correct failure to notify occupants and to investigate lead-based paint hazards.” HPD issued no code number 619 violations between January 1, 2013 and September 12, 2018 – an extremely unlikely scenario had the agency been proactively auditing landlords’ compliance with those specific annual requirements of LL1.

<sup>26</sup> New York City Administrative Code §§27-2056.3, 27-2056.4, 27-2056.2(1), (3)-(6).

<sup>27</sup> New York City Administrative Code §§27-2056.4(f), 27-2056.17(a).

<sup>28</sup> New York City Administrative Code §27-2056.17(b), as amended by Local Law 70 of 2019, effective October 11, 2019.

<sup>29</sup> New York City Administrative Code §27-2056.17(c), as amended by Local Law 70 of 2019, effective October 11, 2019.

<sup>30</sup> New York City Administrative Code §27-2056.8. Under LL1, “lead-based paint hazard” means any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. “Chewable surface” under LL1 means a protruding interior window sill in a dwelling unit in a multiple dwelling where a child under age six age resides and which is readily accessible to such child. It also means any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child under age six who resides in that multiple dwelling has mouthed or chewed such edge or protrusion. New York City Administrative Code §27-2056.2.

<sup>31</sup> New York City Administrative Code §27-2056.8.

<sup>32</sup> RCNY §§11-05(d).

<sup>33</sup> New York City Administrative Code §27-2056.17(a).

<sup>34</sup> New York City Administrative Code §§27-2056.8, 27-2056.11(a)(3); RCNY §11-05.

<sup>35</sup> HPD assigns violation code number 614 to turnover violations.

<sup>36</sup> Lead Free NYC, A Roadmap to Eliminating Childhood Lead Exposure, January 28, 2019.

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<sup>37</sup> New York City Independent Budget Office, *Funding Added for LeadFreeNYC, More to Come?*, <https://a860-gpp.nyc.gov/bitstream/gpp/1415/1/funding-added-for-LeadFreeNYC-more-to-come-fopb-march-2019.pdf>

<sup>38</sup> NYC Administrative Code §27-2056.9(a).

<sup>39</sup> RCNY §§11-03(a)(1), 11-05(c),(d), 11-11 (Audit and Inspection by the Department).

<sup>40</sup> NYC Administrative Code §27-2056.9(c).

<sup>41</sup> NYC Administrative Code §27-2115(l)(1) and (l)(3).

<sup>42</sup> NYC Administrative Code §§27-2056.4(h); NYC Administrative Code §27-2056.12 (concerning annual reports).

<sup>43</sup> Local Law 70 of 2019, amending NYC Administrative Code §27-2056.12.

<sup>44</sup> New York City Administrative Code §27-2056.14, amended by Local Law 66 of 2019 §§6, 1, amendment effective August 12, 2019.

<sup>45</sup> New York City Administrative Code §27-2056.14.

<sup>46</sup> New York City Administrative Code §27-2056.14.

<sup>47</sup> New York City Administrative Code §27-2056.7(a) and 28 RCNY 11-11(a).

<sup>48</sup> New York City Administrative Code §27-2056.7(b).

<sup>49</sup> New York City Administrative Code §27-2056.7(a).

<sup>50</sup> HPD assigns three-digit code numbers to individual types of lead-based paint violations; for example, violation code number 618 denotes a landlord's failure to produce records HPD demands as a follow-up to a DOHMH COTA. The 618 violation requires the owner to "correct failure to provide to the department within 45 days of demand all records required to be maintained by owner."





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*Oversight – LeadFreeNYC and the enforcement of the City’s lead laws.*

**Presented on  
Wednesday, November 13<sup>th</sup>, 2019**



**The Council of School Supervisors and Administrators  
Mark Cannizzaro, President  
Henry Rubio, Executive Vice President  
Rosemarie Sinclair, 1<sup>st</sup> Vice President**

**40 Rector Street, 12<sup>th</sup> Floor  
New York, NY 10006  
(212) 823-2020  
[www.csa-nyc.org](http://www.csa-nyc.org)**

Good afternoon, Chairman Levine, Chairman Cornegy, Chairwoman Alicka Ampry-Samuel, Chairman Mark Treyger, and distinguished members of the City Council. The Council of School Supervisors and Administrators (CSA) is Local 1 of the American Federation of School Administrators (AFSA). CSA represents some 16,000 In-service and retired Principals, Assistant Principals, Educational Administrators, Directors and Assistant Directors of city-funded early childhood centers. As school leaders, we are grateful for this opportunity to address the issue regarding the enforcement of the city's lead laws.

We are alarmed that to date, we have not been able to eliminate lead paint and the lead in our schools' drinking water. On January 28, 2019 in launching his "Lead Free NYC," the Mayor said, "And so today we make clear that New York City commits to zero lead in our city. We commit to ending the scourge of lead paint poisoning once and for all. This is a Vision Zero approach. This report today literally is the plan to end once and for all lead paint poisoning in New York City."

Since 2012 there have been at least 1,160 reported cases of positive lead tests. More than 900 classrooms across 300 city schools have potentially dangerous chipping lead paint according to new data released by the Department of Education. Officials said they will repair or paint over the problem spots by the beginning of the school year and will contact principals asking them to reach out to families at affected schools in coming days.

Lead poisoning, which often comes from ingesting paint dust or flakes, can have harmful effects on brain development, especially in children under the age of six. The Education Department now requires custodians to log observations of chipping paint at least three times a year.

A separate inspection also revealed that water with unsafe lead levels was flowing through at least one faucet in 80% of the more than 500 buildings tested last school year. A DOE spokesperson said that "The flagged faucets had been repaired in all but 12 schools." A Department of Health spokesperson confirmed that "The new protocols will help to ensure that schools remain safe."

According to the DOE website, New York City water is safe. While New York City water is virtually lead-free when it is delivered from the City's upstate reservoir system, the water can absorb lead from fixtures, faucets, and fittings. This most likely happens when water has not been run for several hours.

A standard response protocol is activated if a building has even one water outlet that tests above the action level (which means it contains greater than 15 parts per billion (ppb) of lead). This protocol requires removing any drinking or food prep outlet from service. The water is then flushed out of all or part of the system to eliminate water sitting in pipes overnight. Sometimes it's necessary to replace equipment before re-testing for lead.

Brooklyn posted the highest number of school buildings testing positive for lead paint, with 114 buildings, followed by 90 in the Bronx; 48 in Queens, 29 in Manhattan; and 21 in Staten Island. According to Dr. Morri Markowitz, director of the Lead Poisoning and Prevention Program at

Montefiore Hospital in the Bronx, "The database is a really great start at making information available to families." But Dr. Markowitz added that, "The city's testing methods don't fully remove the risk of lead exposure. As a matter of safety, DOE should test for lead paint before it begins to deteriorate, and not just in classrooms with the youngest students, but in all classrooms, as well as in common areas such as hallways, stairways and auditoriums -- anywhere with a potential risk for exposure." He also raised concerns about how robust the training of custodians is.

We appreciate that you have called this joint hearing to assess the data and continually exercise the City Council's oversight mandate.

CSA is committed to the goal of making every school lead free, and we stand ready to collaborate with all advocates to make schools toxin-free environments.

Sincerely,

Mark Cannizzaro

FOR THE RECORD

**Hearing of the Committee on Public Housing  
New York City Council  
November 13, 2019**

**Jacqueline M. Chiofalo MPA  
Neil Calman MD  
The Institute for Family Health  
2006 Madison Ave  
New York, NY 10035  
212-633-0815**

Esteemed Members of the New York City Council:

My name is Jacqueline Chiofalo. I am the Director of Policy Research and Analysis at the Institute for Family Health. I am speaking to you on behalf of the Institute for Family Health, a network of 35 Federally Qualified Health Centers that was founded by Dr. Neil Calman who still serves as its President and CEO. The Institute has been committed to addressing health injustices in our communities since its inception in 1983. The Institute served over 116,000 patients last year and provides primary care, oral healthcare, and behavioral healthcare to Manhattan, the Bronx, and Brooklyn. Only 30% of our patients have private insurance, and a majority of patients identify as a race other than white.

Thank you for inviting me to testify on the enforcement of the City's lead laws. When local housing advocacy groups approached the Institute to discuss the possibility of excess levels of lead being present in NYCHA housing, we decided to look at our center's data to better understand the problem in our patient population. Our paper, "Pediatric Blood Lead Levels Within New York City Public Versus Private Housing, 2003-2017", was published in the June issue of the American Journal of Public Health<sup>1</sup>. As you know, even trace amounts of lead have devastating impacts on the present and future health of children. Blood lead level is inversely related to IQ, even at lower levels. Exposure can stunt neurological development in children leading to poor academic performance, higher rates of school drop out, and even participation in delinquent activity later in life. It is paramount to understand the sources of exposure and remediate lead given the health consequences for the city's children.

Given that state law requires testing for children ages 1 and 2 years old, we knew that our health centers would have lead levels for children. Community health centers also track patient addresses allowing us to map which addresses corresponded to NYCHA units at the time of lead testing and which correspond to private housing units. We utilized data for as far back as our electronic medical record system would allow giving us 14 years of data. After cleaning the data and identifying legitimate addresses, we identified 4,693 children receiving care at the Institute

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<sup>1</sup> Jacqueline M. Chiofalo, Maxine Golub, Casey Crump, Neil Calman, "Pediatric Blood Lead Levels Within New York City Public Versus Private Housing, 2003-2017", American Journal of Public Health 109, no. 6 (June 1, 2019): pp. 906-911.

with a lead level result and valid address. Our results were mainly based in the Bronx and Manhattan where a majority of our New York City health centers are located. We identified 3,881 patients in non-NYCHA housing and 812 in NYCHA housing reflecting an oversampling of NYCHA residing children compared to the overall NYC population. Among the children in NYCHA housing, 59.8% lived in developments built before 1960, the year NYC banned lead-based paint and 96.5% lived in developments completed before 1978, the year the national ban on lead-based paint went into effect. We coded results to determine if a child had a blood lead level (BLL) over or under 5 µg/dL, the current CDC recommended level of concern. We also examined the average BLL by subgroup as seen in Table 1.

**TABLE 1: DEMOGRAPHIC CHARACTERISTICS**

Characteristic	Patients (n)	Mean BLL (SD)	No. with BLL ≥5 µg/dL (%)
<b>TOTAL</b>	4693	2.07 (1.13)	109 (2.32%)
<b>Housing Type</b>			
Private (non-NYCHA)	3881	2.10 (1.19)	107 (2.76%)
Public (NYCHA)	812	1.92 (0.76)	2 (0.25%)
<b>Sex</b>			
Male	2344	2.08 (1.01)	57 (2.43%)
Female	2349	2.06 (1.23)	52 (2.21%)
<b>Age</b>			
< 6 Years	3858	2.09 (1.12)	93 (2.41%)
6-12 Years	511	2.13 (1.26)	13 (2.54%)
13-18 Years	324	1.71 (0.91)	3 (0.93%)
<b>Race/ethnicity</b>			
Non-hispanic, black	1686	2.14 (1.25)	53 (3.14%)
Hispanic, non-black	2137	2.00 (0.99)	33 (1.54%)
Hispanic, black	249	2.03 (0.98)	4 (1.61%)
Non-hispanic, non-black	621	2.15 (1.29)	19 (3.06%)

Of the 3,881 children in private housing, the average BLL was 2.10 µg/dL with 2.76% of children with BLL greater than or equal to 5µg/dL. Of the 812 children in NYCHA housing, the average BLL was 1.92 with only 0.25% with a BLL greater than or equal to 5µg/dL. We examined the progress of the average of lead levels over time from 2003 and found that the average blood lead level as well as the percentage of children with blood lead levels greater than 5 µg/dL decreased over time (Table 2). We interpreted this as a sign of success for Local Law 1.

**TABLE 2: BLOOD LEAD LEVEL RESULTS OVER TIME BY HOUSING STATUS**

	All children			NYCHA residents			Non-NYCHA residents		
	n	Mean BLL (SD)	No. with BLL ≥5 µg/dL (%)	n	Mean BLL (SD)	No. with BLL ≥5 µg/dL (%)	n	Mean BLL (SD)	No. with BLL ≥5 µg/dL (%)
2003-2006	138	2.89 (1.38)	16 (11.5%)	15	2.26 (1.0)	0 (0)	123	2.96 (1.40)	16 (13.01%)
2007-2010	793	2.18 (1.25)	40 (5.04%)	106	1.90 (0.85)	0 (0)	687	2.23 (1.29)	40 (5.82%)
2011-2014	2068	2.44 (0.80)	34 (1.64%)	390	2.36 (0.49)	1 (0.26%)	1678	2.46 (0.86)	33 (1.97%)
2015-2017	1694	1.50 (1.10)	19 (1.12%)	301	1.34 (0.62)	1 (0.33%)	1393	1.54 (1.23)	18 (1.29%)

We found that children living in private housing had significantly greater odds, approximately 11 times greater, of having an elevated BLL compared to children in NYCHA housing (Table 3).

The results were statistically significant. We underwent sensitivity analyses by restricting the data to 2011-2017, as well as a second model only examining children aged less than 6, to adjust for any outliers. We found similar statistically significant conclusions.

**TABLE 3: ASSOCIATIONS BETWEEN HOUSING TYPE OR OTHER FACTORS AND BLOOD LEAD LEVELS  $\geq 5$   $\mu\text{g/dL}$**

	BLL $\geq 5$ $\mu\text{g/dL}$			
	Unadjusted*		Adjusted	
	OR (95% CI)	P	OR (95% CI)	P
<b>Housing type</b>				
NYCHA	0.08 (0.02, 0.35)	0.001	0.08 (0.02, 0.33)	0.001
Non-NYCHA	Reference		Reference	
<b>Sex</b>				
Male	Reference		Reference	
Female	0.90 (0.62, 1.32)	0.62	0.98 (0.66, 1.44)	0.92
<b>Age (years)</b>				
<6	Reference		Reference	
6-12	1.0 (0.58, 1.90)	0.85	1.09 (0.60, 1.98)	0.75
13-18	0.37 (0.11, 1.20)	0.09	0.38 (0.12, 1.24)	0.11
<b>Race/ethnicity</b>				
Hispanic black	0.51 (0.17, 1.53)	0.23	0.59 (0.19, 1.77)	0.35
Hispanic non-black	0.49 (0.28, 0.88)	0.01	0.51 (0.29, 0.91)	0.02
Non-Hispanic black	1.02 (0.60, 1.75)	0.91	1.15 (0.67, 1.96)	0.60
Non-Hispanic non-black	Reference		Reference	

\*Reported values for each variable without controlling for other covariates.

Our results show that public housing efforts have been successful though more needs to be done and immediate efforts should be focused on private housing. We urge the City Council to ensure that laws are equitable and focus on our city's most vulnerable. Punitive landlords could increase the number of individuals with unstable housing situations. We applaud City Council for the package of bills passed in the spring to expand the scope of the city's lead contamination efforts and support any policies or legislation that helps children lead healthier and happier lives.

**TESTIMONY OF MATTHEW J. CHACHERE  
STAFF ATTORNEY  
NORTHERN MANHATTAN IMPROVEMENT CORPORATION  
BEFORE THE NEW YORK CITY COUNCIL  
NOVEMBER 13, 2019**

Thank you for offering me the opportunity to testify at today's hearing.

**INTRODUCTION**

By way of background, I am a staff attorney at Northern Manhattan Improvement Corporation, a non-profit community based legal services provided in Washington Heights. For over 25 years, I have worked in the field of childhood lead poisoning prevention. As counsel to the New York City Coalition to End Lead Poisoning ("NYCCELP"), I have been involved in key cases that have defined the parameters of governmental and real estate responsibilities to prevent lead poisoning, including NYCCELP v. Giuliani and German v. Federal Home Loan Mortgage Corp. I was also plaintiffs' counsel in NYCCELP v. Vallone, which resulted in the 2003 decision from the New York Court of Appeals striking down the weakened New York City lead paint law (Local Law 38 of 1999), and reinstating the prior more stringent law (Local Law 1 of 1982), and counsel for numerous organizations who intervened to successfully defend New York City's new lead paint law in 2004 against challenges from the real estate lobby (Community Preservation Corp. v. Miller). I was also counsel in a successful environmental challenge to the unsafe removal of lead paint from New York City's bridges Williamsburg Around the Bridge Block Ass'n v. Giuliani. I was counsel for various friends of the court briefs several of the major lead poisoning cases heard by the New York Court of Appeals: Juarez v. Wavecrest Management Corp. (which held that landlords of multiple dwellings in New York City were, by

operation of New York City's local laws, on notice of lead hazards in buildings where young children reside), Chapman v. Silber (which declared that owners of properties not covered by New York City's lead laws may none-the-less be charged with constructive notice of lead hazards in older dwellings rented to families with young children), and Palaez v. Seide (concerning proper response of local health departments to childhood lead poisoning). In 2009, in NYCCELP v. Environmental Protection Agency, I obtained a settlement in which the federal EPA committed to revising its regulations concerning lead paint to make them more protective of children.

I was closely involved in the drafting of New York's current lead poisoning prevention law, Local Law 1 of 2004. Since 2009, I also have served on the New York State Advisory Council on Lead Poisoning Prevention.

### **I. HOW THE CITY FAILS TO END LEAD POISONING**

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

New York City has long been a leader in enacting progressive measures intended to respond to, and end, childhood lead poisoning. Nearly 60 years ago, the Board of Health amended the Health Code to impose a total ban on the sale and use of lead-based paint on the interior surfaces of dwellings, day care centers, and schools in New York in 1960 – 10 years ahead of the rest of New York State and 18 years before the federal ban.<sup>2</sup> And 37 years ago, the

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

<sup>2</sup> Unfortunately, the Board of Education continued to use lead-based paint in school facilities – in violation of the City’s own Health Code – until nearly 1980, according to a report issued by the School Chancellor’s Task Force on Lead Hazard Reduction (August 4, 1993), Report on Lead-Based Paint Policy Recommendations, and for this

City Council established perhaps the first lead poisoning primary prevention law in the nation by enacting Local Law 1 of 1982, chiefly sponsored by then-Councilmembers Stanley Michels and Tom Manton, which mandated that in child-occupied rental dwellings lead abatement take place before children become irreparably injured from lead-based paint hazards.<sup>3</sup>

Notwithstanding this, however, attaining the goal of an end to childhood lead poisoning – perhaps the most preventable widespread environmental diseases – has unfortunately continued to prove elusive. Nearly 60 years after the enactment of New York City’s ban on lead paint, there remain at any given moment hundreds of thousands of private rental dwellings in New York City with young children in residence and lead-based paint on at least some surfaces, and thus posing a risk of permanent, irreparable neuro- cognitive and other injuries.

As someone who was deeply involved in the litigation over the lack of enforcement and compliance with former Local Law 1 of 1982, and with the formulation and drafting of the legislation that became Local Law 1 of 2004, I want to share a bit of that history, because I think it may help inform the analysis of what is—and isn’t – being done by the City and the real estate industry, and the investigations that need to take place in order to remedy this in any new legislation.

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reason, the NYC Board of Education (now Department of Education) generally assumed that all schools constructed before 1980 potentially have some lead-based paint. Id. at 1

<sup>3</sup> While the Health Department has long had the obligation (currently codified under the Health Code at § 173.13) to respond to a report of childhood lead poisoning, such responses are known as “secondary prevention” since they take place after the fact. Given that the damage to young children from lead ingestion is generally irreparable, it has long been accepted in the public health field that “Primary prevention” – i.e., environmental intervention measures taken before a child is exposed to lead hazards – is essential:

“The data do not indicate that lead-induced cognitive defects are reversible. Primary prevention and preventing additional increases in blood lead levels among children whose blood lead levels are high remain the only effective means of dealing with lead poisoning.”

Liu, Dietrich, Radcliff, Regan, Rhoads, Rogan, Do Children with Falling Blood Lead Levels Have Improved Cognition? 110 *Pediatrics* (4) 787-791, at 791 (Oct. 2002)

Former Local Law 1 of 1982 was interpreted early on by the courts to require that all lead-based paint in child-occupied dwelling – in any condition – be permanently abated, and that the City must inspect and enforce this provision.<sup>4</sup> In addition, the courts also declared that LL1/1982's mandates applied regardless of whether a landlord was cited for a lead violation — the very existence of lead paint hazards was a violation that landlords had a duty to inspect for and safely abate, whether or not cited by a City agency.<sup>5</sup>

After many years of litigation and controversy concerning these issues arising from Local Law 1 of 1982 (and its temporary successor, Local Law 38 of 1999, which was subsequently struck down in 2003 by the New York Court of Appeals in NYCCELP v. Vallone, 100 N.Y.2d 337), the City Council passed a major reform package, the New York City Childhood Lead Poisoning Prevention Act, which was enacted over then-Mayor Bloomberg's veto as Local Law 1 of 2004 ("LL1/04").

LL1/04 represented a major compromise between the "absolutist" view incorporated in the 1982 law and the "minimalist" view of the 1999 law. In part, the 2004 law accepted the real estate industry's argument that it wasn't necessary to abate all lead paint in the City – that responsible landlord's could manage it in place. But in order to protect children from the

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<sup>4</sup> Specifically, in NYCCELP v. Koch, N.Y.L.J., July 21, 1989, at 18 (Sup. Ct. N.Y. Co.), aff'd, 170 A.D.2d 419 (1st Dep't 1991), the court found the City's interpretation of LL1/1982's statutory presumption — as limiting its inspection and enforcement duties regarding lead paint solely to peeling painted surfaces and solely to pre-1960 buildings — contrary to the law's plain meaning. Instead, the court declared that LL1/1982 required the abatement (i.e., the removal or covering) of lead paint regardless of whether the paint is peeling or intact.

<sup>5</sup> Juarez v. Wavecrest Mgt., 212 A.D.2d 34, 47(1st Dep't 1995). As the First Department subsequently noted, The plain effect of [§27-2013(h)] ... and the entire remedial scheme would be meaningless if a landlord could suffer a lead condition in its building until given "notice" of the condition as the result of a test performed by others.

Valdez v. Sherman Estates, Inc., 224 A.D.2d 240, 241 (1st Dep't 1996). See also Lane v. Ruiz, N.Y.L.J., May 29, 1996, p. 29 col. 3 (Sup. Ct. Queens Co.) ("A landlord is required to take action to remedy a lead condition prior to receiving any 'notice' of the condition as a result of a confirmed test performed by others." )

potential life-time irreparable injury from exposure to this neurotoxic substance, landlords affirmative obligation to inspect their dwellings and control it – already enunciated by the courts – would be codified into the law, and the City would be given the mandate to enforce it. In addition, the most risky surfaces would be targeted for permanent abatement at vacancy. Lastly, the mandate that safe work practices be utilized whenever lead –based paint – or paint of unknown lead content – is being disturbed, which was specifically mandated by the courts in the NYCCELP v. Koch/ Giuliani litigation, was also codified into the law with particularity.

This philosophy is clearly stated both in the “Statement of Findings and Purposes” at the beginning of LL1/04 and in the actual structure of the substantive provisions of this law. In enacting LL1/04, the City Council decreed that lead poisoning was both “a preventable childhood diseases and a public health crisis” and “established as its goal the elimination of childhood lead poisoning by the year 2010.” Admin. Code § 27-2056.1.<sup>6</sup> The Act declared that in order to accomplish this goal, the “City government must focus on primary prevention as the essential tool...” Id. Key to this effort was the need to assure that owners take preventative action:

[T]he council by enacting this article makes it the responsibility of every owner of a multiple dwelling to investigate dwelling units for lead-based paint hazards and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions as are necessary to prevent a child from becoming lead poisoned.

Id.

This approach was entirely sensible. While the law mandated that “that resources must be directed to primary prevention,” id., it was well understood that in no conceivable manner

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<sup>6</sup> Unfortunately, as we know, this goal was not achieved. City health data indicates that between 2010 and 2016 some 52,692 children were newly identified with blood lead levels of 5 micrograms per deciliter or greater, the current level of concern. Moreover, nearly all of these children resided in private rental dwellings, which was the key focus of LL1/04.

could the City undertake the vast task of regularly inspecting all of the hundreds of thousands of pre-1960 dwelling units where vulnerable children reside to make certain there were no lead hazards. Therefore, LL1/04 imposed specific primary prevention mandates on landlords of rental housing. Key among these were the following three:

**Owner Self-Inspections**

First, LL1/04 imposed on owners the fundamental responsibility to prevent and promptly remediate lead-based paint hazards, including underlying defects (such as water leaks or loose plaster) that can cause those hazards, using specified safe work practices. Admin Code § 27-2056.3. In so doing, the Council defined lead hazards very broadly – to include “any condition ... that causes exposure to lead from lead-contaminated surface dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health impacts.”

In order to effectuate this responsibility, the law set forth in § 27-2056.4 specific mandates that owners, among other thing, must:

- affirmatively ascertain whether young children are present in the dwelling
- inspect such child-occupied dwellings at least annually, and more often as needed, for lead-based paint hazards
- document in writing the results of each such inspection, and provide the written results to the tenant (and retain that report for 10 years, to be made available to the Department of Housing Preservation and Development (“HPD”) on request and to succeeding owners).

These provisions made noncompliance a misdemeanor, punishable by up to 6 months imprisonment and fines.

Unfortunately, the data thus far indicates that New York City taken no any enforcement action against any landlords in the past 15 years since the law went into effect – except in the two instances earlier this year where I took the landlords and HPD to court.<sup>7</sup> Obviously, without enforcement, negligent landlords will continue to violate this essential primary prevention obligation with complete impunity, resulting in the continued exposure of vulnerable children to lead-based paint hazards.

### **Lead Abatement at Vacancy**

Second, the 2004 law required that measures be taken to permanently remove what was - and still is -- considered to be the one of the most significant mechanisms for exposure to, and poisoning from, lead from lead-based paint: the generation of lead-contaminated dust from the abrasion of lead-based paint on door and window frames (i.e., “friction surfaces”). Although earlier drafts of that law (as Intro 101) would have required those measures to be undertaken by no later than July 1, 2007, in all child-occupied housing, the final version of the law as enacted required this work to be done a “turnover” (i.e., vacancy). The thinking behind this was that such work could be done most easily and safely when apartments were unoccupied, and that over time the turnover of housing units would result in the elimination of these high-risk hazards.

The law made non-compliance with this mandate an immediately hazardous “C” violation, and HPD’s implementing regulations mandate that documentation concerning this work, including a certification of compliance, be provided to the incoming tenant. The law also

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<sup>7</sup> As reported in November 2018, by Reuters, a review of “the past 12 years of HPD violation records and found the agency hasn’t cited a single landlord for failure to conduct the annual inspections.” Lead poisoning lurks in scores of New York neighborhoods, (11/14/17), available at [www.reuters.com/investigates/special-report/usa-lead-newyork/](http://www.reuters.com/investigates/special-report/usa-lead-newyork/)

required that such work be performed using specified safe work practices, including lead dust clearance tests at the end of the job to assure that the apartment had been properly cleaned.

Unfortunately, it appears again that HPD has performed essentially no enforcement of this provision – just 2 violations in 15 years, both in instances where I took the landlords and the City to court.

### **Safe Work Practices**

Third, the 2004 law mandated the use of specified safe work practices under all circumstances where lead-based paint – or paint of unknown lead content – was being disturbed in dwellings with young children. These mandates had originated in the context of a class action against the City, NYCCELP v. Koch, and were specifically codified in at Admin. Code § 27-2056.11. In particular, the law required that the work be done by properly trained and credentialed individuals and firms, with specific measures to control the dispersal of lead dust during the work so as to protect the tenants and their possessions from contamination, particularized cleaning procedures, and in virtually all circumstances the use of lead dust clearance tests with the results reported in writing to the tenants. (As mentioned earlier, it is well understood that uncontrolled lead dust is one of the most effective mechanisms for causing the poisoning of young children.)

It is critical to understand that these mandates apply whatever the intent of the work is. While they certainly apply to work being done to abate or remediate lead-based paint, they also apply when the work is being done for entirely different reasons - such as a renovation or an ordinary repair. From the perspective of a child's health, lead-contaminated dust from unsafe work is just as effective at causing irreparable harm no matter whether the work is deliberately being performed to remove lead hazards or is simply incidental to other construction.

In order to effectuate enforcement of these measures in circumstances where the City agencies were not already on notice that such work was to be done (i.e., where the City had not already ordered lead remediation work in response to a violation) – such as ordinary repairs or renovations – the law required that owners must pre-notify the Department of Health and Mental Hygiene (“DHMH” ) if any planned work will involve disturbing more than 100 square feet of lead-based paint or paint of unknown lead content (or removing two or more windows). This would enable DHMH to conduct spot checks for compliance.

Unfortunately, it appears that virtually no notifications are filed with DHMH (perhaps under 100 per year), and there are indications that non-compliance with the safe work practice regulations is rampant, resulting in increased exposure to toxic lead dust.

Moreover, as detailed in a report that my organization and others issued yesterday, “Collecting Dust: How NYC is Failing to Penalize Landlords for Exposing Tenants to Lead Dust,” the City has collected just \$10,190 in fines over the 15 years since the enactment of LL1/04. This sends a message that landlords can simply ignore the safe work practice regulations with impunity.

Without effective enforcement of these key provisions, and other aspects of existing law, it should not be surprising that LL1/04 has not achieved its goal of ending lead poisoning by 2010. And without a careful analysis and understanding of why City agencies are not enforcing these provisions, and why landlords are not complying with them, I am concerned that recent amendments to the City’s lead laws enacted this past April, as well as the remaining package of legislative proposals currently pending before the City Council, will do little to ameliorate these failures. Thus, for example, the recent legislation that made lead dust clearance level standards more stringent will do nothing to decrease childhood lead poisoning if negligent owners continue

the widespread practice of doing this work in child-occupied dwellings without taking lead dust clearance tests whatsoever.

## **II. THE ADMINISTRATION CONTINUES TO FAIL TO ENFORCE THE LAW**

Over a year ago, at the last oversight hearing on September 27, 2019, I and a number of my fellow advocates shared a detailed report on the failures of the Administration to enforce the City's lead poisoning prevention laws. That report, titled "Lead Loopholes," identified numerous areas where the intentions and mandates of Local Law 1 were ignored, and the consequences to the affected families. The conclusions in our report were not seriously contested by anyone; indeed, in response to questions from the Speaker and other members of this Council during the last oversight hearing, Administration officials essentially admitted that the City had failed to place any violations against landlords for failing to comply with their obligations to permanently abate lead paint on the highest risk areas of apartments at turnover of vacant apartments, and to perform annual inspections of child-occupied apartments for lead hazards.

In the ensuing year, I along with other advocates have worked closely with council staff to help refine some of the many pending legislative proposals to cure some of the problems identified in our report. Some of these were adopted in the ten bills enacted in April, as Local Laws 64 through 73 of 2019. But significant areas remain unresolved.

As I indicated earlier, our data last year indicated that in the 14 years since LL1/04 went into effect the City had failed to issue a single violation against any landlord for failing to perform the mandated annual inspections – not one! – and just 1 violation for failing to do the turnover abatement (in a case I had handled in 2010).

Last night I ran an analysis of all the HPD lead violations issued since 1982, using the

City's "Open Data" database, a tabulation of which appears at the end of my testimony. The good news is that -- after 15 years -- the City had now, for the first time, issued 2 violations for failure to conduct annual inspections. And it has now doubled the number of violations it has issued for turnover lead abatement -- to 2. The bad news is -- these violations were issued only after I took both the landlord and HPD to court; none of this took place by the City's own volition. And, tragically, in both these cases, my clients' children had already become lead poisoned, and in one instance re-poisoned.

Let me tell you about one of those two cases. My client, Blanca Quiridumbay, moved into her apartment in Northern Manhattan in 2005 with a young child. Since Local Law 1 of 2004 was already in effect, the lead paint on the door and window frames should have been abated before she moved in. We now know -- in hindsight -- that didn't happen. In June of 2016, her son Axel was born, and within 4 months he was lead poisoned. The Health Department inspected and found lead paint in numerous locations -- including the door frames -- and ordered the landlord to make repairs. But the City did NOT order the landlord to abate all the lead paint on all the door frames, even though that should have occurred before the family moved in, and even though it was now obviously apparent that the landlord had not done so. The family temporarily relocated while the work was done, and in January 2017 resumed occupancy after the Health Department declared the apartment was safe.

But it wasn't safe: in June of 2018, Axel was tested and again found to be lead poisoned. This time both the Health Department and HPD inspected the apartment, and again found lead, including on other door frames. The family again temporarily relocated. It was only after we filed a case in Housing Court earlier this year against the landlord and HPD for Ms. Quiridumbay that the City issued -- for the first time ever in the 15 years since the enactment of

LL1 – a violation against the landlord for failing to do the required annual inspections.

This is tragic. If the landlord had complied with the law before Ms. Quiridumbay’s family had moved in and removed the lead paint on the door frames and regularly inspected the apartment, the poisoning of her child might have been prevented.

If the City had taken action against the landlord in 2016, when it became clear that the Landlord had obviously failed to have removed the lead paint from all the door frames at vacancy and had failed to perform regular inspections, the re-poisoning of this child would have been prevented.

So, in the case of Ms. Quiridumbay and that of my other client, Manuel Castillo, we now have two instances – but only two – where HPD has at long last demonstrated that the City at least has the no-longer theoretical capacity to enforce the annual inspection and turnover provisions of LL1/04. It just continues to fail to do so – and the consequences are nothing short of catastrophic for the affected families whose children become lead-poisoned due to this ongoing institutional neglect.

While the Administration announced that it plans to conduct selective “audits” of some landlords to check for records of annual inspections and turnover abatement, until now I’ve seen no commitment from the City to take further substantive action even where those audits indicate non-compliance (other than to issue a violation for not keeping records). Indeed, it was only at the end of last week – apparently for the first time in the 15 years of LL1/04 – that HPD commenced a case in Housing Court seeking to compel the landlord of my other client mentions above (Mr. Castillo) to carry out the substantive requirements of turnover and annual inspection. One case in 15 years is not enough. Indeed, in Ms. Quiridumbay’s instance, the City had issued a violation for failure to provide records of lead law compliance back in 2008 – apparently

because another child had been poisoned in that building. This violation simply sat there for the next ten years, with apparently no further substantive action. Indeed, the data I've compiled indicate that of the 2,040 violations issued over the past 15 years for failure to produce records in response to an audit after a report of a child with an elevated blood lead ("EBL") level, as mandated by LL1/04 (§ 27-2056.7), some 1,739 remain open and only 301 have been closed.

One last observation: the data I've compiled below indicates that in the 16 years that former Local Law 1 of 1982 was in effect, HPD issued approximately 30,000 violations for peeling lead paint. Meanwhile, in the 15 years since Local Law 1 of 2004 went into effect, HPD has issued nearly 150,000 violations for peeling lead paint – i.e. five times as many. In part, this reflects the fact that Local Law 1 of 2004 requires HPD to inspect for lead paint anytime it is in the home of a child under 6, so to that extent one could say it has been a runaway success. But it is also a mark of failure: the whole point of the mandate in § 27-2056.4 of LL1/04 that landlords regularly inspect their own dwellings for lead hazards was to prevent the necessity of HPD having to do so. Given that there are an estimated 300,000 units of pre-1960 housing with children under age 6 at any given time in this City, there is simply no way that HPD can possibly inspect even a significant fraction of those dwellings for lead hazards – nor should the costs of this be borne by the City and its taxpayers. Thus, one would think that HPD would be aggressively seeking compliance with the self-inspection requirements of LL1/04; this is not only a key provision of the entire law, but indeed the one that provides for misdemeanor penalties with up to 6 months in jail. Seen in this light, HPD's wholly inexplicable failure to enforce this portion of the law is self-defeating.

**HPD Lead violations since 1982, as of Nov. 12, 2019 (source: NYC Open Data)**

Violation Description	Order Code	Violations issued	STATUS		City Law
			Open	Closed	
Peeling lead paint (pre-1999) (former § 27-2013(h))	555	29,728	15,655	14,073	Local Law 1 of 1982 (repealed)
Peeling lead paint (1999 law) (former § 27-2056.5)	610	4,852	2,427	2,425	Local Law 38 of 1999 (repealed)
Peeling lead paint on wood trim, doors or windows (former § 27-2056.5)	611	1,279	609	670	
Lead paint on deteriorated subsurface (former § 27-2056.5)	612	719	325	394	
Certify compliance with turnover abatement - § 27-2056.8	614	2	1	1	Local Law 1 of 2004
Presumed lead paint - peeling or on deteriorated subsurface - § 27-2056.6	616	60,481	13,337	47,144	
Positive-tested lead paint - peeling or on deteriorated subsurface - § 27-2056.6	617	87,678	28,777	58,901	
Failure to provide records per audit after report of EBL child - § 27-2056.7	618	2,040	1,739	301	
Failure to investigate for lead hazards - § 27-2056.4(g)	619	2	2	0	
Failure to provide records of annual inspections, per discretionary audit - § 27-2056.4(h)	620	3	2	1	
<b>Subtotal - LL1/04</b>		150,206	43,858	106,348	
<b>TOTAL -- All Laws</b>		186,784	62,874	123,910	

(Subtotal -- Peeling paint LL1/04)

148,159



**Testimony of Ruthie Lazenby, Legal Fellow at New York Lawyers for the Public Interest to the New York City Council Committees on Health, Housing and Buildings, Public Housing, and Education on Enforcement of Lead Laws  
November 13, 2019**

Good Morning Chairs Levine, Cornegy, Ampry-Samuel, and Treyger. Thank you for the opportunity to share testimony on this important topic this morning. My name is Ruthie Lazenby. I am the Healthy Housing Fellow with New York Lawyers for the Public Interest. Our organization has engaged in legal campaigns to protect children from toxic exposures where they live, learn, and play for over a decade.

Today, New York City landlords may reasonably believe they will face little to no consequences for violating lead laws. Without both proactive measures by the City to prevent lead exposure in the first place and aggressive enforcement for landlords and others that violate the law, the promise of Local Law 1 of 2004 to eliminate childhood lead poisoning will not be achieved. The task is even more critical because lead does not impact all people equally in New York City. Children and pregnant women are most susceptible to the harmful effects of lead, and Asian, Black, and Latinx children represent 84% of the children under age six with blood lead levels of 15 mcg/dL or greater.

One example of where the City has fallen short is enforcement of the crucial provisions of Local Law 1 of 2004 requiring safe work practices to protect children from lead paint that is disturbed, whether for abatement or any other renovation. A new report published by NYLPI and other advocates here today found that while DOHMH sent safe work practice violation cases to OATH, resulting in imposition of 2,212 individual penalties for a total of \$1,976,870 in fines, only \$10,090 was collected. That is only .5% of safe work practices penalties imposed. In total, only 12 penalties have been collected as a result of OATH adjudications in 15 years. This is not serious enforcement, and it does not give landlords a financial incentive to follow the law. In contrast, our report found a far greater collection rate for penalties DOHMH imposed on mobile food vendors. Over the past 15 years, DOHMH has collected a total of \$5 million – 35% of penalties imposed – from street vendors for infractions such as “cart touching or leaning against a building.” A key difference is that street vendors cannot renew their vending permit if they do not address an open violation.

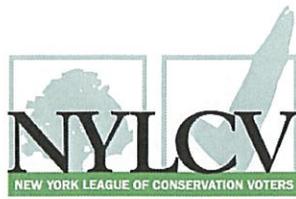
City agencies including DOHMH, HPD, and DOB can take concrete steps to improve enforcement and impose meaningful consequences for failure to comply with the law. The LeadFreeNYC Roadmap to Eliminating Childhood Lead Exposure published by the City earlier this year acknowledged that Local Law 1 enforcement has thus far been primarily driven by complaints from tenants, and proposed several targeted enforcement measures, including proactively auditing lead-related records kept by landlords and aggressively increasing oversight for construction work that poses a risk of lead dust. The Roadmap also committed to increasing resources and staff for enforcement. These are absolutely necessary changes, and this hearing is critical to holding the city accountable to these promises, but they are not adequate on their own.

The City should scale up the collection of fines and impose a structure of escalating fines for repeat violators. Additionally, the City should prevent landlords from receiving certain DOB approvals if they have outstanding unpaid penalties for safe work practices violations. Agencies should work collaboratively and share data – as reflected in the Roadmap’s proposals for DOB, HPD, and DOHMH interagency inspections of buildings under construction in high risk areas, and for DOHMH stop work orders to trigger DOB stop work orders. We should also promote broader data sharing between City agencies, for example, requiring applications for DOB work permits to certify prenotification with DOHMH and increasing scrutiny by all city agencies of subsequent lead safety matters landlords who have had enforcement actions taken against them.

This week, as people are being handcuffed and arrested by police for selling churros in the subway, New York City’s worst landlords may rightly feel confident that no one from the City or state will come after them for seriously endangering the New York City’s most vulnerable children – even if they are caught doing so and OATH has determined that they have violated the law. As we decide where to prioritize resources, we must insist on significantly more aggressive enforcement of the City’s lead laws in order to protect the children of New York.

We look forward to continuing to work with the Council and the City to improve enforcement of the City’s lead laws, and strengthen them where needed to ensure that agencies have the full set of tools to prevent lead exposure and to impose meaningful consequences where the law is violated.

*Founded more than 40 years ago by leaders of the bar, New York Lawyers for the Public Interest is a community-driven civil rights organization that pursues equality and justice for New Yorkers. NYLPI works toward a New York where all people can thrive in their communities, with quality healthcare and housing, safe jobs, good schools, and healthy neighborhoods. In our vision, all New Yorkers live with dignity and independence, with the access and resources they need to succeed. NYLPI’s community-driven approach powers its commitments to civil rights and to disability, health, immigrant, and environmental justice. NYLPI seeks lasting change through litigation, community organizing, policy advocacy, pro bono service, and education.*



**Statement of Adriana Espinoza  
New York City Program Director  
New York League of Conservation Voters  
City Council Oversight Hearing on LeadFreeNYC  
November 13th, 2019**

Good morning. My name is Adriana Espinoza, and I'm the Director of the New York City Program at the New York League of Conservation Voters (NYLCV). NYLCV represents over 30,000 members in New York City and we are committed to advancing a sustainability agenda that will make our people, our neighborhoods, and our economy healthier and more resilient. I would like to thank Chairs Cornegy, Levine, and Treyger for the opportunity to testify before the Committees on Housing & Buildings, Health, and Education.

While the number of children with very high blood lead levels has dropped significantly since 2004, the City remains far from its goal of eliminating childhood lead poisoning. Last September NYLCV, along with advocates from NYLPI, NMIC, and Cooper Square Committee, released a report, *Lead Loopholes*, highlighting how lax enforcement of Local Law 1 of 2004 (LL1) has prevented the most ambitious lead poisoning prevention law in the country from eliminating this public health issue by the City's then-stated goal of 2010. Despite commendable efforts laid out in last year's LeadFreeNYC Roadmap, there is still much more to be done on fully enforcing our existing lead poisoning prevention laws.

LL1 was designed to hold landlords accountable for proactively finding and abating lead paint hazards *before* children become poisoned, and to eventually remove all lead paint hazards from rental apartments throughout the City. Yet data from the Department of Health and Mental Hygiene (DHMH) and the Department of Housing Preservation and Development (HPD) show that the City is not enforcing the primary prevention measures of LL1.

Specifically, landlords are not being held fully accountable for failing to (i) annually inspect apartments where children reside, (ii) abate lead paint hazards before a new tenant moves into an apartment, and (iii) use safe work practices. As a result, rather than the proactive regime envisioned by LL1, the City's response remains complaint driven--too late for many families.

While last year's *Lead Loopholes* report focused mainly on points i and ii above, our new report, *Collecting Dust*, digs much deeper on point iii to highlight how glaringly low the collection of penalties is for violation of lead dust prevention measures. I am submitting the full report in the written version of my testimony.

We cannot keep functioning on a complaint-driven system, and must instead be proactive. That starts with making sure landlords are abating at turnover and annually inspecting all pre-1960 child occupied dwellings. We look forward to hearing from the Administration how the LeadFreeNYC has begun to close these lead loopholes over the last 12 months.



We have learned that City Agencies routinely ask for records related to primary prevention measures when investigating a case of a lead poisoned child. However, if the owner cannot produce the records, for example certifying they did the annual inspection, they are simply fined for not having the paperwork; there is no presumption that they failed to do the inspection at all. If landlords are not penalized for failing to inspect and abate lead, simply put, we will continue to have lead poisoned children in New York City.

What is clear to everyone here is that stronger action is needed on lead. I'd like to thank the Chairs of each committee present today and Speaker Johnson for their leadership on this issue, and will continue to work closely with you all moving forward.

**Contact:**

Adriana Espinoza

NYC Program Director

[aespinoza@nylcv.org](mailto:aespinoza@nylcv.org)

212-361-6350 Ext. 203



Wednesday, November 13, 2019, 10:00am

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**Oral Testimony**

Before New York City Council

Committee on Health, jointly with the Committee on Housing and Buildings, the  
Committee on Public Housing, and the Committee on Education

**Oversight - LeadFreeNYC and the enforcement of the City's  
lead laws.**

Sonal Jessel  
*Policy & Advocacy Coordinator*  
*WE ACT for Environmental Justice*

Thank you for holding the hearing today and for the opportunity to testify regarding New York City's lead laws.

I am Sonal Jessel, and I'm a Policy and Advocacy Coordinator at WE ACT for Environmental Justice. Over the past 30 years, WE ACT has been combating environmental racism in Northern Manhattan. WE ACT was part of the advocacy team lead by Matt Chachere in drafting and fighting for the passage of Local Law 1 in 2004. I am here as a member of the New York City Coalition to End Lead Poisoning, NYCCELP, a collection of experts and advocates who have been involved in action to end lead poisoning. WE ACT is an original member of the coalition. I myself have received my Master in Public Health from Columbia University.

As many others will testify today, New York City, the Department of Housing Preservation and Development and the Department of Health have failed to enforce all aspects of Local Law 1, which sought to end lead-based paint exposure by 2010 for all New Yorkers. The passage of the law was exciting because it shifted the burden of lead mitigation from the tenants to the landlords; tenants were no longer responsible for dealing with lead problems in their homes. The law made it possible to have systematic benefits for all tenants across the city.

Yesterday, NYCCELP published our report on lead violations, and found that only about \$10,000 of fines have been collected for violations since the law was enacted 15 years ago. In contrast, we found that collections from street vendor health code violations amounted to over \$5,000,000 in the past 15 years. Why does the city impose and collect more penalties for street vending, but not for lead poisoning? There is no excuse for failing to enforce the law when landlords endanger tenants' health.

As a public health worker, I am deeply concerned about the City's consistent failure to end lead poisoning. Lead poisoning causes serious harm to children's health, damaging the brain and nervous system, leading to developmental delays, behavioral problems, hearing and speech problems, and more (CDC) 1. These harms are not treatable with simple medication, they have impacts that last through the



lifespan. “Imaging studies of adults who had elevated blood levels in childhood have demonstrated” negative impacts on the brain and nervous system, and children exposed to lead are at greater risk of becoming hypertensive adults. Lead can also cause pregnancy complications (American Academy of Pediatrics)<sup>2</sup>. Lead poisoning is 100% preventable and there is no excuse for this to still be an issue.

Therefore, I join other advocates, experts, and community members to urge the City to enforce all parts of Local Law 1 by increasing penalties for landlords, adding additional measures for fine collections, coordinating more between agencies, and improving enforcement for safe work practices.

Thank you for your time.

Sincerely,  
Sonal Jessel

Policy & Advocacy Coordinator  
WE ACT for Environmental Justice  
1854 Amsterdam Avenue, 2nd Floor  
New York, NY 10031  
212-961-1000

1. Health Effects of Lead Exposure. *Center for Disease Control*. Retrieved on 12 November 2019 at: <https://www.cdc.gov/nceh/lead/prevention/health-effects.htm>
2. Lead Exposure in Children. American Academy of Pediatrics. Retrieved on 12 November 2019 at: <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/lead-exposure/Pages/Lead-Exposure-in-Children.aspx>

# Collecting Dust

*How NYC is Failing to Penalize Landlords  
for Exposing Tenants to Lead Dust*

## Acknowledgements



### *About New York Lawyers for the Public Interest (NYLPI)*

Founded more than 40 years ago by leaders of the bar, New York Lawyers for the Public Interest is a community-driven civil rights organization that pursues equality and justice for New Yorkers. NYLPI works toward a New York where all people can thrive in their communities, with quality healthcare and housing, safe jobs, good schools, and healthy neighborhoods. In our vision, all New Yorkers live with dignity and independence, with the access and resources they need to succeed. NYLPI's community-driven approach powers its commitments to civil rights and to disability, health, immigrant, and environmental justice. NYLPI seeks lasting change through litigation, community organizing, policy advocacy, pro bono service, and education.



### *About Cooper Square Committee*

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



### *About Northern Manhattan Improvement Corporation*

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



### *About NYLCVEF*

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



### *About WE ACT*

Founded in 1988, WE ACT for Environmental Justice is a Northern Manhattan community-based organization whose mission is to build healthy communities by ensuring that people of color and/or low income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. As a result of our ongoing work to educate and mobilize the more than 630,000 residents of Northern Manhattan on environmental issues affecting their quality of life, WE ACT has become a leader in the nationwide movement for environmental justice, influencing the creation of federal, state and local policies affecting the environment.

# Collecting Dust

How NYC is Failing to Penalize Landlords for Exposing Tenants to Lead Dust

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*Cover Image: Dust accumulated thickly enough to  
make boot prints at 138 Ludlow Street  
© DeShah*



*Workers disturbing old paint without protective materials or clothing at 332 East 4th Street*  
© Evan Bell

**IN 2004, THE CITY OF NEW YORK** took a major step to address the serious public health issue of lead poisoning, including poisoning resulting from exposure to lead-based paint dust. By enacting Local Law 1 of 2004, the City mandated the use of safe work practices to protect tenants and workers from harm. The law applies to all buildings with a presumed presence of lead-based paint; in other words, it applies to the nearly two million New York City housing units built before 1960, when lead-based paint was common.

The Department of Health and Mental Hygiene (DOHMH) holds the primary enforcement role of the safe work practices provisions of Local Law 1. As the enforcement agency, DOHMH is responsible for ensuring safe work practices, investigating complaints, and assessing penalties. Our group of tenant and environmental justice advocacy organizations used publicly available data from the NYC Office of Administrative Trials and Hearings (OATH), FOIL requests to the DOHMH, and on-the-ground observations of tenant experiences to gain a deeper understanding of enforcement of safe work practices to protect tenants from lead exposure.

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## *After 15 years, gaps in the enforcement of Local Law 1 of 2004 have come under scrutiny.*

In the 15 years since Local Law 1 went into effect on August 2, 2004,

- OATH has processed 2,828 violations containing references to the safe work practices standards in Health Code § 173.14, which specifies procedures and methods for correcting lead-based paint hazards.
- Of the 2,828 total violations, 75% of the primary charges in these cases relate to building conditions that pose risks to tenant and worker health.
- In four out of five cases (79% of the total cases), the OATH hearing sustained the original violation finding, delivering an “in violation” or “default” result.
- Overall, 2,212 penalties for violations of Health Code § 173.14 have amassed \$1,976,870 in imposed fines.
- Our analysis indicated a shockingly low collection rate for these penalties. Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid.
- Only 12 penalties have been collected as a result of OATH adjudications in 15 years.

In contrast, DOHMH has a far greater collection rate for penalties in other areas it enforces. We compared violations for all of Health Code § 173.14 to a selection of the Health Code subsections also under DOHMH’s enforcement purview, related to mobile food vending. Our review showed that, over the 15-year study period, DOHMH has imposed 21 times the amount of penalties for mobile food vending violations than it did for lead-related violations, collecting a total of \$5 million from street vendors for infractions such as “cart touching or leaning against a building”—as opposed to just over \$10,000 for lead-related violations. Not only did DOHMH impose more penalties on street vendors than property owners, street vendors made payments on

these assessed fines at a dramatically higher rate. For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations.

One reason for the disparity in penalties imposed and collected may be differences in the DOHMH’s enforcement protocol for these different parts of the Health Code. While street vendors must submit to annual grading inspections, complaint-driven investigations, random checks, automatic fines determined by a fine schedule, and impediments to permit renewal, nothing so comprehensive exists to enforce Health Code § 173.14. Rather, the DOHMH’s enforcement protocols for Health Code § 173.14 are opaque, reactive to tenant complaints, unpredictable in their escalation, and rarely seem to result in meaningful financial penalties.

After 15 years, gaps in the enforcement of Local Law 1 of 2004 have come under scrutiny. Our Lead Loopholes report in 2018 found widespread underenforcement of the primary prevention measures in Local Law 1, which were designed to effectively end childhood lead poisoning from household sources throughout New York City. Low collection rates for unsafe work practices violations follow a similar pattern of underenforcement.

Given the health risks associated with lead dust exposure, especially for children, we urge the City to improve Health Code enforcement against landlords who endanger their tenants’ safety and wellbeing. The City must fully enforce existing laws and vigorously seek and collect penalties, break down agency silos, and increase transparency around DOHMH’s enforcement protocols.

## Preventing Exposure to Lead Dust

**THE DANGERS POSED BY LEAD-BASED PAINT** to the health and safety of New York City’s children has long been recognized. In 1996, noting that “even relatively low levels can lead to significant nervous system damage” the New York Court of Appeals declared that “[c]hildhood lead paint poisoning may be the most significant environmental disease in New York City.”<sup>1</sup>

Experts consider lead dust to be “the primary exposure pathway of childhood lead poisoning.”<sup>2</sup> Lead dust can be invisible to the naked eye and highly toxic even in vanishingly small quantities.<sup>3</sup> Lead dust can be inhaled or swallowed when present on contaminated surfaces, such as children’s toys, hands, and food, and is generated not only from peeling or chalking lead paint on aging or damaged structures, but also from normal abrasion of intact painted surfaces, such as window and door frames.

Any construction or renovation work that disturbs lead-based paint—whether intended as part of lead abatement activities, as a renovation or repair, or as normal maintenance activities (such as preparation for repainting)—can easily generate lead-contaminated dust. In 2004 the New York State Department of Health (NYSDOH) stated that “Children living in dilapidated older houses or an older house undergoing renovations are at particular risk for lead poisoning due to lead contaminated dust and debris.”<sup>4</sup> Therefore, construction, repair, renovation, or abatement work in housing built before 1960, which is presumed to contain lead paint, must employ practices to prevent the dispersion of dust and to properly clean up the work area at the end of the job, performed by persons with appropriate training.

For the past three decades the City of New York has been under a legal mandate to protect tenants during work disturbing or removing lead-based paint. As a result of a class action lawsuit brought on behalf of children in rental properties, in 1989 the City was ordered to promulgate regulations governing safe work practices for such activities.<sup>5</sup> After the City was held in contempt of court

1 *Juarez v. Wavecrest Management*, 88 N.Y.2d 628, at 641.

2 *New York City Coalition to End Lead Poisoning (“NYCCELP”) v. Vallone*, 100 N.Y.2d 337, at 343 (2003). See also Jacobs, Clickner, Zhou, Viet, Marker, Rogers, Zeldin, Broene, Friedman, *The Prevalence of Lead-Based Paint Hazards in U.S. Housing*, 110 *Environmental Health Perspectives* (10) 599-606, at 599 (Oct 2002) (“A large body of evidence shows that a common source of lead exposure for children today is lead-based paint hazards in older housing and the contaminated dust and soil it generates . . . . Recent studies indicate that dust lead is the strongest predictor of childhood blood lead levels.”) (citations omitted); Lanphear, Weitzman, Winter, Eberly, Yakir, Tanner, Emond, Matte, *Lead-Contaminated House Dust and Urban Children’s Blood Lead Levels*, 86 *Amer. J. of Public Health* (10) 1416-1421, at 1420 (Oct. 1996) (“[T]his study confirms that lead-contaminated house dust is a significant source of lead exposure for urban children with low-level elevations in blood lead . . . .”); Lanphear, Matte, Rogers, Clickner, Dietz, Bornschein, Succop, Mahaffey, Dixon, Galke, Rabinowitz, Farfel, Rohde, Schwartz, Ashley, Jacobs, *The Contribution of Lead-Contaminated House Dust and Residential Soil to Children’s Blood Lead Levels: A Pooled Analysis of 12 Epidemiologic Studies*; 79 *Environmental Research* 51-68, at 57 (1998) (“In the multivariate regression, floor dust lead loading was the most significant environmental predictor of children’s blood lead levels . . .”).

3 In 1999 the U.S. Department of Housing and Urban Development (HUD) tightened its safety standards from 100 micrograms (millionths of a gram) per square foot of floor area ( $\mu\text{g}/\text{ft}^2$ ) to only 40  $\mu\text{g}/\text{ft}^2$ . Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 *Fed. Reg.* 50140 (Sept. 15, 1999). In 2019, the New York City Council passed legislation tightening this standard to 10  $\mu\text{g}/\text{ft}^2$ , with a further proviso that the level will be halved to 5  $\mu\text{g}/\text{ft}^2$  on June 1, 2021. Local Law 66 of 2019, amending Admin. Code § 27-2056.2.

4 NYSDOH, “Eliminating Childhood Lead Poisoning in New York State by 2010,” (Aug. 2004), at 10. Reported studies by NYSDOH have found that unsafe work practices expose children. See, e.g., EM. Franko et al, “Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remodeling Activities—New York, 1993-1994,” in CDC, *Mortality and Morbidity Weekly Report* Jan. 3, 1997; EM. Franko et al, “Children with Elevated Blood Lead Levels Related to Home Renovation, Repair, and Painting Activities—New York State, 2006-2007” in CDC, *Mortality and Morbidity Weekly Report* Jan. 30, 2009.

5 *NYCCELP v Koch*, N.Y.L.J., July 21, 1989, at 18 (Sup. Ct. N.Y. Co.), *aff’d*, 170 A.D.2d 419 (1st Dep’t 1991).



*Stairway with dust accumulated  
in corners at 138 Ludlow Street  
© DelShah*

for failing to do so,<sup>6</sup> the City eventually promulgated regulations in 1993—as Health Code § 173.14. However, as originally written, these regulations applied only in the limited circumstances where a violation had already been cited by the City—which left landlords otherwise free to use unsafe work practices during ordinary repairs or renovations, and resulted in yet another court decision holding the City in contempt in 1997.<sup>7</sup>

It was not until the enactment of Local Law 1 of 2004, which specifically mandated (through Administrative Code § 27-2056.11) that the relevant agencies promulgate regulations covering work that disturbs lead paint—regardless of the existence of code violations—that Health Code § 173.14 was revised to cover all such work. These standards incorporated state-of-the-art safety measures to prevent dispersal of toxic lead dust during such activities, and addressed the multiple hazards posed by lead dust through, among other things, safe disposal of hazardous materials; prevention of lead dust contamination of the home, its contents, and surrounding areas; proper licensing and training of lead abatement workers; and safe cleanup after lead paint work, including stringent dust clearance testing to ascertain that no hazardous lead dust remains.

Local Law 1 of 2004 requires DOHMH the primary role to enforce the safe work regulations and investigate complaints regarding unsafe work practices.<sup>8</sup>

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<sup>6</sup> *NYCCELP v. Koch*, N.Y.L.J., May 12, 1993, at 29 (Sup. Ct. N.Y. Co.).

<sup>7</sup> *NYCCELP v. Giuliani*, 173 Misc. 2d 235, 240 (Sup. Ct. N.Y. Co. 1997), *aff'd*, 248 A.D.2d 120 (1st Dep't 1998), rejecting the then-promulgated Health Code § 173.14 because “assumes no responsibility at all without the issuance of a lead paint violation by a City agency.”

<sup>8</sup> Local Law 1 of 2005, adding Admin. Code § 17-185.

## Enforcement of Local Law 1

**AS DESCRIBED ABOVE,** New York City in Health Code § 173.14 lays out work practices and safety standards for abatement of lead-based paint or other work that may disturb lead paint. Once DOHMH has inspected and determined that a violation is present, it applies the enforcement mechanisms of the Health Code as a whole, described in §3.11 and 3.12. These sections call for fines for each violation of a provision of the Health Code, which are set out in a fine schedule.

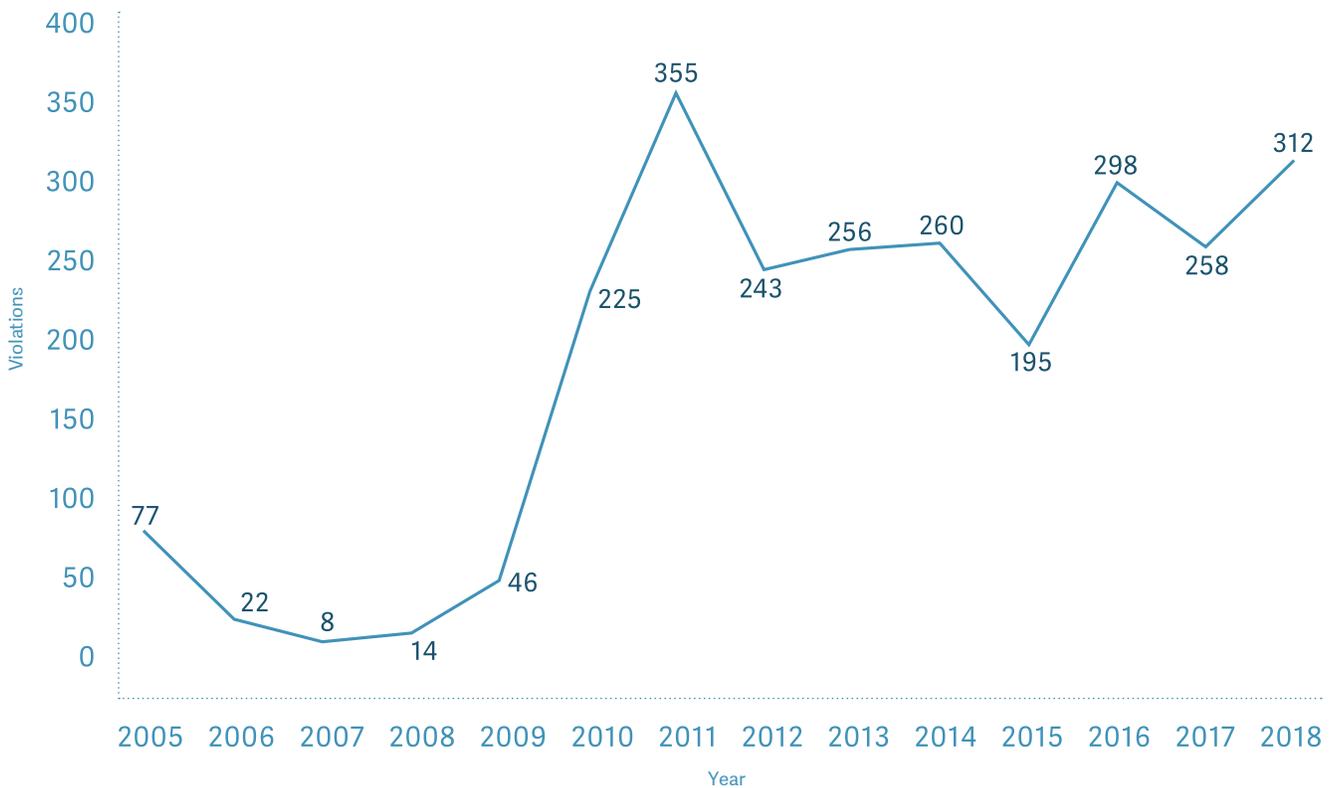
In order to impose fines for violations, DOHMH must bring a proceeding at the New York City Office of Admin-

istrative Trials and Hearings (OATH). Hearings at OATH require reasonable notice to the parties, and the burden of proof to substantiate violations is on the agency commencing the proceeding. OATH decisions are appealable. In most cases, the defendant must, however, pay the fine in order to appeal. If the defendant wins the appeal, they are issued a refund.

We used publicly available data from the NYC Office of Administrative Trials and Hearings (OATH) and FOIL requests to the Department of Health and Mental Hygiene (DOHMH) to gain a deeper understanding of enforce-

Fig. 1: Lead-related violations processed by OATH by year

In the 15 years since August 2, 2004, when NYC enacted Local Law 1 of 2004, OATH has processed 2,828 violations containing references to Health Code 173.14.



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. Chart shows violations processed per year for every full calendar year available. Violations from 2004 and 2019 not shown.

ment of penalties related to this portion of the City's lead poisoning prevention measures.

Our research revealed that in the 15 years since Local Law 1 went into effect on August 2, 2004, OATH has processed 2,828 violations containing references to Health Code § 173.14 (Figure 1). A minority of the primary charges of these violations (17%) relate to administrative requirements of the law. The majority of violations (57%) are related to tenant protection, followed by violations relating to work methods and occupant relocation (19%) (Figure 2). In other words, three-quarters of the

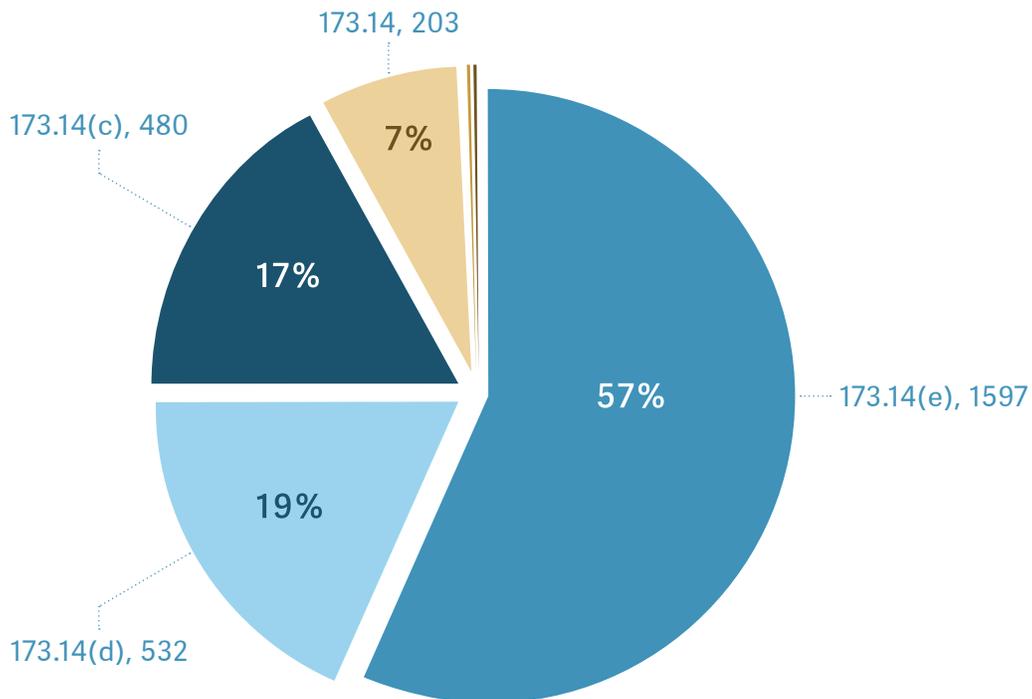
primary charges in these cases relate to building conditions that pose risks to tenant and worker health.

In 20% of cases, OATH dismissed the case and did not impose a penalty.<sup>9</sup> However, for the great majority of the total alleged violations, the OATH hearing triggered a penalty: In 41% of cases, the hearing sustained the original violation and resulted in a penalty, and in an additional 38% of cases, the hearing yielded a "default" result,

<sup>9</sup> This rate of dismissals is similar to the rate seen for violations in other areas of the health code.

Fig. 2: Charge #1 Code Section (simplified)

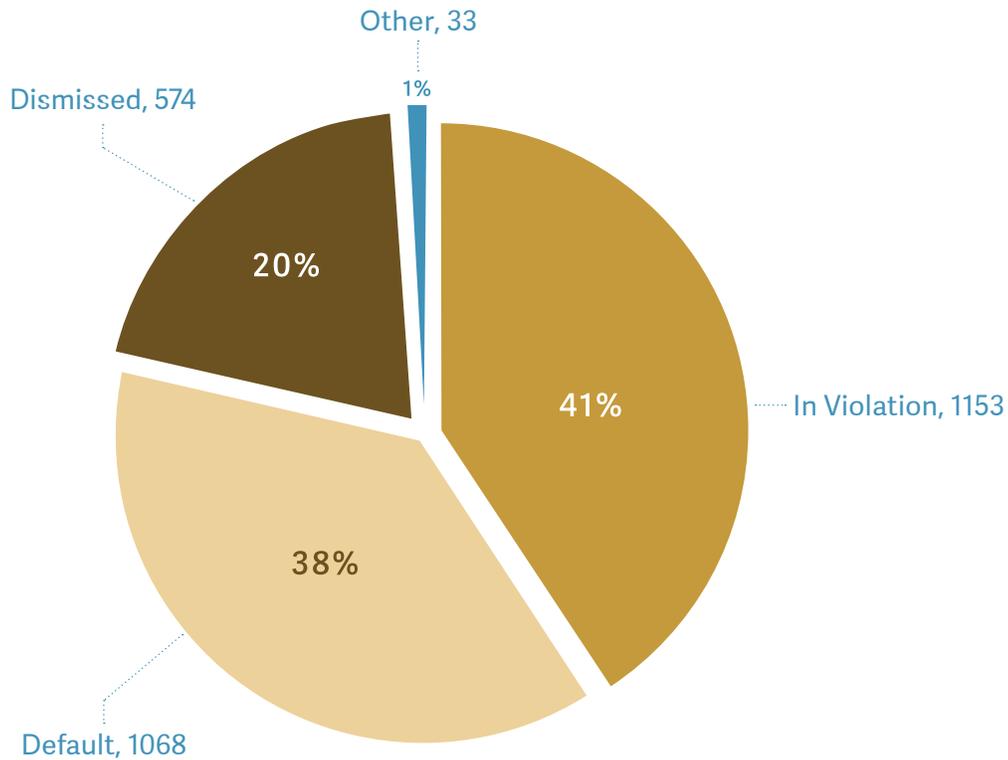
Of the 2,828 total violations, 75% of the primary charges correspond to sections of the health code related to occupant protection (173.14(e)) or work methods (173.14(d)).



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. Code subsections were reduced to their primary subsection, e.g. 173.14(e)(1)(A)(i) was simplified to 173.14(e). Records without code sections correspond to general safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

Fig. 3: Hearing results for lead-related violations processed by OATH

In 20% of cases, OATH dismissed the case and did not impose a penalty. However, for 79% of the total alleged violations, the OATH hearing delivered an “in violation” or “default” result.



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. “In Violation” means that OATH sustained the alleged violation and assigned a penalty. “Default” largely means that the party failed to appear at the hearing and OATH assigned a penalty. OATH also imposed penalties in 16 cases with blank hearing results and 4 cases “written off.”

meaning that the party failed to appear to contest the violation. Here, too, OATH imposed a penalty (Figure 3). Overall, 2,212 penalties for violations of Health Code § 173.14 have amassed \$1,976,870 in imposed penalties over the 15 years Local Law 1 has been in place (Figure 4).

However, although nearly \$2,000,000 in penalties have been imposed pursuant to Health Code § 173.14, our analysis indicated a shockingly low collection rate. Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid (Figure 5). Only 12 penalties have been collected as a result of OATH adjudication of safe work practices violations in 15 years.

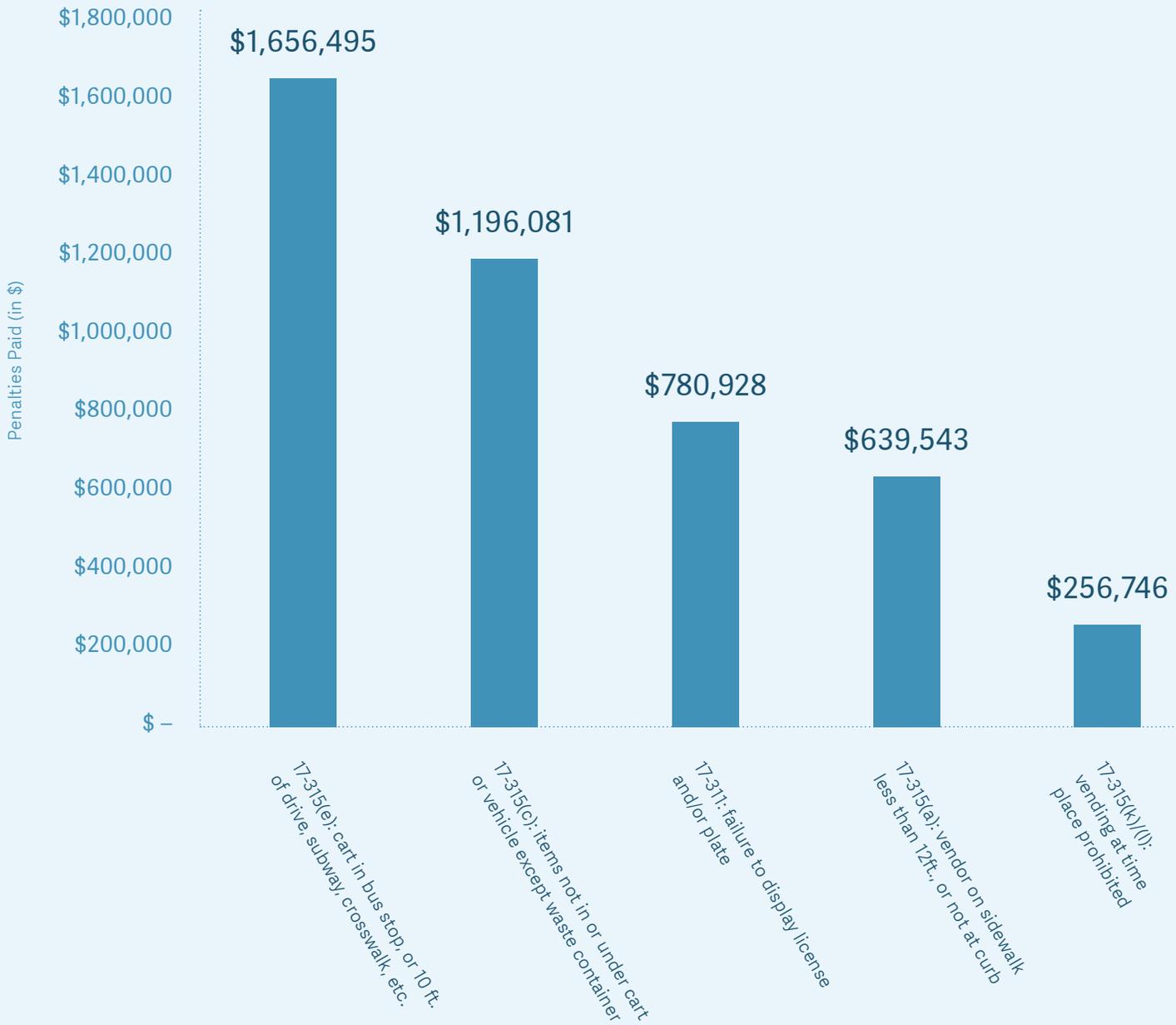
The 0.5 percent collection rate is extraordinarily low. Moreover, since there are approximately two million housing units built before 1960 that are presumed to contain lead-based paint, it is likely the nearly 3,000 violations registered through OATH represent only a small percentage of the overall scope of the problem. DOHMH does not publish its data on lead-related violations, investigations, or penalties, and thus this analysis of OATH-assigned penalties is the best we can conduct using publically available data.

Fig. 4: Summary of total hearings, penalties imposed, and penalties paid for lead-related violations and street vending violations.

	Lead-Related Violations		Street Vending Violations	
<b>TOTAL HEARINGS (2004 to 2009)</b>		2,828		118,729
Number of Penalties Imposed		2,212		93,487
Average Penalty Imposed	\$	894	\$	457
Maximum Penalty Imposed	\$	12,310	\$	4,000
<b>TOTAL PENALTIES IMPOSED</b>	\$	1,976,870	\$	42,745,442
Number of Penalties Paid		12		32,463
Average Paid Amount	\$	849	\$	154
Maximum Paid Amount	\$	2,532	\$	2,609
<b>TOTAL PENALTIES PAID</b>	\$	10,190	\$	5,015,124
<b>PERCENTAGE COLLECTED</b>		1%		12%

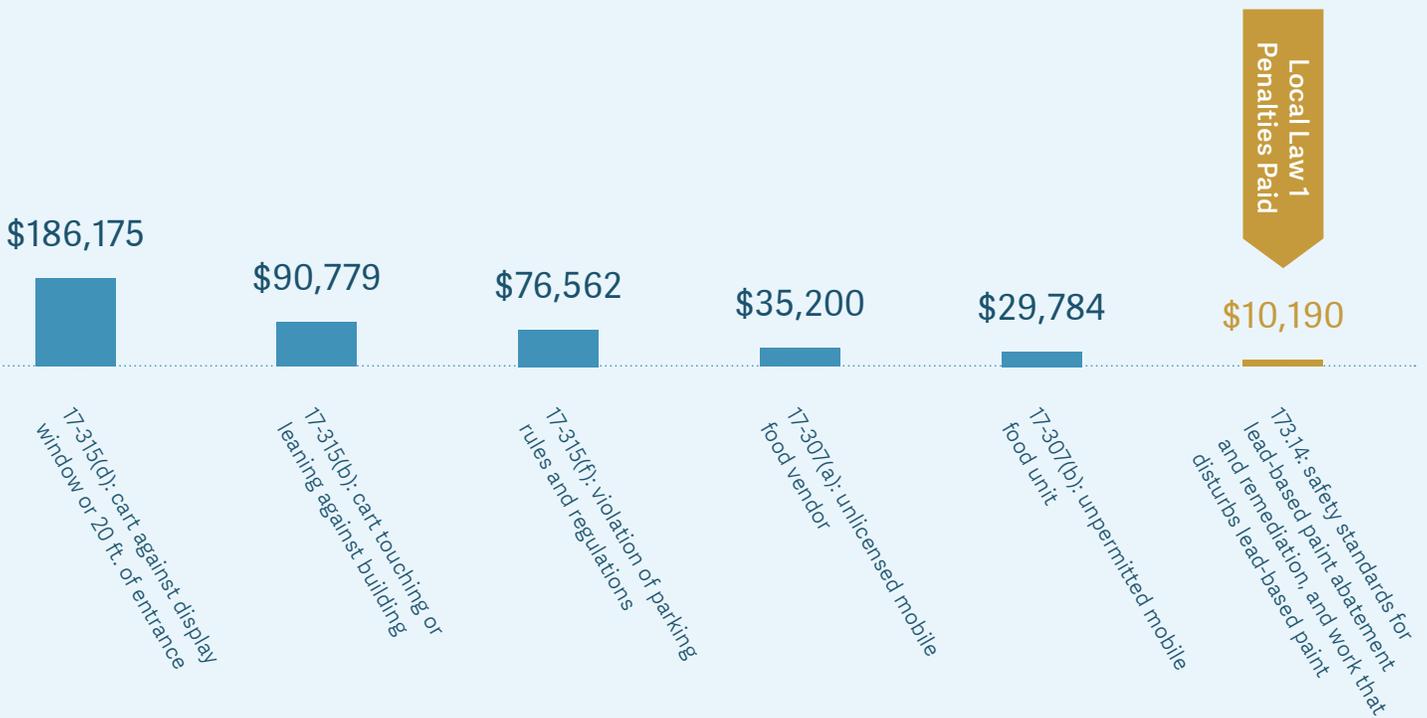
Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. For violations related to safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint, the primary charge code section references administrative code section 173.14. The administrative code sections related to street vending include 17-307(a) and (b); 17-307(b); 17-311; 17-315(a), (b), (c), (d), (f), (k)/(l). Penalties Imposed and Penalties Paid calculations exclude when value is 0 or blank. Percentage Collected is proportion of total penalties paid (in dollars) to total penalties imposed (in dollars).

Fig. 5: Selected OATH-Adjudicated Health Department Penalties Paid for Violations Since Local Law 1 Enacted (8/2/04 to 8/2/19)



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019.

Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid. Only 12 penalties have been collected as a result of OATH adjudication of safe work practices violations in 15 years.



Administrative Code Section

## Health Code § 173.14 Enforcement Compared to Other Health Code Enforcement

**DOHMH OVERSEES ENFORCEMENT** across a wide range of areas beyond lead-based paint hazards, including tobacco sales, environmental hazards, restaurants, daycare providers, and street vendors. Our analysis of other areas of DOHMH's oversight portfolio, in particular its regulation of street food vendors, uncovered a disparity in enforcement of health code violations.

Street vendors, like landlords, run businesses that pose potential public health risks. They, too, must abide by laws meant to protect the health of New Yorkers. To comply with health and administrative codes, vendors interact with multiple enforcement agencies including the NYPD and a special unit within the Health Department (the Bureau of Food Safety and Community Sanitation). Vendors must submit to proactive annual grading inspections, complaint-driven investigations, and random inspections. They face automatic fines determined by a fine schedule. If they do not address an open violation, they cannot renew their vending permit, a consequence which seriously impacts their ability to do business. If vendors are caught operating without a permit, the City imposes an automatic \$1,000 fine, and this fine escalates after subsequent offenses.

Our analysis found that the most common violations that enforcement agencies assign to street vendors relate to vending in the wrong place and not keeping items in or on their cart.

We compared violations for all of Health Code § 173.14 to a handful of subsections related to street vending violations (17-307(a)(b), 17-311, 17-315(a)(b)(c)(d)(f)(k)(l)). Our review showed that over the 15-year study period DOHMH has imposed 21 times the amount of penalties for street vending violations than it did for lead-related violations.

Critically, street vendors make payments on assessed fines at a dramatically higher rate than property owners. For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations (Figure 4). Over the 15-year study period, street vendors paid over \$5 million in penalties. Over that same period, property owners paid just over \$10,000 for lead-related violations (Figure 5).

This disparity could exist for various reasons, including differences in staff levels across DOHMH or how easy certain types of violations may be to detect and enforce. However, regardless of possible explanations, the data nonetheless suggest that enforcement against landlords is far too lenient.

Ultimately, the data pose the question of whether the City cares more about ensuring food carts are placed correctly on the sidewalk than ensuring that landlords won't continue to poison their tenants with lead dust. Since 2004, the City's OATH procedures have resulted in \$90,779 collected from street vendors for allowing their cart to touch or lean against a building—nearly nine times what the City has collected from landlords who have disturbed dangerous lead dust inside residential buildings. Simply put, the penalties collected don't match the severity of health risks associated with the violation. As noted previously, street vendors are subject to automatic penalties with a predetermined fine schedule. Failure to resolve an open violation could prevent them from conducting business. In contrast, landlords appear to risk few if any consequences for failing to address an open violation, and they maintain their ability to collect rent.

## Theresa Kimm

Theresa Kimm's family had been long time residents of 332 East 4th Street in Manhattan's Lower East Side when the building was sold to Frontier Fourth Development in early 2019. By March, tenants were subjected to intense renovations in both the common areas and in vacant apartments. As a mother of a two-year-old child, Theresa was particularly worried about the effects of lead exposure on her family.

Within a few hours of work beginning on the first day of construction, Theresa saw dusty, open bags being hauled through common areas and dust on the stairways, so she called 311. DOHMH inspected on March 13, 2019, and found elevated levels of lead in the dust. The landlord was notified of the lead contamination. Besides the commissioner's orders to clean up all debris and dust issued in April, the City took no other actions at that point.

Theresa and her neighbors continued to call 311 about high levels of dust and other unsafe work in the building. DOHMH inspected on numerous subsequent occasions, and while they did not find dust violations at the time of the inspections, Theresa and her neighbors continued to report high levels of dust before and after inspections.

During the period of heavy renovations, Theresa was advised by DOHMH inspectors to put a wet towel across the bottom of her doorway to protect her daughter from the onslaught of dust they were continuously experiencing. Even on the occasions when the Department of Buildings (DOB) temporarily stopped construction for illegal activity, Theresa was worried about letting her child walk up the stairs by herself. The stair railings and other parts of the common areas were frequently left dusty, as were tenants' doors.

Finally, on May 14, 2019, inspectors issued a stop-work order for unsafe work practices related to lead. Inspectors observed visible construction dust and debris on public

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hallway floors, window sills, and stairway treads from the first to the sixth floor, and issued a summons. According to NYC Open Data, a \$1300 penalty was assessed through default/no appearance at an OATH hearing, but the fine was never paid.

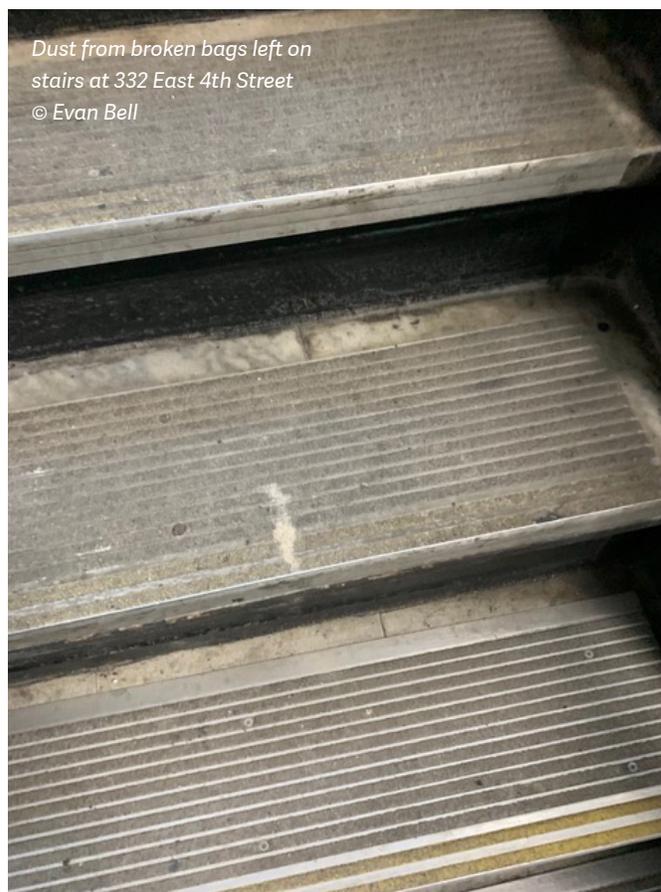
Inspectors went out the next day, and saw plastic containment with visible tears and holes over doors coated with construction dust. On the following day, May 16, inspectors noted that dust was being controlled, and allowed work to resume.

Months after potential exposure of Theresa's toddler to a dangerous neurotoxin in their home, our research showed no penalty or other consequences from DOHMH for not following safe work practices.

## Mayra Hernandez

Mayra Hernandez's extended family has lived on the Lower East Side since the 1960's. She has been a resident of 138 Ludlow Street for close to 40 years. In early 2018 her building was sold to DelShah Capital and extensive renovations started. By July, tenants began reporting reckless construction and unsafe conditions to housing rights organizations.

At the same time, rent stabilized tenants reported they were being offered buy-outs, and other tenants' leases were not renewed. During the latter half of 2018, Mayra's disabled adult daughter fell ill repeatedly and had to be taken to the hospital on multiple occasions, which Mayra attributes to exposure to high levels of construction dust, causing her eye and ear infections. Mayra, too, experienced burning and irritation of her eyes, nose, and throat from the intense dust. Though workers began putting up plastic sheeting over doorways, the sheeting was often left open, and dust from renovations accumulated so thickly on stairs and halls that distinct footprints could be seen throughout the building. On December 24, 2018, DOHMH inspected and found lead over 36 times the legal limit, and ordered a cleanup.



*Dust from broken bags left on stairs at 332 East 4th Street  
© Evan Bell*



*Door left open and no plastic cover during renovations at 138 Ludlow Street  
© DelShah*

Mayra and her neighbors hoped that the attention paid to conditions in the building would improve their living situation. Inspectors visited on three additional occasions, but did not report uncontrolled dust, although the Department of Buildings found multiple unsafe construction activities. On February 4, around the same time the landlord sent information to tenants and the Cooper Square Committee about how the building had been cleaned up and safe work practices were being followed, tenants reported high levels of dust, and DOHMH was called to the building. Inspectors from DOHMH did not test for lead, but again ordered a clean-up. By mid-2019, only four original tenants remained in the building. According to Open Data NYC, OATH imposed \$2,600 in penalties, which remain unpaid. Though we have obtained the DOHMH report confirming lead found in the common areas of this building, the DOHMH FOIL request yielded no additional records. In any case, Mayra, her vulnerable daughter, and her neighbors were exposed to high levels of lead dust.

## Holly Slayton

As a small business owner and mother of an elementary school-aged daughter, Holly Slayton has deep connections in her community. Holly's landlord, Raphael Toledano, recently reached a settlement with New York's Attorney General resolving allegations of widespread tenant harassment and other illegal behavior, after an LLC he controlled purchased her building in 2016 as one of a large portfolio managed by his property management company, Brookhill Properties. The landlord revoked the storefront lease where Holly had operated her business for 15 years. In addition, when he began renovations where she lived, conditions there also quickly deteriorated. Gut renovations of apartment units were happening at a rapid pace. Holly reported construction work outside of approved work hours and construction dust throughout the building that she was concerned contained lead. In March 2017, DOHMH inspected and found elevated lead levels. In addition to many other construction and maintenance problems, again in April

2017, Holly and her school-aged child were exposed to lead over five times the legal levels.

Though Toledano and his associated companies lost control of the buildings, the private equity fund Madison Realty Capital, which had loaned him the money to buy the buildings, took over management of the buildings through its property management arm, Silverstone Property Group. After the change in management, Holly reported that construction still dust lay on floors for a week and that cleanup wasn't performed according to the rules. Holly reported that blood vessels around her eyes burst from coughing, and her daughter suffered respiratory illnesses. Their doctor recommended that she and her daughter wear dust masks inside their own home. She struggled to connect to the correct City agencies, and felt her complaints were pushed from agency to agency.

In November of 2017 DOHMH inspected again and tested the dust for lead, revealing that Holly and her daughter had been again exposed to lead over four times the allowed levels. Holly experienced the loss of her business, multiple instances of unsafe construction, and the potential long-term consequences of repeated lead exposure on her and her daughter's health. A FOIL request to DOHMH didn't yield information about any fines and penalties paid by Raphael Toledano, his associated LLCs, Brookhill Properties, or Madison Realty Capital's Silverstone Property Group.

### **FULLY ENFORCE EXISTING LAWS, AND VIGOROUSLY SEEK AND COLLECT PENALTIES.**

Even the best-intentioned statutory schemes for addressing the potential harm to vulnerable children from lead dust will be rendered useless unless offenders face meaningful consequences. If the City fails to take its enforcement mandates seriously, landlords will not take their responsibilities to control lead dust seriously.

- Scale up collection of fines. The City must seek to collect penalties assessed by OATH through both the Department of Finance as well as through parallel measures that prevent landlords from, for example, receiving certain approvals if there are outstanding unpaid penalties. Otherwise, many landlords will have little if any incentive to pay even the low fines currently allowed.
- Impose a structure of escalating fines for repeat violators of safe work practices. Landlords who trigger multiple enforcement actions for performing work unsafely in any of their buildings should face increased fines with each action. This escalating system should include criminal prosecution for landlords who flout the law.
- Introduce the possibility of criminal penalties for the most serious offenses. Lead violations should constitute a public nuisance. Allowing this classification within the legal system holds landlords personally liable for lead violations. This would be a powerful step towards holding to account those who are putting children at risk of irrevocable long-term harm.

**BREAK DOWN GOVERNMENTAL SILOS.** Creating more opportunities for coordination and collaboration between city agencies can help keep lead poisoning prevention from slipping through the cracks. On September 25, 2019, Comptroller Scott Stringer issued a report detailing the results of his office's audit of the City's lead poisoning prevention program.<sup>10</sup> A key finding of the report was a lack of effective coordination and data-sharing among City agencies, such as DOHMH and the De-

partment of Housing Preservation and Development (HPD), and the need for proactive enforcement. Avenues for such coordination with respect to safe work practices include:

- Data-sharing among DOHMH, HPD, and the Department of Buildings (DOB) to flag larger renovation projects that could disturb lead-based paint in occupied buildings. Although landlords are required by city law to notify DOHMH prior to performing work that will disturb significant amounts of lead paint (in order to give DOHMH the ability to ensure safe work practices), there is little evidence that landlords do so. Requiring applications for DOB work permits to certify pre-notification with DOHMH might help close this loophole. DOB and DOHMH can link their databases to enable spot-checking as well.
- DOB should also mandate that applicants for work permits certify that the relevant personnel have the appropriate, mandated training and credentials under federal and local law to perform work that may involve disturbing lead-based paint or paint of unknown lead content.
- Landlords who have had enforcement actions taken against them should face increased scrutiny by all city agencies for all subsequent lead safety and similar matters. For instance, a landlord who has been found to violate safe work practices in the past should face extensive oversight of all future City-approved construction work in pre-1960 buildings.

### **INCREASE TRANSPARENCY TO CREATE MORE PUBLIC ACCOUNTABILITY.**

Many tenants do not know how to enforce their rights or get information on what, if any, enforcement measures have occurred. The City should create a more transparent and predictable

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<sup>10</sup> New York City Comptroller, [New York City Comptroller's Scott Stringer's Investigation into Child Lead Exposure](https://comptroller.nyc.gov/wp-content/uploads/documents/Lead-Investigation.pdf) (Sept. 2019). Available at: <https://comptroller.nyc.gov/wp-content/uploads/documents/Lead-Investigation.pdf>

## Conclusion

enforcement protocol and share it with landlords, tenants, and the general public.

- A flow chart or other process diagram for the steps in DOHMH enforcement would aid inspectors to align their enforcement actions and allow tenants and landlords alike to know what to expect when an inspection yields a violation or repeated violations.
- Make all data on lead enforcement actions taken by City agencies against landlords publicly available through the agencies' websites. With publicly available data on DOHMH common area lead-wipe test results, commissioner's orders, and other measures of enforcement, communities can actively monitor the City's progress with lead safety enforcement.
- The City should consider using available technology creatively to oversee work as well. For example, DOHMH could install real-time monitoring technology to ensure that landlords that had recent violations do not go back to the same unsafe work practices as soon as those violations have been resolved.

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*For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations. Over the 15-year study period, street vendors paid over \$5 million in penalties. Over that same period, property owners paid just over \$10,000 for lead-related violations.*

**THE LACK OF MEANINGFUL ENFORCEMENT** of Local Law 1 of 2004's safe work practices standards endangers families in New York City every day, so it is imperative that we act to ensure landlords face real penalties when they are found to be in violation of these critical health-protective standards. Without meaningful enforcement, including collection of fines, landlords will not be effectively held accountable to prevent exposure to lead-based paint in apartments around New York City.

As DOHMH's record enforcing and collecting penalties for violations of street vending violations shows, it is possible for the agency to assess and collect fines at a far higher rate than it does in the context of lead safe work practices.

In 2018 a coalition of public health advocates, community organizers, and attorneys published the Lead Loopholes report, outlining the lack of meaningful enforcement of the primary prevention mandates in New York City's lead paint poisoning prevention law. One year later, this report finds a similar pattern when it comes to enforcing violations the City has in fact imposed.

Fifteen years after the enactment of Local Law 1, there is no excuse for failing to meaningfully and aggressively enforce the law when landlords endanger tenants' health. We urge all branches of city government to employ their power to improve enforcement of Local Law 1 of 2004 through increased and escalating penalties, additional measures to collect fines, additional coordination and collaboration between city agencies to more effectively enforce existing laws, and more transparent enforcement protocols for safe work practices.

By following these recommendations, the City will be better able to address the ongoing issue of lead poisoning that deeply impacts the safety, health, and wellbeing of families across New York City.

This study analyzes NYC Open Data from the NYC Office of Administrative Trials and Hearings (OATH), obtained from <https://data.cityofnewyork.us/City-Government/OATH-Hearings-Division-Case-Status/jz4z-kudi/data> on September 26, 2019. The OATH Hearings Division Case Status dataset contains information about alleged public safety and quality of life violations that are filed and adjudicated through OATH—the City’s administrative law court—and provides information about the infraction charged, hearing results, fees, and payment amounts relating to the case. The summonses listed in this dataset are issued and filed at the OATH Hearings Division by City enforcement agencies.

A limitation of this study is the availability of public data. The City does not release information about the total number of alleged lead violations it issues or the fines it imposes and collects. The OATH dataset is therefore the best available public data on lead violations and penalties. However, these records only represent the alleged lead violations that are adjudicated through OATH. They do not include any violations or fines issued prior to this adjudication process.

This study focuses on alleged violations to lead-based paint abatement and remediation standards. These OATH hearings meet the following criteria:

- Violation date is between August 2, 2004 (when Local Law 1 took effect) and August 2, 2019
- Charge # 1 Code Section contains “173.14”
  - Overall, this code section relates to safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint
  - It includes the following code subsections
    - 173.14(c): Administrative requirements
    - 173.14(d): Work methods
    - 173.14(e): Occupant protection

The comparison to other violations issued by the Department of Health focuses on alleged violations that met the following criteria:

- Violation date is within the same time frame (between August 2, 2004 and August 2, 2019)
- Charge #1 Code Section starts with “17-3”
  - This query captures code subsections related to street vending
    - 17-307(a): unlicensed mobile food vendor
    - 17-307(b): unpermitted mobile food unit
    - 17-311: failure to display license and/or plate
    - 17-315(a): vendor on sidewalk less than 12ft., or not at curb
    - 17-315(b): cart touching or leaning against building
    - 17-315(c): items not in or under cart or vehicle (except in waste container)
    - 17-315(d): cart against display window or 20 ft. of entrance
    - 17-315(f): violation of parking rules and regulations
    - 17-315(k)/(l): vending at time/place prohibited

*Sandra Mayer*  
p.1

1) Hello, my name is Sandra Mayer. I'm a tenant living on East 5th Street in the East Village. This building was bought by Raphael Toledano and defaulted to Madison Realty Capital. I'm a member of a tenant coalition called 'Tenants Taking Control' working together with Cooper Square Committee.' I am also a member of Lead Dust Free NYC.

2) Greetings to you all. Thank you for this opportunity to speak.

3) As a tenant who has experienced lead dust episodes in my building, I am here today to make a plea for the proper enforcement of penalties to the landlords in this city who ignore Local Law 1 of 2004.

4) In the East Village, hyper-gentrification has led to an abundance of real estate transactions, resulting in numerous gut-renovations. These renovations often release very high levels of lead dust in apartment buildings, exposing families to this dangerous neurotoxin. This commonly occurs in rent-stabilized housing, where landlords have an incentive to remove tenants.

5) My story began in March of 2016 when my new landlord, Raphael Toledano gut renovated two units in our building. There was no warning and there were no tenant protections. This happened three and a half years ago, but I remember the event quite clearly because it caused me a great deal of fear and stress—resulting in a feeling of utter helplessness.

For one whole day, workers pounded away at units 6 and 10. There were no plastic covers on doors, no mops or HEPA vacuums, no tightly sealed bags for carrying out debris. The noise was intense. Workers stomped up and down the stairs, tracking dust throughout the stairwell. I called our building manager, but his answering machine was full. I then called 311—which forwarded me to the 'Healthy Homes' division. Their answering machine actually worked—yet it was still just a machine.

The next day, upon opening my door, I saw that the hallway was coated with a light grey powder. No one had cleaned the mess from the previous day's work. Our building dates from 1876, so I knew that this dust was anything but benign.

I managed to reach Mr. Toledano on his phone. He listened to my complaints, but did not seem terribly concerned—he mumbled something about getting his Super to clean up. His response was neither reassuring nor convincing.

I should NOT have been shocked that Raphael Toledano, a 20-something-year-old, convicted-felon would turn our building into a lead-dust snowglobe—knowing full well that he was potentially poisoning a young family with two toddlers; a second family with three teenagers and a frail grandmother; and a third family with a young teen.

Mr. Toledano did not seem to care. Perhaps the building mattered to him, but the tenants did not matter at all.

*A seem to*

Now knowing that I was on my own to deal with this mess, I purchased a mop and pail and started cleaning the hallway and stairs. It took many pails of water to feel somewhat safer in my own home. Each time I spilled water out onto the sidewalk, I felt outraged that these lead particles would now be out in the environment—most likely forever. The mop itself was contaminated—I didn't dare bring it into my apartment. I even needed to damp wipe my shoes each time I entered my home.

Healthy Homes did eventually respond. My building tested positive for lead, 16x above the allowable limit.

A year later, there was a repeat of this scenario, when Madison Realty Capital decided to empty one of Raphael Toledano's leftover 'dumpster apartments.'—again without following Local Law 1. Again, dust was spread throughout the common areas.

**6)** In conclusion, I would like to state that construction harassment and illegal lead dust release takes away peace of mind. It obliterates all sense of home and safety. My experiences of construction harassment, were like an echo of 9/11— another moment in time when I felt like I had no city, no home—when the air around me was turned to poison. And like a terror attack, lead dust released by predatory landlords is often 100% deliberate. It's designed to harm. It's designed to drive people from their homes. It's designed to remove affordable housing from New York City. We need to enforce Local Law 1 of 2004 and enact tougher lead laws with hefty fines for these flagrant, lead offenders and see to it that these fines are paid in full. For the worst, repeat offenders there should be jail time. Harming a child for life deserves severe punishment.

On the other hand, it's outrageous that New York City's hardworking, (often immigrant) street vendors are severely penalized by the DOH — while landlords, with deep pockets, are getting off with barely a slap on the wrist for poisoning inhabited apartments. This is unacceptable. Lead Dust Free NYC will not back down until this imbalance is properly addressed.

**7)** Thank you for the opportunity to speak at this hearing.

I am once again before this Council telling my story. In Spring 2017, without my knowledge, lead dust and other toxins were seeping into my apartment. Construction was taking place in the neighboring apartment, but with the approval of the building's management, it had been taking place without proper permits or proper protection plan in place. They did not cover the walls or safeguard my apartment as according to the standard practices required by the Tenants Protection Plan and Local Law 1. All that separated my apartment from the neighboring apartment was a quarter-inch of wood paneling. Lead dust became trapped in the walls and floors and seeped into all of the cloth furnishings.

In 2017, I reported these issues and had multiple filings with HPD and DOHMH. The Dept of Health and HPD inspectors visited the apartment for over a five months period and declared it tested high levels of lead. It took court orders, fines, and major clean ups and repairs to seal up the toxic walls and floors, so my son and I could return home to a normal life. Even in April of 2019 additional repairs had to be made due to poor job done the year before by the same contractor, due to continued unsanitary conditions.

I have spent the past two years constantly sick with unexplained symptoms and became so bad that my son could no longer live in our home. Both my son and I suffered with rashes, and skin irritations. I have suffered with severe joint aches and pains, hypertension and anxiety which studies have shown in woman over age 40 who are exposed to any level of lead. Lead settles inside the bone and is re-released into the body as estrogen levels drop. Each time my body is being re-poisoned. Even my pets became ill! Sadly, one died and the veterinarian believes that exposure to toxins released during construction was a contributing factor. I have been to multiple specialists and been hospitalized looking for answers to my debilitating health. To date, no organic reason for my health complaints has been elicited and my doctors have concluded that there is time coincidence between the construction and my subjective ill health and suspect that exposure to lead from construction dust caused these symptoms.

By telling my story again to the Council, I hope others will be able to know their rights, know how to report these issues, and to highlight issues with the enforcement of Local Law 1. I support all of the laws in this package, and it is my hope that Dept. of Health, HPD, and Dept. of Buildings streamline communications and actually hold these contractors, landlords, and management companies legally accountable so this never happens to anyone.

VILLAGE PARK MEDICAL, P.C.  
*Internal Medicine and Infectious Diseases*

*William Mandell, M.D.*

*Dennis Karter, M.D.*

*David Bekhor, M.D.*

*Joseph Rahimian, M.D.*

*Abbe Friedberg, N.P.*

July 24, 2019

To whom it may concern:

Ms. Christine Rucci is a patient of Village Park Medical. In 2017 she reported that she was having increasing issues in her apartment with construction dust and lead in the apartment. She has multiple filings with the department of health and hygiene and HPD about conditions in her apartment. There are reports citing unsanitary conditions.

Since 2017, Ms Rucci has had multiple medical issues including but not limited to skin rashes, skin irritation, joint aches and pains, hypertension and anxiety.

She has been to multiple specialists looking for answers to her sometimes debilitating health issues. To date, no organic reason for her complaints has been elucidated. It certainly appears, that there is a time coincidence between the construction and her subjective ill health.

Sincerely,



Abbe Friedberg, NP

Community Education Council District 2  
333 Seventh Avenue  
New York, New York 10001  
Tel (212) 356-3915  
www.cecd2.net

Maud Maron, President  
Edward Irizarry, Vice President  
Thomas Wrocklage, Treasurer  
Vincent Hom, Recording Secretary  
Robin Broshi  
Eric Goldberg

Emily Hellstrom  
Benjamin Morden  
Ushma Neill  
Leonard Silverman  
Shino Tanikawa

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**Resolution #125**  
**In support of comprehensive lead testing in and around NYC schools**

Cosponsors: U. Neill, E. Hellstrom, M. Maron  
11 in Favor. 0 against. Passed 9/11/19

WHEREAS

1. Long-term studies on children with even mild-to-moderate lead exposure have found evidence of enduring subclinical deficits in cognitive function or educational performance<sup>1</sup>;
2. NYC DOE tests all schools constructed before 1985 three times a year for lead paint, but only tests classrooms, and only classrooms hosting children age 6 and under;
3. Lead exposure at any age is detrimental<sup>2</sup> to health, growth, and behavior;
4. The NYC DOE decision to only test classrooms with children age 6 or younger for lead is arbitrary and not in the best interests of all students;
5. While it is true that hand-to-mouth behavior is highest in children age 6 and younger, the potential for lead intoxication is highest after *inhalation*<sup>2</sup>, which affects all school children, staff and family members in lead contaminated classrooms and makes the 6-year-old age cut off for classroom testing unreasonable;
6. Lead exposure in pregnant teachers<sup>3</sup> and incidental exposure of pregnant parents/caregivers is also of concern given that lead and other heavy metals are known to cross the placental barrier and can detrimentally affect a fetus;
7. Visible paint chips may appear to contain only a small quantity of lead, but may contain hundreds of milligrams of lead, with increased airborne lead resultant from cracking. The US National Toxicology Program and the CDC decreased<sup>4</sup> their reference value for blood lead levels at which they are concerned to 5  $\mu$ g/dL (essentially 1/100<sup>th</sup> of a grain of rice in a can of coke);
8. Exposure to lead or other heavy metals may occur outside of classrooms in cafeterias, gyms, playgrounds, and neighboring construction sites. Particular attention needs to be paid to screening for lead and mercury and other heavy metals in exterior sites,

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<sup>1</sup> Needleman HL, Schell A, Bellinger D, et al. The long-term effects of exposure to low doses of lead in childhood: an 11-year follow-up report. *N Engl J Med.* 1990;322:83–8; Fergusson DM, Horwood LJ, Lynskey MT. Early dentine lead levels and educational outcomes at 18 years. *J Child Psychol Psychiatry.* 1997;38:471–8 Tong S, Baghurst PA, Sawyer MG, et al. Declining blood lead levels and changes in cognitive function during childhood: the Port Pirie cohort study. *JAMA.* 1998;280:1915–9.

<sup>2</sup> Kosnett, MJ. Lead. Pp 1-30 (2016). *Critical Care Toxicology.*

<sup>3</sup> National Center for Education Statistics, *Public School Teacher Autonomy in the Classroom*, 1; Richard Ingersoll and David Perda, *The Mathematics and Science Teacher Shortage: Fact and Myth* (Philadelphia: Consortium for Policy Research in Education, 2009), 32; Richard Ingersoll, "Teacher Turnover and Teacher Shortages: An Organizational Analysis," *American Educational Research Journal* vol. 38, no. 3 (2001).

<sup>4</sup> Hauptman M, Bruccoleri R, Woolf AD. An Update on Childhood Lead Poisoning. *Clin Pediatr Emerg Med.* 2017;18(3):181–192.

especially as they contribute to soil and dust exposures, and the resulting exposure to children;

9. Lead-contaminated soil and construction dust is an important source of lead intake for children<sup>5</sup>. Dust can be tracked by shoes into other environments and indirectly increase exposure. Furthermore, urban soil is often heavily contaminated from past use of leaded gasolines and paints. Construction sites adjacent to schools should also be overseen and monitored directly by DOE to minimize risk to children playing or engaging in physical education or sports out of doors;
10. Remediation of lead paint is of primary importance, the worthy objective of protecting confidentiality should not undermine the equally important mandate to notify parents whose children might have been exposed in the past;
11. Drinking fountains and other pipes in older schools are also a significant cause for concern in lead exposure and require more frequent monitoring;
12. For every dollar invested to reduce lead hazards, society benefits by an estimated \$17-221, a cost-benefit ratio that is comparable to childhood vaccines<sup>6</sup>.

THEREFORE BE IT RESOLVED that the Community Education Council District 2 (CECD2) urges the DOE to conduct lead testing and implement immediate remediation **in all areas** of all NYC public schools constructed prior to 1985, regardless of student age, and should include testing of cafeterias, gymnasiums, playgrounds, building exteriors, and all sources of potable water for school children;

THEREFORE BE IT FURTHER RESOLVED that the CECD2 urges the DOE to pursue the following beyond increased testing and remediation:

1. Conduct increased training be given to teachers to recognize antecedent signs of lead exposure, namely headache, lethargy, anorexia, vomiting, clumsiness, gait disturbance, decline in visual acuity, and gastrointestinal distress.<sup>2</sup>
2. Adopt and follow the EPA's established procedures for domestic remediation of lead paint as per the lead paint Pre-Renovation Education Rule<sup>7</sup>, which became effective June 1999 and was amended in August 2010, which requires persons conducting renovations to distribute awareness information to those receiving renovation services concerning potential hazards created when paint is disturbed;
  - a. Such notice would include notification to parents whose children had previously received instruction in classrooms that now test positive for lead such that they can pursue conversation with their pediatricians about lead exposure testing. As noted by the Alliance for Health Homes<sup>8</sup>, State and local health departments are not covered by HIPAA, and childhood lead poisoning prevention programs are specifically exempt. These regulations are an important component of public education activities.

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<sup>5</sup> Overcoming Barriers to Data-Sharing Related to the HIPAA Privacy Rule: A Guide for State and Local Childhood Lead Poisoning Prevention Programs [https://www.cdc.gov/nceh/lead/policy/hipaa\\_clppp\\_june17\\_final.htm](https://www.cdc.gov/nceh/lead/policy/hipaa_clppp_june17_final.htm)

<sup>6</sup> AAP COUNCIL ON ENVIRONMENTAL HEALTH. Prevention of Childhood Lead Toxicity. Pediatrics. 2016;138(1):e20161493

<sup>7</sup> <https://www.epa.gov/sites/production/files/2014-01/documents/reviseconsolidated-erppenaltypolicy4513.pdf>

<sup>8</sup> Overcoming Barriers to Data-Sharing Related to the HIPAA Privacy Rule: A Guide for State and Local Childhood Lead Poisoning Prevention Programs [https://www.cdc.gov/nceh/lead/policy/hipaa\\_clppp\\_june17\\_final.htm](https://www.cdc.gov/nceh/lead/policy/hipaa_clppp_june17_final.htm)

Thank you for this opportunity to bring up the topic of lead testing in public schools. My name is Ushma S. Neill PhD, I am a longtime Manhattan resident with three children in District 2 public schools, and I am also a trained biomedical engineer, currently working at Memorial Sloan Kettering Cancer Center. Since August 2019, I am a member of the Community Education Council District 2 (CECD2), serving as one of the Manhattan Borough President appointees.

At one of the first CECD2 meetings I attended as a member, Bernard Orlan (NYC DOE Director Office of Environmental Health and Safety) talked about lead paint remediation in DOE schools. In short, the DOE tests for lead paint in the classrooms of schools constructed before 1985. However, it soon became apparent that the testing is only in classrooms, and only in classrooms hosting children under the age of 6. When I pushed Mr. Orlan for the reasons for this arbitrary cut off, he mentioned the decision was made based on the increased likelihood of hand-to-mouth behavior and given the “decreased brain development” after age 6. I challenged him in that meeting, and have painstakingly researched the literature since that meeting. Mr. Orlan has been unable to provide me with supporting literature for the DOE position.

Accompanying this testimony is the resolution the CECD2 passed based on a comprehensive literature review. In short, lead exposure at ANY AGE can be massively detrimental to health, growth, and behavior. Furthermore, visible paint chips may appear to contain only a small quantity of lead, but may contain hundreds of milligrams of lead, with increased airborne lead resultant from cracking. The US National Toxicology Program and the CDC decreased their reference value for blood lead levels at which they are concerned to 5 ug/dL (essentially 1/100th of a grain of rice in a can of coke). Inhaled lead can be detrimental to all those who inhale it, from teachers, to parents, to older children.

We therefore are extremely distressed that the many DOE schools built before 1985 are not all being tested- middle schools and high schools. Nor are libraries, gyms, hallways, or school exteriors. As part of a campaign for LeadFreeNYC, much further effort needs to be put into making our children safe in their schools.

With thanks,  
Ushma Neill

## SUBMITTED COMMENTS OF THE REAL ESTATE BOARD OF NEW YORK TO THE COMMITTEES ON HEALTH, HOUSING AND BUILDINGS, PUBLIC HOUSING AND THE COMMITTEE ON EDUCATION OF THE CITY COUNCIL REGARDING LEADFREE NYC AND THE ENFORCEMENT OF THE CITY'S LEAD LAWS

November 15, 2019

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY supports the goals of LeadFreeNYC and appreciates this opportunity to comment on ways to further prevent lead poisoning in New York City.

Owners typically make upgrades, whether cosmetic or related to changes in building code or safety policy, at vacancy. When it comes to rent stabilized stock, the opportunity to do this work is not on an annual basis, but decades apart. This is because the average tenancy for rent stabilized tenants is approximately 13 years. In neighborhoods like the Upper East Side and Upper West Side, tenancy rates are nearly 20 years. Those neighborhoods, and others with similar building stock age, contain large stabilized units of 3, 4, 5 or more bedrooms.

Typical of those buildings was the use of lead paint on high friction areas, such as door and window frames, radiators, and even on floors and ceilings. The larger the unit the more surface area to test and potentially mitigate. Owners are required to test, and if necessary, remediate, upon turnover by law.

The costs associated with these obligations can be significant. Those tests include a \$250 base fee, with an additional \$20-30 per wipe, typically a minimum of three, per room. The cost for these larger units for lead mitigation alone can be anywhere from \$50-75,000.

Prior to June 15, 2019, Individual Apartment Improvements (IAIs) was a viable method previously available to owners of stabilized units to cover the costs of work done for lead abatement. However, the legislation passed by the state in June provides for an IAI expenditure cap of \$15,000 that in no way covers the expense of compliance with the spirit of the laws on the books regarding lead hazard containment and abatement. Additionally, with the RGB guidelines applying to renewal leases, and not inclusive of initial leases despite the statutory authority to do so, there are no increases from the prior rent to the next year and new tenant to cover the testing of the unit either.

As the City Council explores the efficacy of its existing regulatory scheme, it is important to consider multiple tools for compliance – both carrot and stick. Missing from the current framework is an incentive program to cover the necessary work of lead testing and mitigation. One example is from the Washington D.C Department of Energy and Environment Lead Pipe Replacement Assistance Program. This program is designed to allow homeowners to recoup 50%, 80% or 100% of the cost of lead pipe replacement. The percentage of costs covered is determined by income limits of the effected households, with no income limit in place to recoup 50% of the cost of replacement. The program also allows homeowners to utilize an online interactive map to learn if their property contains lead pipes and if they are eligible for the assistance program. The program acknowledges the steep expenses associated with lead pipe replacement and the need for public funding to mitigate the public health risks posed by lead pipes.

REBNY encourages the Council to consider creating a program to help owners meet the per room cost of lead abatement.

Thank you for the time and consideration of these points.

# # #

**CONTACT(S):**

Basha Gerhards  
Vice President  
Policy & Planning  
Real Estate Board of New York (REBNY)  
(212) 616-5254  
[bgerhards@rebny.com](mailto:bgerhards@rebny.com)

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Ruth Larenby

Address: 151 W. 30<sup>th</sup> St

I represent: New York Lawyers for the Public Interest

Address: 151 W 30<sup>th</sup> St

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THE CITY OF NEW YORK**

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Date: 13-NOV-2019

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Name: Sonal Jesel

Address: 1854 Amsterdam Ave, 2nd floor, NY

I represent: WE ACT for Environmental Justice

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

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Name: Dan Greene

Address: \_\_\_\_\_

I represent: New York City Housing Authority (NYCHA)

Address: \_\_\_\_\_

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Name: Ann Marie Santiago

Address: 100 Gold

I represent: HPD

Address: \_\_\_\_\_

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Date: 11/13/19

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Name: Louise Carroll

Address: 100 Gold

I represent: HPD

Address: \_\_\_\_\_

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Date: 11/13/2019

(PLEASE PRINT)

Name: JACQUELINE CHIOFALO

Address: 2006 MADISON AVE

I represent: THE INSTITUTE FOR FAMILY HEALTH

Address: \_\_\_\_\_

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in favor  in opposition

Date: 11-13-14

(PLEASE PRINT)

Name: Matthew Chockere

Address: 45 Wadsworth Ave NY NY 10033

I represent: Northern Manhattan Improvement Corp

Address: \_\_\_\_\_

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Corinne Schiff

Address: Deputy Commissioner, Dept. of Health

I represent: Mental Hygiene

Address: \_\_\_\_\_

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Oxiris Barnot

Address: Commissioner, Dept. of Health & Mental Hygiene

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT) First  
Name: Liam Kavanagh Deputy Commissioner

Address: The Arsenal

I represent: NYC Parks

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: Kathryn Garcia

Address: \_\_\_\_\_

I represent: Sr. Advisor, Lead Prevention

Address: \_\_\_\_\_

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Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: Adriana Espinoza

Address: \_\_\_\_\_

I represent: NYLCV

Address: 50 Broad St. NY NY

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: RANA KHAN / Deputy Chief of school operations

Address: \_\_\_\_\_

I represent: NYC DOE

Address: \_\_\_\_\_

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in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Steven Lawitts

Address: 30-30 Thomson Ave, LIC 11101

I represent: SCA

Address: 30-30 Thomson Ave, LIC 11101

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in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Christine Rucci

Address: E 5th

I represent: Cooper Square Committee

Address: 61 E 4th St

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THE CITY OF NEW YORK**

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in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Sandy Mayer

Address: E 5th St.

I represent: Cooper Square Committee

Address: 61 E 4th St.

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in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Ed Rudyk

Address: \_\_\_\_\_

I represent: Cooper Square Committee

Address: 61 E 4th St.

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in favor  in opposition

Date: 11/13/19

(PLEASE PRINT)

Name: Cooper Square Committee / Jodie Leidinger

Address: 61 E 4th St.

I represent: Cooper Square Committee

Address: 61 E 4th St.

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