

1 **AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
2 **FOR BILL 17-0936, THE “LEAD HAZARD**  
3 **PREVENTION AND ELIMINATION AMENDMENT**  
4 **ACT OF 2008”**

5  
6 **ADDITIONAL LEGISLATIVE MEETING**  
7 **DECEMBER 16, 2008**

8  
9 A BILL

10  
11 17-0936

12  
13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
14  
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16

17 To require that owners of pre-1978 properties maintain dwelling units, common areas of  
18 multifamily properties, and child-occupied facilities free of lead-based paint hazards; to  
19 authorize the Mayor to require lead abatement or the use of interim controls, relocation,  
20 and clearance in response to a child’s elevated blood lead level; to authorize the Mayor to  
21 conduct a risk assessment or clearance examination or inspection of a dwelling unit or  
22 child-occupied facility built before March 1, 1978, based upon reasonable belief of the  
23 risk of a lead-based paint hazard; to authorize the Mayor to require repairs and a  
24 clearance report in response to a finding of lead-based paint hazards; to require disclosure  
25 of known lead-based paint hazards to prospective rental tenants; to require owners to  
26 provide a clearance report before turnover of rental properties constructed before March  
27 1, 1978; and to authorize inspections, enforcement, and civil and criminal penalties for  
28 violations of this act.  
29

30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
31 act may be cited as the “Lead Hazard Prevention and Elimination Act of 2008”.

32 Sec. 2. Definitions.

33 For the purposes of this act, the term:

34 (1) “Abatement” means any measure or set of measures that eliminate lead-based paint  
35 hazards by either the removal of paint and dust, the enclosure or encapsulation of lead-based  
36 paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, and all  
37 preparation, cleanup, disposal, and post-abatement clearance testing activities associated with  
38 such measures.

39 (2) “Accredited training provider” means a training provider that has been approved by  
40 the Mayor to provide training for individuals who conduct lead-based paint activities.

41 (3) “Business entity” means a partnership, firm, company, association, corporation, sole

1 proprietorship, government, quasi-government entity, non-profit organization, or other business  
2 concern.

3 (4) “Child-occupied facility” means a building, or portion of a building, constructed prior  
4 to March 1, 1978, which as part of its function receives children under the age of 6 on a regular  
5 basis, and is required to obtain a certificate of occupancy as a precondition to performing that  
6 function. The term “child-occupied facility” may include a preschool, and kindergarten  
7 classroom, and child development facility licensed under the Child Development Facilities  
8 Regulation Act of 1998, D.C. Law 12-215, effective April 13, 1999 (D.C. Official Code §§ 7-  
9 2031 *et seq.*). The location of a child-occupied facility as part of a larger structure does not make  
10 the entire structure a child-occupied facility. Only the portion of the facility occupied or  
11 regularly visited by children under age 6 shall be considered the child-occupied facility.

12 (5) “Clearance examination” is an evaluation of a property to determine whether the  
13 property is free of any deteriorated lead-based paint and underlying condition, or any lead-based  
14 paint hazard, underlying condition, lead-contaminated dust, and lead-contaminated soil hazards,  
15 that is conducted by a certified risk assessor, a lead-based paint inspector, or in accordance with  
16 limitations specified by statute or by rule, a dust sampling technician.

17 (6) “Clearance report” means a report issued by a risk assessor, a lead-based paint  
18 inspector, or a dust sampling technician that finds that the area tested has passed a clearance  
19 examination, and that specifies the steps taken to ensure the absence of lead-based paint hazards,  
20 including confirmation that any encapsulation performed as part of a lead hazard abatement  
21 strategy was performed in accordance with the manufacturer’s specifications.

22 (7) “Containment” means a system, process, or barrier used to contain lead-based paint  
23 hazards inside a work area.

24 (8) “Day” means a calendar day.

25 (9) “Deteriorated paint” means paint that is cracking, flaking, chipping, peeling,  
26 chalking, not intact, or otherwise separating from the substrate of a building component, except  
27 that pinholes and hairline fractures attributable to the settling of a building shall not be  
28 considered deteriorated paint.

29 (10) “Dust sampling technician” means an individual who has successfully completed an  
30 accredited training program; who has been certified to perform a visual inspection of a property  
31 to confirm that no deteriorated paint is visible at the property, and to sample for the presence of

1 lead in dust for the purposes of certain clearance testing and lead dust hazard identification; and  
2 who provides a report explaining the results of the visual inspection and dust sampling.

3 (11) “Dwelling unit” means a room or group of rooms that form a single independent  
4 habitable unit for permanent occupation by one or more individuals, that has living facilities with  
5 permanent provisions for living, sleeping, eating, and sanitation. A dwelling unit does not  
6 include: a unit within a hotel, motel, or seasonal or transient facility, unless such unit is or will be  
7 occupied by a person at risk for a period exceeding 30 days; an area within the dwelling unit that  
8 is secured and accessible only to authorized personnel; housing for the elderly, or a dwelling unit  
9 designated exclusively for persons with disabilities, unless a person at risk resides or is expected  
10 to reside in the dwelling unit or visit the dwelling unit on a regular basis; or an unoccupied  
11 dwelling unit that is to be demolished, provided that the dwelling unit will remain unoccupied  
12 until demolition.

13 (12) “EBL child” means a child with an elevated blood lead level.

14 (13) “Elevated blood lead level” means the concentration of lead in a sample of whole  
15 blood equal to or greater than 10 micrograms of lead per deciliter ( $\mu\text{g}/\text{dL}$ ) of blood , or such  
16 more stringent standard as may be established by the U.S. Centers for Disease Control and  
17 Prevention as the appropriate level of concern, and adopted by the Mayor by rule.

18 (14) “Encapsulation” means the application of a covering or coating that acts as a barrier  
19 between the lead-based paint and the environment, and that relies for its durability on adhesion  
20 between the encapsulant and the painted surface and on the integrity of the existing bonds  
21 between paint layers and between the paint and the substrate.

22 (15) “Enclosure” means the use of rigid, durable construction materials that are  
23 mechanically fastened to the substrate in order to act as a barrier between lead-based paint and  
24 the environment.

25 (16) “Exterior surfaces” means all surfaces that are attached to the outside of a property;  
26 all structures that are appurtenances to a property; fences that are a part of the property; and for a  
27 property within a multi-unit dwelling, all painted surfaces in stairways, hallways, entrance areas,  
28 recreation areas, laundry areas, and garages that are common to individual dwelling units or  
29 located on the property.

30 (17) “Interim controls” means a set of measures designed to temporarily reduce human  
31 exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs,

1 maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards  
2 or potential hazards, and the establishment and operation of management and resident education  
3 programs.

4 (18) “Lead-based paint” means any paint or other surface coating containing lead or lead  
5 in its compounds in any quantity exceeding 0.5% of the total weight of the material or more than  
6 one milligram per square centimeter (1.0 mg/cm<sup>2</sup>), or such more stringent standards as may be  
7 specified in federal law or regulations promulgated by the US Environmental Protection Agency  
8 (EPA) or U.S. Department of Housing and Urban Development, and adopted by the Mayor by  
9 rule.

10 (19) “Lead-based paint activities” means the identification, risk assessment, inspection,  
11 abatement, use of interim controls, or elimination of lead-based paint, lead-based paint hazards,  
12 lead-contaminated dust, and lead-contaminated soil, and all planning, project designing, and  
13 supervision associated with any of the these activities.

14 (20) “Lead-based paint hazard” means any condition that causes exposure to lead from  
15 lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint or presumed lead-  
16 based paint, or lead-based paint or presumed lead-based paint that is disturbed without  
17 containment.

18 (21) “Lead-based paint inspector” or “inspector” means an individual who has been  
19 trained by an accredited training provider and certified to conduct lead inspections. For the  
20 purpose of clearance testing, a certified lead-based paint inspector also samples for the presence  
21 of lead in dust and in bare soil.

22 (22) “Lead-contaminated dust” means surface dust that contains a mass per area  
23 concentration of lead equal to or exceeding 40 micrograms per square foot (“µg/ft<sup>2</sup>”) on floors or  
24 250 µg/ft<sup>2</sup> on interior windowsills based on wipe sample based on wipe sample, or, for the  
25 purpose of clearance examination, 400 µg/ft<sup>2</sup> on window troughs based on wipe sample, or such  
26 more stringent standards as may be specified in federal law or regulations promulgated by the  
27 US Environmental Protection Agency (EPA) or U.S. Department of Housing and Urban  
28 Development, and adopted by the Mayor by rule.

29 (23) “Lead-contaminated soil” means bare soil on real property that contains lead in  
30 excess of 400 ppm, or such other more stringent level specified in federal law or regulations  
31 promulgated by the U.S. Environmental Protection Agency or the U.S. Department of Housing

1 and Urban Development, and adopted by the Mayor by rule.

2 (24) "Lead disclosure form" means the form developed by the Mayor for a property  
3 owner to disclose an owner's knowledge of any lead-based paint or of any lead hazards, and  
4 information about any pending actions ordered by the Mayor pursuant to this law, to prospective  
5 rental tenants.

6 (25) "Lead-free property" means a property that contains no lead-contaminated soil, and  
7 the interior and exterior surfaces do not contain any lead-based paint or other surface coatings  
8 that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm<sup>2</sup>).

9 (26) "Lead-free unit" means a unit for which the interior and exterior surfaces  
10 appurtenant to the unit do not contain any lead-based paint or other surface coatings that contain  
11 lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm<sup>2</sup>), and for which the  
12 approaches thereto remain lead-safe. The mayor may, by rule, establish a method to ensure that  
13 approaches to lead-free units remain lead-safe.

14 (27) "Lead-safe work practices" means a prescribed set of activities that taken together,  
15 ensure that any work that disturbs a painted surface on a structure constructed prior to March 1,  
16 1978, generates a minimum of dust and debris, that any dust or debris generated is contained  
17 within the immediate work area, that access to the work area by non-workers is effectively  
18 limited, that the work area is thoroughly cleaned so as to remove all lead-contaminated dust and  
19 debris, and that all such dust and debris is disposed of in an appropriate manner, all in  
20 accordance with the methods and standards established by the Mayor by rule consistent with  
21 applicable federal requirements, as they may be amended.

22 (28) "Owner" means a person, firm, partnership, corporation, guardian, conservator,  
23 receiver, trustee, executor, legal representative, registered agent, or the federal government, who  
24 alone or jointly and severally with others, owns, holds, or controls the whole or any part of the  
25 freehold or leasehold interest to any property, with or without actual possession.

26 (29) "Person at risk" means a child under age 6 or a pregnant woman.

27 (30) "Presumed lead-based paint" means paint or other surface coating affixed to a  
28 component in or on a dwelling unit or child-occupied facility, constructed prior to March 1,  
29 1978.

30 (31) "Relocation expenses" means reasonable expenses directly related to relocation to  
31 temporary replacement housing that complies with the requirements of this act, including

1 moving and hauling expenses, payment of a security deposit, the cost of replacement housing,  
2 provided that the tenant continue to pay the rent on the dwelling unit from which they have been  
3 relocated, and installation and connection of utilities and appliances.

4 (32) “Renovation” means the modification of any existing structure or portion thereof,  
5 that results in the disturbance of painted surfaces, unless that activity is performed as part of an  
6 abatement. The term renovation includes the removal, modification or repair of painted surfaces  
7 or painted components, the removal of building components, weatherization projects and interim  
8 controls that disturb painted surfaces.

9 (33) “Renovator” means an individual who either performs or directs workers who  
10 perform renovations. A certified renovator is a renovator who has successfully completed a  
11 renovator course accredited by EPA or by the District.

12 (34) “Risk assessment” means an on-site investigation to determine and report the  
13 existence, nature, severity, and location of conditions conducive to lead poisoning, including: the  
14 gathering of information regarding the age and history of the housing and occupancy by persons  
15 at risk; a visual inspection of the property; dust wipe sampling, soil sampling, and paint testing,  
16 as appropriate; other activity as may be appropriate; provision of a report explaining the results  
17 of the investigation; and any additional requirements as determined by the Mayor.

18 (35) “Risk assessor” means an individual who has been trained by an accredited training  
19 program and certified to conduct risk assessments.

20 (36) “Underlying condition” means the source of water intrusion or other problem that is  
21 causing paint to deteriorate which may be damaging the substrate of a painted surface.

### 22 Sec. 3. Prohibitions.

23 (a) All dwelling units, common areas of multifamily properties, and child-occupied  
24 facilities constructed prior to March 1, 1978, shall be maintained free of lead-based paint  
25 hazards.

26 (b) No person shall apply a lead-based paint or glaze to any surface including the interior  
27 and exterior surfaces of any residential, public, or commercial building, bridge, or other structure  
28 or superstructure, or on any paved surface.

29 (c) Notwithstanding any other provision of law, the District Government may deny any  
30 license, registration, or permit relating to the use or occupancy of a child-occupied facility or  
31 dwelling unit to an owner of that property if the owner is in violation of this act.

1           Sec. 4. Risk reduction of lead-based paint hazards.

2           (a) Mayor's investigation of properties visited by an EBL child – Whenever a child  
3 under age 6 with an elevated blood lead level resides in, or regularly visits a dwelling unit or  
4 child-occupied facility in the District, or upon reasonable belief that any other property located in  
5 the District may have contributed to a child's lead exposure, the Mayor shall conduct a risk  
6 assessment of the appropriate properties, and the owner, occupant or owner's agent shall  
7 cooperate with and shall not impede the Mayor's conduct of such assessment.

8           (b) Mayor's reasonable belief of a lead-based paint hazard – Upon reasonable belief,  
9 which may be based upon a request by a tenant or may be based on other information, that there  
10 is risk of a lead-based paint hazard in a dwelling unit, accessible common area, or child-occupied  
11 facility constructed before March 1, 1978, the Mayor shall, in his or her discretion, take action  
12 which may include a risk assessment, clearance examination, or visual examination of the  
13 dwelling unit, accessible common area, or child-occupied facility, and provide a report to the  
14 owner and the tenant.

15           (c) Mayor's response to an identified lead-based paint hazard – Whenever action is taken  
16 by the Mayor pursuant to subsection (a) or (b) of this section identifies lead-based paint hazards,  
17 then the Mayor shall determine the actions necessary to eliminate the lead-based paint hazards at  
18 the property, including abatement or interim controls, and order the property owner to perform  
19 those measures required to eliminate the lead-based paint hazards and underlying conditions, and  
20 any other action deemed necessary by the Mayor to protect the health and safety of the occupants  
21 of the property.

22           (d) Property owner's obligations – Upon receipt of an order from the Mayor described in  
23 subsection (c) of this section, the owner of the property shall:

24                   (1) Perform the measures required by the Mayor to eliminate any lead-based paint  
25 hazards and underlying conditions.

26                   (2) Obtain a permit from the Mayor, if the elimination of lead-based paint hazards  
27 and underlying conditions employs abatement.

28                   (3) Ensure that any individual working to eliminate identified or presumed lead  
29 hazards:

30                           (A) Abides by the work practice standards of section 12; and

1 (B) Is trained in lead-safe work practices.

2 (4) Make temporary comparable alternative arrangements for the relocation of  
3 any person at risk who is a tenant residing at the property, as determined by the Mayor.

4 (A) The owner shall pay all reasonable temporary relocation expenses that  
5 may be required until the dwelling unit has passed a clearance examination, unless a risk  
6 assessment report issued by the Mayor states that temporary tenant relocation is not necessary.

7 (B) The Mayor shall provide a tenant with a copy of any order by the  
8 Mayor regarding temporary relocation within 5 days of issue. Before any relocation of a tenant,  
9 the owner shall provide the tenant with at least 14 days of written notice, unless a shorter time  
10 period is ordered by the Mayor or agreed to by the tenant. The owner shall make all reasonable  
11 efforts to provide to the tenant as early as possible before the commencement of the proposed  
12 relocation the contact information and address of the temporary unit and a statement that the  
13 tenant has the a right to return to the unit at the conclusion of work to eliminate any lead-based  
14 paint hazards and underlying conditions, and under the same terms.

15 (C) The owner shall make all reasonable efforts to minimize the duration  
16 of any temporary relocation, and shall determine whether there are any appropriate temporary  
17 relocation units within the same housing accommodation.

18 (D) The owner shall make all reasonable efforts to ensure that the  
19 household is relocated to a dwelling unit that is in the same school district or ward, near public  
20 transportation, as appropriate.

21 (E) The tenant has a right to return to the unit under the same terms at the  
22 conclusion of the work to eliminate lead-based paint hazards.

23 (F) In lieu of relocation to a dwelling unit identified by the owner, the  
24 tenant may agree to make alternative arrangements for temporary relocation.

25 (G) Nothing in this section shall be construed to interfere with tenants'  
26 rights under other District of Columbia law. If the owner intends to substantially rehabilitate,  
27 demolish or discontinue any housing accommodation to comply with the requirements of this  
28 act, the procedures set forth in sections 501 and 701 of the Rental Housing Act of 1985, D.C.  
29 Law 6-10, effective July 17, 1985; D.C. Official Code sec. 42-3505.01 and 42-3507.01 (2006  
30 Supp.) shall apply.

31 (5) Reimburse the Mayor for the costs associated with conducting the risk

1 assessment.

2 (6) The owner shall comply with requirements of this subsection within 30 days  
3 of receipt of a written order from the Mayor, unless otherwise directed on the notice. The 30-day  
4 time period may be extended by the Mayor, in increments of a maximum of 30 days, in response  
5 to a timely written request for extension from the owner or tenant, in such manner as required by  
6 the Mayor by rule, provided that, Mayor shall extend the 30-day time period only if the owner  
7 has provided a good faith basis for the request.

8 (7) Upon completion of the work ordered by the Mayor in subsection (c) of this  
9 section, the owner shall submit to the Mayor and any tenant a clearance report that has been  
10 completed by a risk assessor. If the elimination of lead-based paint hazards and underlying  
11 conditions employs interim controls, then the Mayor may require that the owner submit to the  
12 Mayor a clearance report periodically, as determined by the Mayor, following the date of the  
13 initial clearance report.

14 (e) Whenever presumed lead-based paint is identified in an uncontained and non-intact  
15 condition, the Mayor shall be authorized to issue a Notice of Violation. A Notice of Violation  
16 shall include an order to repair non-intact presumed lead-based paint and its underlying cause  
17 using lead-safe work practices, and shall require production of a clearance report. Presumed  
18 lead-based paint may be rebutted by production of a lead-based paint inspection report from an  
19 inspector or risk assessor, affirming that such paint is not lead-based.

20 Sec. 5. Disclosure and risk reduction requirements at turnover.

21 (a) Disclosure requirements – Beginning January 1, 2010, and in accordance with the  
22 timeframes established under subparagraph (b)(2) of this section, owners of residential properties  
23 constructed before March 1, 1978, shall disclose to tenants information reasonably known to the  
24 owner about the presence of any of the following conditions in the unit or property: lead-based  
25 paint, lead-based paint hazards, and pending actions ordered by the Mayor pursuant to this act.  
26 The requirements of this subsection shall be disclosed before any change in occupancy or  
27 contract for possession is executed. Within 180 days after the effective date of the Act, the  
28 Mayor shall provide the lead disclosure form to be used as the basis for the lead disclosure  
29 statement required by subsections (a) and (b) of this section.

30 (b) Turnover requirements:

31 (1) Before a lessee is obligated under any contract to lease a residential property

1 constructed before March 1, 1978, that will be occupied by a child under age 6 or a pregnant  
2 woman, the lessee shall be provided by the owner of the property a completed lead disclosure  
3 form and a clearance report issued within the previous 12 months. The requirements of this  
4 paragraph do not apply to an owner who provides:

5 (A) A report from a risk assessor or inspector certifying that the unit is a  
6 lead-free unit; or

7 (B) Three clearance reports issued at least 12 months apart and within the  
8 previous 7 years, provided that the owner of the property is, or was not subject to any housing  
9 code violations that occurred during the past 5 years, or that are outstanding.

10 (2) Phased implementation.

11 (a)(1) **Phase 1**—Within 180 days of the effective date of this act, the  
12 disclosure requirements at turnover provisions in section 5 of this act shall apply to rental  
13 dwelling units to be inhabited by persons at risk.

14 (2) In a rental dwelling unit with a tenancy commencing, or with a  
15 lease agreement or lease renewal signed, after the effective date of this act, an owner shall  
16 provide, upon request, a clearance report pursuant to section 5 of this act to a tenant in whose  
17 household a person at risk resides, or regularly visits.

18 (3) The owner shall provide notice to tenants of their rights under  
19 this act on a form provided by the Mayor.

20 (4) 12 months after the effective date of regulations implementing  
21 this act, the Mayor shall submit a report on the status of the implementation of Phase 1 of this  
22 section and the prospect of an expansion into Phase 2. The report shall include, but not be limited  
23 to, the following:

24 (A) A statement on the capacity, to date, in both the private  
25 and public sector to carry out the provisions of section 5 of this act in all units in buildings built  
26 before 1950; and

27 (B) An analysis of other factors which may impact  
28 expanding compliance to all units in buildings built before 1950, such as existing federal  
29 requirements, cost, and liability.

30 (b) **Phase 2**—Based on the findings in a phase 1 report, the Mayor may  
31 submit a legislative proposal for Council consideration on expanding compliance to all units in

1 buildings built before 1950. The Council must approve, by act, the Mayor’s proposal in order to  
2 enact Phase 2 of this section, and such approval must occur prior to the implementation of Phase  
3 3 of this section.

4 (c)(1) **Phase 3**—12 months after the effective date of an act approved  
5 pursuant to Phase 2 of this section, the Mayor shall submit a report on the status of the  
6 implementation of Phase 2 of this section. The report shall include, but not be limited to, the  
7 following:

8 (A) A statement on the capacity, to date, in both the private  
9 and public sector to carry out the provisions of section 5 of this act in all units in buildings built  
10 before 1978; and

11 (B) An analysis of other factors which may impact  
12 expanding compliance to all units in buildings built before 1978, such as existing federal  
13 requirements, cost, and liability.

14 (2) The Mayor may submit a legislative proposal for Council  
15 consideration on expanding compliance to all units in buildings built before 1978. The Council  
16 must approve, by act, the Mayor’s proposal in order to enact Phase 3 of this section.

17 Sec. 6. Right of entry, inspections, analyses, corrective actions, and notices.

18 (a) Upon the presentation of appropriate credentials to the owner, agent in charge, or  
19 tenant, the Mayor shall have the right, subject to 14 DCMR 707.18, to enter any property or  
20 inspect any activity reasonably believed to be subject to this act. Upon reasonable belief of  
21 imminent threat to the health and safety of the occupants of the property, the Mayor shall have  
22 the right of entry and inspection without notice. The right of entry and inspection shall be for the  
23 following purposes:

24 (1) To conduct a risk assessment or inspection;

25 (2) To collect dust, paint chips, soil or other environmental samples and submit  
26 them to a laboratory for analysis;

27 (3) To inspect or copy any reports from certified personnel that the owner is  
28 required to retain under this act;

29 (4) To inspect any interior or exterior surfaces;

30 (5) To otherwise verify compliance with this act or rules implementing the act; or

31 (6) For any reason related to ensuring the safety of occupants after detection of an

1 elevated blood lead level in such occupants of, or persons who regularly visit such property.

2 (b) If the Mayor has reason to believe that either there has been a violation of this act or  
3 of the rules issued pursuant to this act, the Mayor may:

4 (1) Issue a cease and desist order, which shall take effect upon issuance;

5 (2) Impose fines and penalties in accordance with sections 16 and 17; and

6 (3) Request the Attorney General for the District of Columbia to commence  
7 appropriate civil action in the Superior Court of the District of Columbia to secure a temporary  
8 restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief.

9 (c) If the Mayor is denied access to conduct a risk assessment in accordance with this  
10 Act, the Mayor may apply to the Superior Court of the District of Columbia for a search warrant.  
11 An owner's denial of access to conduct an inspection in accordance with this section shall  
12 constitute a violation of this section, and the owner shall be subject to the civil and  
13 administrative penalties imposed by section 16 and the criminal penalties imposed by section 17.

14 (d) Any notice required by this act or as the Mayor may prescribe by regulation, may be  
15 served upon an owner of the dwelling or agent of the owner in the same manner as a summons in  
16 a civil action, or by registered or certified mail to his or her last known address or place of  
17 residence.

18 (e) In the event any owner, individual or business entity fails to follow any order by the  
19 Mayor, the Mayor may take the action ordered, the cost of which shall be borne by the owner,  
20 individual or business entity and shall be a judgment against the owner, individual or business  
21 entity, and a continuing and perpetual lien in favor of the District upon all property owned by the  
22 owner, individual or business entity, whether real or personal. The lien shall not be valid against  
23 any bona fide purchaser, or holder of a security interest, mechanic's lien or other creditor interest  
24 in the property, until notice of the lien is filed with the Recorder of Deeds. The lien shall be  
25 satisfied by payment of the amount of the lien to the District Treasurer.

26 Sec. 7. Tenant provision of access to dwelling unit.

27 (a) Subject to 14 DCMR 707.18, a tenant shall allow access to his or her dwelling unit  
28 at reasonable times, to the owner or his or her employee or representative to facilitate any work  
29 or inspection required under this act following the provision of written notice by the owner at  
30 least 48 hours prior to the work or inspection.

31 (b) Notice required by subsection (a) shall include a description of the general nature

1 and locations of the planned work or inspection by the owner or his employee or representative;  
2 related requirements for containment, occupant protection and relocation; the expected starting  
3 and ending dates of the planned work; and any other information prescribed by the Mayor.

4 (c) If the owner demonstrates to the satisfaction of the Mayor that the tenant refuses to  
5 allow access after the owner provides notice of no less than 7-days, the owner shall be exempt  
6 from meeting any requirements of this act that are dependent upon such access as long as that  
7 tenant occupies that dwelling unit or until the tenant provides written notice of their willingness  
8 to allow access or otherwise allows access. Nothing here shall prohibit the Mayor from ordering  
9 the owner to fulfill the tenant's reasonable conditions for access or take other action to ensure  
10 that the ordered work can be completed.

11 (d) Notwithstanding subsections (a) through (c), if entrance is for the purpose of  
12 performing work, the tenant may deny access to any person not properly certified pursuant to  
13 Section 11 to perform that work.

14 Sec. 8. Prohibition against retaliation.

15 (a) A tenant may provide information to the Mayor concerning deteriorated paint or lead-  
16 based paint hazards within a property or elevated blood levels of a person at risk.

17 (b) The provision of information in subsection (a) shall be considered tenant rights.

18 Sec. 9. Property owner's concurrent obligations.

19 The provisions of this act do not reduce, replace, or eliminate:

20 (a) The duties and obligations of a property owner to monitor, repair or maintain the  
21 property as required under any applicable District law or regulation; or

22 (b) The authority of the Mayor to enforce applicable housing codes or to issue orders in  
23 accordance with any applicable District law or regulation.

24 Sec. 10. Lead Poisoning Prevention Fund.

25 (a) There is established a non-lapsing fund designated as the Lead Poisoning Prevention  
26 Fund, which shall be separate from the General Fund of the District of Columbia. All fees, fines,  
27 or penalties derived from compliance with and enforcement of the requirements of this act, and  
28 all interest earned on those monies, shall be deposited into the Lead Poisoning Prevention Fund  
29 without regard to fiscal year limitations pursuant to any act of Congress. All monies deposited  
30 into the fund shall not revert to the General Fund of the District of Columbia at the end of any  
31 fiscal year or at any other time, but shall be continually available for the uses and purposes set

1 forth in this section, subject to authorization by Congress.

2 (b) Amounts allocated to, or deposited in, the Lead Poisoning Prevention Fund shall be  
3 used by the Mayor solely for the purposes of ensuring compliance with and enforcement of this  
4 act, and to provide low-income residents of the District with assistance to comply with the  
5 requirements of section 4, provided they qualify for such assistance in accordance with rules  
6 issued by the Mayor..

7 Sec. 11. Certification requirements for individuals and business entities conducting lead-  
8 based paint activities.

9 (a) An individual or business entity shall obtain the appropriate certification from the  
10 Mayor by demonstrating compliance with subsections (b) or (c), as applicable, prior to  
11 conducting a lead-based paint activity, clearance examination, or renovation in a dwelling unit or  
12 child-occupied facility, built before March 1,1978.

13 (b) An individual risk assessor, inspector, dust sampling technician, renovator and  
14 supervisor, shall submit proof to the Mayor that the individual has passed an examination  
15 required by the Mayor, or EPA-approved state program, for that discipline, and:

16 (1) A current appropriate certification from the EPA or an EPA-approved state  
17 program; or

18 (2) Proof of the successful completion of an accredited training course and any  
19 required accredited review course.

20 (c) A business entity shall demonstrate to the satisfaction of the Mayor that all its  
21 employees and subcontractors conducting a lead-based paint activity, clearance examination, or  
22 renovation are:

23 (1) Certified pursuant to subsection (b);

24 (2) Comply with work practice rules established by the Mayor pursuant to this  
25 act; and

26 (3) Comply with all applicable federal and District laws, regulations, and rules  
27 governing the disposal of all waste containing lead.

28 (d) The Mayor may establish additional criteria and procedures for certification by rule.

29 (e) Certifications for lead-based paint activities shall expire 24 months from the date of  
30 issuance, or when otherwise determined by the Mayor. To maintain certifications for dust  
31 sampling technicians, such individuals shall complete a refresher course within 5 years from the

1 date of initial issuance of the certification.

2 (f) Individuals and business entities seeking certification and certification renewal in the  
3 District shall pay a reasonable fee set by the Mayor. The Mayor may by rulemaking, revise the  
4 certification and certification renewal fees as necessary to cover the administrative costs  
5 associated with the issuance of certificates and inspection of lead-based paint activities.

6 (g) Except with regard to persons conducting lead-based paint activities pursuant to  
7 Section 4 of this act, who must always comply with the provisions of this Section, exceptions to  
8 this section are limited to the following:

9 (1) Individuals who perform lead-based paint activities or renovations in a  
10 residence which they own, provided the residence is occupied solely by the owner or the owner's  
11 immediate family, and there is no person at risk residing therein;

12 (2) Performance of maintenance, repair, or renovation work involving lead-based  
13 paint that results in disturbances of lead-based paint in a total of 2 square feet or less of surface  
14 area per room, except for window removal or replacement, are *de minimis* activities that do not  
15 trigger certification requirements.

16 (3) Individuals who perform maintenance, repair, painting, and renovation work  
17 that does not disturb painted surfaces; and

18 (4) Individuals who perform risk assessment and lead-based paint inspections for  
19 litigation or other forensic purpose, in compliance with all work practice rules established by the  
20 Mayor pursuant to this act, by an individual who possesses the appropriate certification by EPA  
21 or an EPA-approved state program.

22 Sec. 12. Work practice standards.

23 (a) Any owner, individual or business entity conducting any lead-based paint activity, or  
24 demolition, renovation, remodeling, painting, carpentry, plumbing, or other activity, that may  
25 generate lead-based paint chips, dust, or other lead-based paint debris, in or on the exterior of a  
26 dwelling unit or child-occupied facility, built prior to March 1, 1978, shall use lead-safe work  
27 practices.

28 (b) In addition, any owner, individual or business entity shall:

29 (1) Comply with the following work practice standards, as applicable:

30 (A) Work practice standards in 40 C.F.R. § 745.226 and 40 C.F.R. §  
31 745.227, or any successor regulation of the U.S. Environmental Protection Agency (EPA);

1 (B) U.S. Department of Labor, Occupational Safety and Health  
2 Administration (OSHA) standards relating to lead, including those standards found at 29 C.F.R.  
3 § 1926.62 and 29 C.F.R. § 1910.1025, and any successor regulations; and

4 (C) U.S. Department of Housing and Urban Development (HUD) Methods  
5 and Standards for Lead-Paint Hazard Evaluation and Hazard Activities contained in 24 C.F.R. §  
6 35.1330, and any successor regulations.

7 (D) Any other standards required by the Mayor by rule.

8 (2) Conform with the prohibition of unsafe practices listed at 24 C.F.R. 35.140.

9 (3) Prevent paint dust, chips, debris, or residue from being dispersed onto  
10 adjacent property or increasing the risk of public exposure to lead-based paint; and

11 (4) Adhere to other requirements established by the Mayor, or promulgated by the  
12 EPA at 40 C.F.R. 745.85.

13 (c) Subsection (a) does not apply to the following:

14 (1) Individuals who perform lead-based paint activities in residences that they  
15 own, provided that the residence is occupied by the owner or the owner's immediate family, and  
16 provided there is no person at risk residing therein; and

17 (2) Performance of maintenance, repair, or renovation work involving lead-based  
18 paint that results in disturbances of lead-based paint in a total of 2 square feet or less of surface  
19 area per room, except for window removal or replacement.

20 (d) No person shall cause paint dust, chips, debris, or residue to be dispersed onto  
21 adjacent property or increase the risk of public exposure to lead-based paint.

22 (e) Within 180 days from the effective date of this act, the Mayor shall issue rules  
23 establishing comprehensive safe work practice standards and training requirements in  
24 conformance with this section.

25 (f) (1) A clearance examination following either elimination of a lead-based paint hazard  
26 ordered by the Mayor, or after such work performed in response to a child with an elevated blood  
27 lead level, shall not be conducted by a risk assessor who is related to the owner or any tenant by  
28 blood or marriage, or is an employee or an entity in which the individual or business entity has a  
29 financial interest, or by a dust sampling technician.

30 (2) In all other situations where a clearance examination is required under this act,  
31 such clearance examination may be performed by a lead inspector, dust sampling technician, or

1 risk assessor, whether or not employed by the owner.

2 (g) Within 90 days of the effective date of the act the Mayor shall establish certification  
3 requirements for the profession of “dust sampling technician”. The requirements shall include  
4 the successful completion of the appropriate course accredited by EPA under § 40 C.F.R.  
5 745.225.

6 (h) All renovation work shall conform to such additional requirements as may be issued  
7 by the Mayor by rule.

8 Sec. 13. Accreditation of training providers.

9 (a) An individual or business entity may not provide training on performing lead-based  
10 paint activities under this act unless accredited by the Mayor in accordance with this section.

11 (b) To receive accreditation, a training provider shall:

12 (1) Submit an application to the Mayor that shall include, but not be limited to,  
13 the following information:

14 (A) Qualifications of all training managers and instructors;

15 (B) Copies of all instructor and student course materials for each course  
16 offered, including materials covering requirements specific to District of Columbia statutes or  
17 regulations;

18 (C) A description of the facilities and equipment available for lecture and  
19 hands-on training; and

20 (D) Any other information determined by the Mayor to be necessary for  
21 approval of an application for accreditation.

22 (2) Pay a reasonable application fee, except that the Mayor may exempt any  
23 District government agency or nonprofit organization for payment of such fee. The Mayor may  
24 revise the application fees as necessary to cover the administrative costs through rulemaking.

25 (c) Where appropriate, the Mayor shall accredit an educational services provider that  
26 already has been accredited by another State, the federal Environmental Protection Agency, or  
27 the federal Department of Housing and Urban Development, on a reciprocity basis, without a  
28 complete application, provided that the educational services provider:

29 (1) Submits a copy of those portion of its course materials covering requirements  
30 specific to District of Columbia statutes or regulations; and

31 (2) Pays the fee provided for in subsection (b)(2) of this section.

1 (d) Accreditation by the Mayor shall expire 3 years from the date of issuance.

2 Sec. 14. Recordkeeping and disclosure requirements.

3 (a) Owners, business entities, and individuals subject to this act shall maintain copies of  
4 any records or reports required by this act, for 6 years, or as the Mayor may otherwise establish  
5 by rule, and shall make those documents available for inspection by the Mayor upon request.

6 (b) If the Mayor is denied access to any records, reports, documents, or other data  
7 requested in connection with ensuring compliance with this subchapter, the Mayor may issue a  
8 subpoena to obtain all necessary documents.

9 Sec. 15. Denial, suspension, or revocation.

10 The Mayor may, after notice and opportunity for hearing, suspend, revoke, modify, or  
11 refuse to issue, renew, or restore a certificate or accreditation issued under this act if the Mayor  
12 finds that the applicant or holder has:

13 (a) Failed to comply with any provision of this act or rule issued pursuant to this act;

14 (b) Misrepresented facts relating to a lead-based paint activity to a client or customer;

15 (c) Made a false statement or misrepresentation material to the issuance, modification, or  
16 renewal of a certificate, permit, or accreditation;

17 (d) Submitted a false or fraudulent record, invoice, or report;

18 (e) As a training provider, or as an instructor, provided inaccurate information or  
19 inadequate training;

20 (f) Fails to meet any qualifications required by this act;

21 (g) Does not possess proof of required accreditation, as prescribed by the Mayor;

22 (h) Had a history of repeated violations; or

23 (i) Had a certificate, permit, or accreditation denied, revoked, or suspended in another  
24 state or jurisdiction.

25 Sec. 16. Serving of notice, civil penalties.

26 (a) Any notice required by this act may be served upon an owner of the dwelling or agent  
27 of the owner in the same manner as a summons in a civil action or by registered or certified mail  
28 to his or her last known address or place of residence.

29 (b) Any violation of this act or implementing rule is punishable by a civil penalty not to  
30 exceed \$ 25,000 for each day of each offense. Each day a violation continues shall be deemed a  
31 separate offense.

1 (c) Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for  
2 any infraction of the provisions of this act or the rules issued under this act pursuant to the  
3 Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October  
4 5, 1985, D.C. Law 6-42, D.C. Official Code § 2-1801 *et seq.* Adjudication of any infractions  
5 shall be pursuant to the Civil Infractions Act.

6 (d) In determining the severity of a civil penalty under subsection (a) of this section, the  
7 Superior Court of the District of Columbia shall take into account the nature, circumstances,  
8 extent, gravity, actual or potential harm to the environment, and actual or potential harm to  
9 human health, of the violation or violations and, with respect to the violator, ability to pay, any  
10 history of prior such violations, the degree of culpability, and such other matters as justice may  
11 require.

12 (e) The Attorney General for the District of Columbia may commence appropriate civil  
13 action in the Superior Court of the District of Columbia to secure a temporary restraining order, a  
14 preliminary injunction, a permanent injunction, or other appropriate relief to enforce compliance  
15 with the provisions of this act.

16 (f) As specified by the Mayor in rulemaking, a person adversely affected by an action  
17 taken pursuant to the provisions of this subchapter, or the rules or regulations promulgated  
18 pursuant to this subchapter, is entitled to a hearing before the Mayor upon filing with the Mayor,  
19 within 15 calendar days of such action, a written request for a hearing. Such hearing shall be held  
20 in accordance with D.C. Official Code § 2-509.

21 Sec. 17. Criminal penalties.

22 (a) Notwithstanding any other provision of this subchapter, any person who knowingly or  
23 willingly violates the provisions of this act or its implementing rules, shall be subject, upon  
24 conviction, to a fine of not more than \$ 25,000 for each day of each violation, or to imprisonment  
25 for not more than one year, or both.

26 (b) Falsification of information required by this act shall be a violation of this act.

27 (c) In determining the severity of a criminal penalty, the Superior Court of the District of  
28 Columbia shall take into account the nature, circumstances, extent, gravity, actual or potential  
29 harm to the environment, and actual or potential harm to human health of the violation or  
30 violations and, with respect to the violator, ability to pay, effect on ability to continue to do  
31 business, any history of prior such violations, the degree of culpability, and such other matters as

1 justice may require.

2 (d) All prosecutions under this section shall be in the Superior Court of the District of  
3 Columbia in the name of the District of Columbia and shall be instituted by the Attorney  
4 General.

5 Sec. 18. No private right of action against the District.

6 Nothing in this act is intended to, or does, create a private right of action against the  
7 Government of the District of Columbia and their officers, employees, agents, representatives,  
8 contractors, successors and assigns based upon compliance or noncompliance with its provisions.  
9 No person or entity may assert any claim or right as a beneficiary or protected class under this  
10 act in any civil, criminal, or administrative action, against the District of Columbia.

11 Sec. 19. Rulemaking.

12 Except as otherwise set forth herein, the Mayor may issue rules and regulations to  
13 implement the provisions of this subchapter, in accordance with rulemaking provisions of the  
14 District of Columbia Administrative Procedure Act, Pub. L. 90-614, effective Oct. 21, 1968,  
15 D.C. Official Code sec.2-501 *et seq.* Notwithstanding the requirements of Section 302(c) of the  
16 District of Columbia Administrative Procedures Act, effective March 6, 1979 (D.C. Law 2-153;  
17 D.C. Official Code § 2-552), where the Mayor chooses to adopt a federal regulation as the  
18 District's standard under this act, the Mayor may do so by incorporating the federal regulation by  
19 reference in the Notice of Intent to take rulemaking action. When incorporating the federal  
20 regulation by reference, the notice shall include a specific indication of how and where a paper  
21 or electronic copy of such document may be inspected or obtained. Any amendments to the  
22 incorporated federal rules shall be deemed to be included in the District's rules, provided that  
23 after the initial adoption of the federal regulation, the Mayor shall annually issue a Notice of  
24 intent to re-adopt the federal standard in whole or in part, or announce an intent to adopt a  
25 different standard.

26 Sec. 20. Common law unaffected.

27 The remedies under this act do not supplant whatever rights and remedies that may be  
28 available against property owners and other liable parties under the common law.

29 Sec. 21. Repealer.

30 The Lead-Based Paint Abatement and Control Act of 1996, effective April 9, 1997 (D.C.  
31 Law 11-221; D.C. Official Code § 8-115.01 *et seq.*), is repealed except that the repeal of section

1 8 “Permit Requirements” (D.C. Official Code § 8-115.07), shall remain in effect, and shall be  
2 deemed repealed upon issuance of rules by the Mayor under this act regarding abatement permit  
3 requirements.

4 Sec. 22. Fiscal impact statement.

5 The Council adopts the fiscal impact statement in the committee report as the fiscal  
6 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
7 approved December 24, 1973 (84 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

8 Sec. 23. Effective date.

9 This act shall take effect following approval by the Mayor (or in the event of veto by the  
10 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
11 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
12 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
13 Columbia Register.