

ARTICLE III  
**Lead-Based Paint Poisoning Prevention**  
**[Added 12-20-2005 by Ord. No. 2005-393<sup>1</sup>]**

**§ 90-50. Policy and intent.**

It is the policy of the City of Rochester to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 nonresidential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to such hazards.

**§ 90-51. Legislative findings.**

- A. Lead poisoning poses a serious public health threat to children and adults in the City of Rochester.
- B. Younger children are particularly susceptible to the hazards of lead-based paint since their bodies are still developing. Fetuses are also vulnerable to the effects of lead-based paint because pregnant women can transfer lead to their fetuses, which can result in adverse developmental effects.
- C. A small amount of lead can cause elevated blood lead levels resulting in serious and irreversible developmental damage, particularly in children under the age of six years.
- D. Exposure to lead hazards from deteriorated lead-based paint is a primary cause of elevated blood lead levels in humans.
- E. Structures built before 1978 are the most likely to contain lead-based paint hazards.
- F. Residential properties are more likely than are nonresidential properties to be a source of exposure to lead-based paint hazards by children.
- G. Children living in older, poorly maintained homes are disproportionately at risk for lead-based paint hazards.
- H. The exposure to lead-based paint hazards in the City of Rochester is most common, and presents the most serious risk, to young children residing in rental housing built before 1978.
- I. It is essential to the overall public health of persons in the City of Rochester, and particularly for children younger than six years of age, that they be protected from exposure to lead-based paint hazards.
- J. According to the environmental impact statement, proposed lead-based paint poisoning prevention legislation could have a cost impact on the rental housing market as high as \$540,000,000 depending on the alternative chosen.
- K. The application of lead-based paint poisoning prevention legislation to the owner-occupied

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1. Editor's Note: This ordinance also provided for the renumbering of former Art. III, Penalties and Severability, comprising §§ 90-45 and 90-46, as Art. IV, §§ 90-70 and 90-71. It provided an effective date of 7-1-2006.

housing market could cause extensive housing abandonment in at least nine distinct neighborhoods.

- L. Although unquestionably positive, the potential health benefits of lead-based paint poisoning prevention legislation are difficult to quantify since the number of people at risk is undetermined, the transient nature of tenants makes targeting difficult, the mere presence of lead in a structure does not necessarily lead to human exposure to lead-based paint hazards, and the generally agreed-upon group at greatest risk, children from zero to six years of age, are significantly transient.

### § 90-52. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**ABATEMENT** — Any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. (See definition of "permanent"). "Abatement" includes:

- A. The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and
- B. All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

**CERTIFIED** — Licensed or certified to perform such activities as risk assessment, lead-based paint inspection, lead dust wipe tests or abatement supervision by the United States Environmental Protection Agency (EPA) in accordance with 40 CFR Part 745, Subpart L. Any individual who has been licensed or certified by the EPA will be approved as certified by the City for the purpose of performing such licensed activities, provided that such approvals are subject to suspension or revocation after a finding of nonresponsibility by the Director pursuant to § 90-57I. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**CERTIFIED LEAD-BASED PAINT INSPECTOR** — An individual who has been trained by an accredited training program, as defined by 40 CFR 745.223, and certified by the EPA pursuant to 40 CFR 745.226 to conduct lead-based paint inspections, whose approval to conduct such inspections in the City is not subject to suspension or revocation after a finding of nonresponsibility pursuant to § 90-57I. A certified lead-based paint inspector also samples for the presence of lead in dust and soil for the purposes of clearance testing. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**CERTIFIED LEAD DUST WIPE TECHNICIAN** — An individual who has been trained by an accredited training program, as defined by 40 CFR 745.223, and certified by the EPA pursuant to 40 CFR 745.226 to conduct lead dust wipe tests, whose approval to conduct such dust wipe tests in the City is not subject to suspension or revocation after a finding of nonresponsibility pursuant to § 90-57I. **[Added 5-14-2013 by Ord. No. 2013-136]**

**CERTIFIED RISK ASSESSOR** — An individual who has been trained by an accredited training program, as defined by 40 CFR 745.223, and certified by the EPA pursuant to 40 CFR 745.226 to conduct risk assessments, whose approval to conduct such risk assessments in the City is not subject to suspension or revocation after a finding of nonresponsibility pursuant to § 90-57I. A certified risk assessor also samples for the presence of lead in dust and soil for the purposes of

clearance testing. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**CHEWABLE SURFACE** — An interior or exterior accessible painted surface that a young child can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**CLEARANCE EXAMINATION** — An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this article, exist in the dwelling unit or worksite.

**COMMON AREA** — A portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day-care facilities, porches, basements, attics, garages and boundary fences.

**COMPONENT** — An architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

**CONTAINMENT** — The physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

**DETERIORATED PAINT** — Any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing.

**DRIPLINE** — The area within three feet surrounding the perimeter of a building.

**DRY SANDING** — Sanding without moisture and includes both hand and machine sanding.

**DUST-LEAD HAZARD** — Surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels listed in § 90-57D. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**DWELLING UNIT** — **[Amended 5-14-2013 by Ord. No. 2013-136]**

- A. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation; or
- B. A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower; or
- C. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

For the purposes of this definition, a basement or attic that is accessible from inside a dwelling unit is considered to be part of the dwelling unit. Common areas and basements and/or attics that are only accessible through a common area or from the exterior of the property are not considered to be part of the dwelling unit.

**ENCAPSULATION** — The application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. (See definition of "permanent").

**ENCLOSURE** — The use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent. (See definition of "Permanent.")

**EVALUATION** — A risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

**FRICTION SURFACE** — An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

**g** — The abbreviation for "gram."

**HAZARD REDUCTION** — Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

**HEPA VACUUM** — A vacuum cleaner device with an included high- efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97% of airborne particles of at least 0.3 micrometer in diameter.

**IMPACT SURFACE** — An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

**INTERIM CONTROLS** — A set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment and specialized cleaning. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**LEAD-BASED PAINT** — Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5% by weight or 5,000 parts per million (ppm) by weight.

**LEAD-BASED PAINT HAZARD** — Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

**LEAD-BASED PAINT INSPECTION** — A surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

**LEAD HAZARD INFORMATION PAMPHLET** — The most recent publication of the lead hazard information pamphlet means the pamphlet developed by the EPA, the United States Department of Housing and Urban Development and the Consumer Product Safety Commission pursuant to Section 403 of the Toxic Substances Control Act (15 U.S.C. § 2686), entitled "Protect Your Family From Lead in Your Home."

**LEAD SAMPLING TECHNICIAN** — An individual who has been trained by an accredited training program, as defined by 40 CFR 745.223, to conduct lead dust wipe tests, whose approval to conduct such dust wipe tests in the City is not subject to suspension or revocation after a finding of nonresponsibility pursuant to § 90-57L. **[Added 5-14-2013 by Ord. No. 2013-136]**

**mg** — The abbreviation for "milligram" (thousandth of a gram).

**OCCUPANT** — A person who inhabits a dwelling unit.

**OWNER** — A person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

**PAINT REMOVAL** — A method of abatement that permanently eliminates lead-based paint from surfaces.

**PAINTED SURFACE TO BE DISTURBED** — A paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

**PAINT STABILIZATION** — Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

**PAINT TESTING** — The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

**PERMANENT** — An expected design life of at least 20 years.

**PORCH, OPEN** — A roofed open structure projecting from the exterior wall of a building and having at least 70% of the total area of the vertical planes forming its perimeter unobstructed in any manner except by insect screening between floor and ceiling. **[Added 3-14-2006 by Ord. No. 2006-37]**

**REDUCTION** — Measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

**REHABILITATION** — The improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

**RENOVATION, REPAIR AND PAINTING RULE (RRP) CERTIFICATION** — EPA-required certification for all home improvements contractors, property management firms, handymen or

others compensated for renovation work that involves window replacement or that disturbs more than six square feet of interior and/or 20 square feet of exterior paint or surface coating in pre-1978 residential housing and child-occupied facilities. This EPA requirement also applies to landlords working on rental properties. The individual must complete training, use safe work practices and verify that the work area is clean after completion of renovations. **[Added 5-14-2013 by Ord. No. 2013-136]**

**REPLACEMENT** — A strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

**RESIDENTIAL PROPERTY** — A dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other nonresidential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

**RISK ASSESSMENT** —

- A. An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- B. The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.<sup>2</sup>

**TENANT** — The individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

**ug** — The abbreviation for "microgram" (millionth of a gram).

**VISUAL ASSESSMENT** — A visual examination of all surfaces within the dwelling unit, including any basement and/or attic as per the definition of a dwelling unit. A visual assessment shall not be considered to be complete if the examining individual is locked out or otherwise prevented from inspecting any room or space within the dwelling unit. For the purpose of determining whether or not a deteriorated paint violation is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**WET SANDING or WET SCRAPING** — A process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

**WINDOW TROUGH** — The area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

**WIPE SAMPLE** — A sample collected by wiping a representative surface of known area, as determined by § 90-57, with an acceptable wipe material as defined in ASTM E 1792, "Standard

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2. **Editor's Note:** The former definition of soil-lead hazard, which immediately followed this definition, was repealed 5-14-2013 by Ord. No. 2013-136.

Specification for Wipe Sampling Materials for Lead in Surface Dust."[**Amended 5-14-2013 by Ord. No. 2013-136**]

**WORKSITE** — An interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

**§ 90-53. Presumptions and obligations.**

- A. For purposes of this article, all paint on the interior or exterior of any residential building on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based. [**Amended 7-18-2006 by Ord. No. 2006-224**]
- B. For purposes of this article, all paint on the exterior of any nonresidential structure on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based.
- C. Any person seeking to rebut these presumptions shall establish through the means set forth in § 90-56 that the paint on the building or structure in question is not lead-based paint.
- D. Residential buildings shall be maintained free of lead-based paint hazards. [**Amended 7-18-2006 by Ord. No. 2006-224**]

**§ 90-54. Violations.**

- A. Deteriorated paint violation. The interior and exterior of any residential building on which the original construction was completed prior to January 1, 1978, and the exterior of any nonresidential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than: [**Amended 7-18-2006 by Ord. No. 2006-224; 5-14-2013 by Ord. No. 2013-136**]
  - (1) Twenty square feet on exterior surfaces;
  - (2) Two square feet in any one interior room or space; or
  - (3) Ten percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

For the purpose of determining whether or not a deteriorated paint violation is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior.

- B. Bare soil violation. Bare soil shall not be present within the dripline of any residential building on which the original construction was completed prior to January 1, 1978. [**Amended 7-18-2006 by Ord. No. 2006-224**]
- C. Dust-lead hazard violation. A dust-lead hazard shall be identified and cited in accordance with the procedures set forth in § 90-55, Inspection for violations. [**Added 3-14-2006 by**

**Ord. No. 2006-37]**

- D. Dust sample violation. A dust sample violation shall be cited upon a failure by an owner of a property to timely cause dust samples to be taken and certified test results to be submitted to the Department in accordance with the procedures set forth in §§ 90-55 and 90-57 of this article. [Added 8-21-2007 by Ord. No. 2007-305<sup>3</sup>; amended 7-15-2008 by Ord. No. 2008-254; 10-11-2011 by Ord. No. 2011-326; 5-14-2013 by Ord. No. 2013-136]

**§ 90-55. Inspections for violations. [Amended 8-21-2007 by Ord. No. 2007-305<sup>4</sup>; 7-15-2008 by Ord. No. 2008-254; 10-11-2011 by Ord. No. 2011-326; 5-14-2013 by Ord. No. 2013-136]**

All inspections, including, but not limited to, inspections performed as part of an application for a certificate of occupancy pursuant to § 90-16 of the City Code, a renewal of a certificate of occupancy, or based upon the filing of a complaint, shall include a visual assessment for deteriorated paint and bare soil violations. With respect to units in structures containing five or fewer units and located in the high-risk area identified by the Mayor or the Mayor's designee, when the visual assessment identifies no interior deteriorated paint violation, the owner shall cause dust samples to be taken and certified test results to be obtained in accordance with the protocols established in § 90-57B to determine whether a dust-lead hazard exists. For the purpose of determining whether or not a deteriorated paint violation is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior. The owner shall be given 60 days to cause the dust samples to be taken and to submit all certified test results to the Department. If all certified results are not submitted within the specified time, a dust sample violation shall be cited. When a dust-lead hazard is identified and not cleared, a dust-lead hazard violation shall be cited. A certification of clearance as described in § 90-57 shall be required in order to clear a dust-lead hazard violation. The high-risk area to be identified by the Mayor or the Mayor's designee shall be based on the County Health Department inspections data in conjunction with its elevated blood-lead level inspections. Where the filing of a complaint leads to an inspection, the inspection shall include the unit which is the focus of the complaint and all common areas.

**§ 90-56. Remedy for violations.**

Following a visual assessment which results in the citation of a deteriorated paint violation, the violation may be removed only by one of the following methods:

- A. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR 745.227(b) not to contain lead-based paint.
- B. Certification by a lead-based paint inspector or risk assessor that all cited violations of § 90-54, Violations, have been abated, or interim controls implemented, and clearance has been achieved in accordance with standards found in § 90-57; provided, however, that the

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3. Editor's Note: This ordinance also provided that it shall take effect 8-1-2007. Ordinance No. 2007-342, adopted 9-19-2007, amended Ord. No. 2007-305 to change the effective date to 10-15-2007.

4. Editor's Note: This ordinance also provided that it shall take effect 8-1-2007. Ordinance No. 2007-342, adopted 9-19-2007, amended Ord. No. 2007-305 to change the effective date to 10-15-2007.



property has been inspected pursuant to those standards since the deteriorated paint or dust-lead hazard violation was last cited, including a full visual assessment. **[Amended 3-14-2006 by Ord. No. 2006-37; 5-14-2013 by Ord. No. 2013-136]**

- C. <sup>5</sup>**[Effective through 12-31-2024<sup>6</sup>]** Where exterior deteriorated paint violations, including deteriorated paint violations on an open porch, and/or bare soil violations are cited, or where interior deteriorated paint violations are cited in a common area, as per the definition of a "dwelling unit," clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented. **[Amended 3-14-2006 by Ord. No. 2006-37; 5-14-2013 by Ord. No. 2013-136]**

**§ 90-57. Standards for clearance examination and report. [Amended 3-14-2006 by Ord. No. 2006-37; 5-14-2013 by Ord. No. 2013-136]**

**[Effective through 12-31-2024<sup>7</sup>]** The remedy available through § 90-56B and the dust sampling required by § 90-55 shall require the following certification of clearance standards:

- A. Qualified personnel. Certification of clearance shall be issued by:
- (1) A certified risk assessor; or
  - (2) A certified lead-based paint inspector.
- B. Required activities.
- (1) An examination shall include a full visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Examinations shall be performed in all dwelling units in accordance with this section.
  - (2) A full visual assessment of every area of the subject dwelling unit shall be performed to determine if deteriorated paint and/or visible amounts of dust, debris, paint chips or other residue are present. Interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris, paint chips or residue are present, they must be eliminated prior to the continuation of the clearance examination.
  - (3) **[Effective through 12-31-2024<sup>8</sup>]** Dust samples shall be wipe samples and shall be taken

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5. Editor's Note: Former Subsection C, concerning certification by the Rochester Housing Authority or other state or federal supervising agency, was repealed 5-14-2013 by Ord. No. 2013-136, which ordinance also relettered former Subsection D as Subsection C.

6. Editor's Note: Effective 1-1-2025, Subsection C will be amended, and a new Subsection D will be added, as follows: "C. Where exterior deteriorated paint violations, excluding deteriorated paint violations on an open porch, and/or bare soil violations are cited, or where interior deteriorated paint violations are cited in a common area, as per the definition of a "dwelling unit," clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented. D. Where deteriorated paint violations on an open porch are cited, clearance may be established by means of a clearance examination and report in accordance with § 90-57 after reduction measures have been implemented."

7. Editor's Note: Effective 1-1-2025, the introductory paragraph of this section will be amended to read as follows: "The remedy available through § 90-56B and D and the dust sampling required by § 90-55 shall require the following certification of clearance standards:"

8. Editor's Note: Effective 1-1-2025, Subsection B(3) will be amended, and new Subsection B(3)(e) and (f) will be added, to read as follows: "(3) Dust samples shall be wipe samples and shall be taken on floors, including open porches, and interior windowsills and window troughs that have a paint history. Dust samples shall be collected and analyzed in accordance with this section.\*\*\*(e) Upon

on floors, excluding open porches, and interior windowsills and window troughs that have a paint history. Dust samples shall be collected and analyzed in accordance with this section.

- (a) Dust samples shall be taken from each of no more than four rooms. The selection of rooms to be tested, where applicable, shall include no less than one bedroom and the living room. At least one wipe sample shall be taken from a window trough or a windowsill with a paint history, if present, and one from a floor in each room. Where there are less than four rooms, then all rooms shall be sampled.
- (b) Dust samples shall be collected by persons authorized and/or certified by the EPA as a lead inspector, risk assessor, dust wipe technician, or lead sampling technician whose approval to conduct such dust wipe tests in the City is not subject to suspension or revocation after a finding of nonresponsibility pursuant to § 90-57I.
- (c) The method for collecting dust samples shall include:
  - [1] Laying out the sample area by using a template or tape to outline the area;
  - [2] Label each tube with its own identification number to be recorded on the sample collection form;
  - [3] Put on clean gloves before taking each sample; do not touch anything other than the wipe after putting on the gloves;
  - [4] Use an unused wipe to sample the entire area inside the template or tape as follows:
    - [a] Starting in the upper corner of the sample area, use a side-to-side motion, wiping the entire area, pressing firmly with your fingers;
    - [b] Fold the wipe sample in half, dirty side in;
    - [c] With the clean side of the sample and starting at the upper corner, use a top-to-bottom motion, wiping the entire area, pressing firmly with your fingers;
    - [d] Fold the wipe sample in half again, dirty side in;
    - [e] With the clean side of the sample, wipe around the entire perimeter, cleaning the corners, fold the sample; and
    - [f] Place the folded wipe sample in the tube.
  - [5] Write down the measurements of the sample area on the collection form;
  - [6] Clean the sampling equipment after each wipe sample is taken;

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reinspection and a visual clearance, a dust wipe sample shall be taken on all open porch floors that have been cited for an exterior deteriorated paint violation.(f) Dust wipe samples taken on open porch floors shall not be taken where inclement conditions make it difficult to secure a sample. Where there is snow, ice or entirely wet floor surface conditions, the dust wipe sample shall be rescheduled."

[7] Forward wipe samples to an authorized laboratory.

- (d) Dust samples shall be analyzed by a laboratory recognized by the EPA pursuant to Section 405(b) of TSCA<sup>9</sup> as being capable of performing analysis for lead compounds in dust samples.
- C. Report. The clearance examiner shall ensure that an examination report is prepared that provides documentation of the examination.
- (1) The report shall include the following information:
    - (a) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected;
    - (b) The date(s) of the examination;
    - (c) The name, address, and signature of each person performing the examination, including their EPA certification number;
    - (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
    - (e) The results of the analysis of dust samples, in ug per square foot, by location of sample; and
    - (f) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by the EPA under Section 405(b) of the Toxic Substances Control Act [15 U.S.C. § 2685(b)].
- D. **[Effective through 12-31-2024<sup>10</sup>]** Clearance standards. Where dust sampling is required by § 90-55 or where an interior deteriorated paint or dust-lead hazard violation has been cited in a dwelling unit, the following dust-lead standards shall be met before a certificate of occupancy may be issued or a violation removed.
- (1) Dust sample results shall be less than:
    - (a) For floors: 40 ug/ft<sup>2</sup>;
    - (b) For windowsills: 250 ug/ft<sup>2</sup>; and
    - (c) For window troughs: 400 ug/ft<sup>2</sup>.
  - (2) Where dust sample results are greater than or equal to the levels above, additional dust

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9. Editor's Note: The Toxic Substances Control Act; see § 15 U.S.C. § 2685(b).

10. Editor's Note: Effective 1-1-2025, Subsection D will be amended to read in its entirety as follows: "D. Clearance standards. Where dust sampling is required by § 90-55, where an interior deteriorated paint or a dust-lead hazard violation has been cited in a dwelling unit or where deteriorated paint violations on an open porch are cited, the following dust-lead standards shall be met before a certificate of occupancy may be issued or a violation removed. (1) Dust wipe sample results shall be less than the post-abatement clearance levels specified in the United States Environmental Protection Agency's Lead-Based Paint Poisoning Prevention regulation at 40 CFR 745.227(e)(8), regardless of whether the sampling is being performed for purposes of post-abatement clearance. (2) The results of dust wipe samples for open porch floors as required by § 90-57B(3) shall be less than 40 ug/ft<sup>2</sup>. (3) Where dust sample results are greater than or equal to the levels above, additional dust wipe samples shall be taken in the subject areas until all said areas are found to be below the listed thresholds."

wipe samples shall be taken in the subject areas until all said areas are found to be below the listed thresholds.

- E. Validity of wipe test results. For the purposes of meeting the requirement in § 90-55, the results of all successful wipe tests shall be valid for a period of three years, unless a subsequent inspection of the dwelling unit identifies an interior deteriorated paint violation, which would immediately cause the previous wipe tests results to be invalid.
- F. Requirement to avoid conflict of interest regarding clearance inspection. All examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities.
- G. This section shall not apply to the situations set forth in § 90-56C.
- H. As part of the Department's efforts to ensure consistency and compliance with the required clearance standards, random audits will be performed on all third-party lead clearance providers. Nonrandom audits may also be performed based on a reasonable suspicion that a third-party lead clearance provider is not providing proper tests, including, but not limited to, complaints received about the provider or about a specific property inspected by the provider. If the results indicate noncompliance with these standards, the Director may take whatever action is necessary as set forth in Subsection I of this section.
- I. Rejection of clearance examination report/nonresponsibility of issuer.
  - (1) The Director, or the Director's designee, is authorized to reject a lead clearance examination report that does not meet the requirements set forth herein or that is found after an inspection to not substantially represent the conditions present at the premises for which the report was prepared. The reasons for the rejection shall be set forth in writing to the issuer of the report and to the owner of the property to which the report pertains. **[Amended 6-20-2017 by Ord. No. 2017-170]**
  - (2) No lead clearance examination report shall be accepted from an issuer who does not meet the qualifications set forth herein or who has been found by the Director or the Director's designee to be nonresponsible.
  - (3) The Director shall inform an issuer in writing of a nonresponsibility determination and the reasons therefor.
  - (4) Upon making a nonresponsibility determination, the Director may bar the issuer and affiliated organizations, as further set forth herein, from submitting lead clearance reports to the City for a period of not to exceed three years. If a corporation is found to be a nonresponsible issuer, that finding may be applied to a parent, affiliate or subsidiary corporation, if the Director finds that an officer, director or person directly or indirectly controlling 10% or more of the stock of the corporation found to be nonresponsible is an officer, director or person directly or indirectly controlling 10% or more of the stock of the parent, affiliate or subsidiary corporation. If an unincorporated association is found to be nonresponsible, that finding may be extended to other related associations upon a finding by the Director that the related associations have substantially the same ownership, management or operating personnel.

- (5) Guidelines for nonresponsibility determinations. In determining the nonresponsibility of an issuer, the Director shall consider:
- (a) The record of performance of the issuer, including but not limited to lack of adequate expertise, prior experience with lead clearance examinations or lack of ability to perform the clearances in a timely, competent and acceptable manner. Evidence of such a lack of ability to perform may include, but shall not be limited to, evidence of suspension or revocation for cause of any professional license of any director or officer or any holder of 5% or more of the issuer's stock or equity; suspension or debarment by the state or federal government; or a history of lead clearance examinations that do not meet federal, state or City requirements.
  - (b) The record of integrity of the issuer.
  - (c) The availability to the issuer of the necessary organization, experience, operational controls and technical skills, and the necessary technical equipment and facilities required for performance of the clearance examinations.
  - (d) The compliance by the issuer with any special or general standards of responsibility.
  - (e) The compliance by the issuer with standards which may be established by the Director pursuant to rule or regulation.
  - (f) Criminal conduct in connection with lead clearance examinations, government contracts or business activities. Evidence of such conduct may include a judgment of conviction or information obtained as a result of a formal grant of immunity in connection with a criminal prosecution of the issuer, any director or officer, or holder of 5% or more of the shares or equity of the issuer or any affiliate of the issuer.
  - (g) Violations of the Labor Law.
  - (h) Violations of the Environmental Conservation Law or other federal or state environmental statutes or regulations.
  - (i) Any other cause of so serious or compelling a nature that it raises questions about the responsibility of an issuer, including, but not limited to, submission to the City of a false or misleading statement in connection with a lead clearance examination.
  - (j) In addition to the factors specified above, the Director may also give due consideration to any other factors considered to bear upon issuer responsibility, including, but not limited to, any mitigating factors brought to the City's attention by the issuer.
- (6) The Director may develop rules and regulations to implement these guidelines and may request a sworn statement of issuer qualifications to gather the necessary information set forth herein. The Director may use the information contained in the response to the sworn statement in making a determination of issuer nonresponsibility.
- (7) A nonresponsibility determination by the Director may be appealed by the issuer to the

Commissioner by delivery to the Commissioner of a written notice of appeal within 10 days after receipt of the determination of the Director. The Commissioner shall offer the issuer an opportunity to be heard, at which a hearing officer appointed by the Commissioner who is not a City employee shall preside. Such hearing shall be scheduled as soon as possible after a request. The issuer shall be permitted to be represented by counsel, to submit evidence and summon witnesses on his or her behalf and to inspect documents and cross-examine opposing witnesses. Compliance with the technical rules of evidence shall not be required. The hearing officer shall make a recommendation to the Commissioner. The Commissioner shall make the final determination in writing, based upon evidence produced at the hearing. In the final determination, the Commissioner may accept, reject or modify the determination and/or penalty imposed by the Director. The determination of the Commissioner shall be the final determination of the City and shall be subject to review pursuant to Article 78 of the Civil Practice Law and Rules.

#### **§ 90-58. Lead-safe hazard reduction and control.**

- A. No person shall disturb or remove lead-based paint or in any other way generate excessive dust or debris during work on the interior or exterior of any existing building or structure except in accordance with the requirements of this section and §§ 90-59 and 90-60. Any home improvement contractor, property management firm, handyman or other person compensated for renovation work that involves window replacement or that disturbs more than six square feet of interior, and/or more than 20 square feet of exterior, paint or surface coating, in a residential building or child-occupied facility for which the original construction was completed prior to January 1, 1978, must possess an EPA RRP certification. **[Amended 3-14-2006 by Ord. No. 2006-37<sup>11</sup>; 5-14-2013 by Ord. No. 2013-136]**
- B. Exemptions. This section shall not apply to activities that disturb or remove paint where the activities are being performed on buildings on which construction was completed on or after January 1, 1978.
- C. Sign required when exterior lead-based paint (or presumed lead-based paint) is disturbed.
  - (1) Not later than the commencement date of any lead-based paint hazard reduction work, the owner, or the contractor when the owner has entered into a contract with a contractor to perform such work on the exterior of a building or structure, shall post signs in a location or locations clearly visible to the adjacent properties stating the following:

LEAD-BASED PAINT HAZARD REDUCTION WORK IN  
PROGRESS

PUBLIC ACCESS TO WORK AREA PROHIBITED

POSTED IN ACCORDANCE WITH CHAPTER 90 OF THE CITY OF  
ROCHESTER CODE

FOR FURTHER INFORMATION, PHONE -----

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11. Editor's Note: This ordinance also provided for the redesignation of former § 90-58E, F, G and H as § 90-58D, E, F and G, respectively.

- (2) The sign required by Subsection C(1) shall be not less than 24 inches square and shall be in large boldface capital letters no less than 1/2 inch in size, and shall contain the notification in both English and Spanish. The sign required by this subsection shall remain in place until the lead-based paint hazard reduction work has been completed.
  - (3) Where it is not possible to post signs in a conspicuous location or locations clearly visible to the adjacent properties, the owner or, where the owner has entered into a contract with a contractor to perform lead-based paint hazard reduction work, the contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.
- D. Notice to tenants. Where lead-based paint hazard reduction work is to be performed on the interior or exterior of buildings occupied by one or more tenants, not less than three business days before any lead-based paint hazard reduction work is to commence the owner shall provide the following information:
  - (1) Contents of notice. Provide written notice to tenants of the building on which the work is being performed that lead-based paint hazard reduction work is being performed. This notice, which shall be in both English and Spanish, shall be in compliance with the EPA prerenovation notification rules set forth in 40 CFR Part 745, Subpart E, shall be in the form of a sign, letter or memorandum, and shall prominently state the following:

Work is scheduled to be performed beginning \_\_\_\_\_ (date) on this property that may disturb or remove lead-based paint. The persons performing this work are required to follow federal and local laws regulating work with lead-based paint. You may obtain information regarding these laws, or report any suspected violations of these laws, by calling the City of Rochester at \_\_\_\_\_ (a number to be designated by the City). The owner of this property is also required to provide tenants with a copy of the lead hazard information pamphlet. Retaliatory action against tenants is prohibited by § 90-63 of the Municipal Code.
  - (2) The owner shall provide all tenants in the building with a copy of the lead hazard information pamphlet.
- E. Notice by contractor. Where lead-based paint hazard reduction work is being performed by a contractor on residential property, the contractor shall, at least three business days prior to the commencement of such work, notify the property owner of potential lead hazards during the project by delivering to the owner a copy of the lead hazard information pamphlet.
- F. Early commencement of work by owner. A property owner may commence, or may authorize a contractor to commence, lead-based paint hazard reduction work less than three business days after providing notices required above when such work must be commenced immediately to correct an emergency condition, such as work necessitated by nonroutine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

- G. Early commencement of work requested by tenant. Upon written request of a tenant, an owner may commence, or authorize a contractor to commence, lead-based paint hazard reduction work on that tenant's unit less than three business days after providing notices required in Subsection E above.

**§ 90-59. Occupant protection; worksite preparation.**

A. Occupant protection.

- (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite) until after hazard reduction work has been completed and clearance has been achieved.
- (2) Occupants shall be temporarily relocated during hazard reduction activities and until a clearance examination has been successfully completed on the occupant's unit, and occupants who relocate to a unit not owned by their landlord shall not be liable for rent accruing during that time, except that relocation shall not be necessary if:
  - (a) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
  - (b) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned afterward, and entry free of dust-lead hazards, soil-lead hazards and debris is provided;
  - (c) Treatment of the interior will be completed within one period of eight-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
  - (d) Treatment of the interior will be completed within 15 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards, and, at the end of work on each day, the worksite and the area within at least 10 feet of the containment area is cleaned to remove any visible dust or debris, and occupants have safe daily access to sleeping areas and bathroom and kitchen facilities.
- (3) The dwelling unit and the worksite shall be secured against unauthorized entry and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.
- (4) In addition to protections afforded elsewhere by law, if interior hazard reduction activities will not be or are not completed within 60 calendar days, occupants shall have the right to terminate their lease and shall have no further obligation to pay rent under that rental agreement; provided, however, that this subsection shall not relieve the occupant of the obligation to pay any previously accrued rent for which he or she is otherwise liable.



**B. Worksite preparation.**

- (1) The worksite shall be prepared, including the placement of containment barriers, to prevent the release of leaded dust and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.
- (2) A warning sign, as defined in § 90-58C(1), shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present or at each main and secondary entryway to a building from which occupants have been relocated. Each warning sign shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language. **[Amended 5-14-2013 by Ord. No. 2013-136]**

**§ 90-60. Safe work practices.**

A. Lead-based paint shall not be applied to any exterior or interior surface.

B. Prohibited methods. The following methods of paint removal shall not be used:

- (1) Open flame burning or torching.
- (2) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (3) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (4) Heat guns operating above 1,100° F. or charring the paint.
- (5) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 foot of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room or space, or totaling no more than 20 square feet on exterior surfaces.
- (6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

C. Worksite preparation. The worksite shall be prepared in accordance with § 90-59B. **[Amended 3-14-2006 by Ord. No. 2006-37]**

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

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

- (1) Twenty square feet on exterior surfaces;
- (2) Two square feet in any one interior room or space; or
- (3) Ten percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

#### **§ 90-61. Emergency actions; weather conditions.**

- A. For emergency actions necessary to safeguard against imminent or immediate danger to human life, health or safety, or to protect property from further structural damage, including demolitions ordered pursuant to § 47A-16B and C of the Municipal Code, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable. This exemption does not apply to any work undertaken subsequent to or above and beyond such emergency actions, other than the demolitions noted above.
- B. Performance of lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this article may be delayed for a reasonable time during a period when weather conditions render impossible the completion of conventional construction activities; provided, however, that this limitation shall continue only for the period in which work cannot be performed in the work-safe manner as provided for herein.

#### **§ 90-62. Exemptions.**

- A. This article shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and:
  - (1) Scheduled for demolition; or
  - (2) Scheduled for sale within 12 months.
- B. The requirements of §§ 90-54 through 90-57 which are applicable to residential buildings shall not include single-family owner-occupied dwellings. **[Amended 7-18-2006 by Ord. No. 2006-224]**
- C. A building complex with 10 or more units, any housing development or complex designated for seniors, and all studio apartments shall be exempt from the requirements for dust sampling established in § 90-55. A "building complex" for the purposes of this section includes any proximately related grouping or combination of units or buildings that is structured under a single ownership or management contract, regardless of whether such buildings are contiguous. This exemption does not exempt a property from a dust sampling required by any other local, state, or federal law or regulation. **[Added 10-11-2011 by Ord. No. 2011-326]**

#### **§ 90-63. Prohibition of retaliatory action.**

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

occupants' use of the property.

- B. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section, except that in instances of nonpayment of rent or commission of waste upon the premises by the tenant no such presumption shall apply. After six months from the date of the reporting of a suspected lead hazard, or the most recent activity related to any enforcement action, the defense of retaliatory eviction shall remain available to the tenant, but without the benefit of the presumption created by this section.
- C. The provisions of this section shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant; nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

**§ 90-64. Notification to county of violations.**

The City shall continue to send notices to the County of Monroe listing any health and safety violations found in properties inspected by the City. Any violation of § 90-54 shall be included on that list.

**§ 90-65. Database for properties.**

- A. The City shall maintain a database, accessible to the public, of all residential properties where lead hazards have been identified, reduced and controlled with funds received by the City from the United States Department of Housing and Urban Development which require that such a database be maintained. The City shall further maintain a database of all residential properties granted a certificate of occupancy after the effective date of this article.
- B. The databases created pursuant to this section shall be kept available for "walk- in" inspection by the public. No person requesting access shall be required to complete a freedom of information request in order to view this database.

**§ 90-66. (Reserved)**

**§ 90-67. (Reserved)**

**§ 90-68. (Reserved)**

**§ 90-69. (Reserved)**