

[Clarifications and Technical Corrections to Work Practices Program for Lead-Based Paint Disturbance and Removal.]

Ordinance amending Section 3407 et seq., to amend the definitions of Clearance Inspection, Containment and Barrier Systems, and Prohibited Practices; to clarify scope of prohibitions on the removal or disturbance of lead-based paint; to specify the type of covering required prevent contamination by lead debris; to specify where signs noticing lead work must be posted, to make further minor technical corrections to the work practices program for lead-based paint disturbance and removal; and to make findings in accordance with California Health and Safety Code Section 17958.5 as to the local climatic, topological and geological reasons for amending the State Building Code.

Note: Additions are *single-underline italics Times New Roman*;
deletions are *strikethrough italics Times New Roman*.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors hereby finds, as required by California Code of Health and Safety Code Section 17958.5, that the following amendments to the Building Code are necessary for the specific climatic, topological, and geological reasons listed below:

Certain buildings/occupancies in San Francisco are at increased risk for earthquake-induced structural failure due to local hazardous microzones, slide areas, and local liquefaction hazards. Such structural shifts can release lead in to the environment through the cracking of lead-based paint on the interiors of buildings.

Section 2. The San Francisco Building Code is hereby amended by amending Section 3407 et seq., to read as follows:

1 Sec. 3407 -- **WORK PRACTICES FOR LEAD-BASED PAINT ON PRE-1979**
2 **BUILDINGS AND STEEL STRUCTURES.**

3 3407.1 **GENERAL.** Any buildings, structures, and properties on which the original
4 construction was completed on or before December 31, 1978, or any steel structures to which
5 lead-based paint disturbance or removal, including surface preparation, additions, alterations,
6 repairs, or demolitions are made, shall comply with the requirements of this section.

7 3407.1.1 **Purpose, Intent and Scope.**

8 3407.1.1.1 **Purpose.** The purpose of this section is to ensure that any
9 person undertaking activities that result in the disturbance or removal of interior or exterior
10 lead-based paint on pre-1979 buildings, structures and properties and on steel structures
11 uses work practices that minimize or eliminate the risk of lead contamination of the
12 environment.

13 3407.1.1.2 **Intent.** The intent of this section is to encourage safe work
14 practices for activities resulting in the disturbance or removal of lead-based paint while
15 providing a reasonable level of health and safety for the occupants and the public at large.

16 3407.1.1.3. **Scope.**

17 3407.1.1.3.1 **Interior.** The requirements of this section apply to any
18 activity resulting in the disturbance or removal of lead-based paint in the interior of pre-1979
19 buildings, structures and properties or portions thereof with one of the following occupancy
20 classifications: Group E3 and Group R, Divisions 1 and 3. The requirements of this section
21 with regard to the interior of a facility shall include, but are not limited to, residential-based
22 family childcare facilities licensed by the State of California.

23 3407.1.1.3.2 **Exterior.** The requirements of this section apply to any
24 activity resulting in the disturbance or removal of lead-based paint on the exterior of any pre-
25 1979 buildings, structures and properties and any steel structures.

1 3407.2 **DEFINITIONS.** Except as otherwise specified herein, the terms used in this
2 section shall have the same meanings as those set forth in Chapter 2 of this code.

3 **ACCREDITED LABORATORY** means a laboratory that operates within the EPA
4 National Lead Laboratory Accreditation Program.

5 **ADJACENT PROPERTIES** means properties that adjoin the regulated area, including
6 but not limited to properties next to and at the corners of lot lines.

7 **CERTIFIED LEAD INSPECTOR/ASSESSOR** means any person licensed or certified
8 by the California Department of Health Services (DHS), as authorized by the United States
9 Environmental Protection Agency (EPA), in accordance with 40 CFR Part 745, subparts L or
10 Q, to perform risk assessment and/or lead-based paint inspection.

11 **CLEARANCE INSPECTION** means an on-site limited investigation *using visual*
12 *observation and sampling techniques* performed by an independent certified lead
13 inspector/assessor to verify the absence *of lead-based paint hazards, as specified in Title 17,*
14 *California Code of Regulations, Division 1, Chapter 8: Accreditation, Certification and Work Practices*
15 *for Lead-Based Paint and Lead Hazards.* Any analytical testing of sample(s) collected during
16 such inspection shall be performed by an accredited laboratory.

17 **COMMON AREA** means any interior part of a multi-unit residential building that is
18 accessible to all occupants, including but not limited to: corridor, hallways, lobbies, laundry
19 rooms, storage areas, stairways, porches and interior play areas.

20 **CONTAINMENT AND BARRIERS SYSTEMS** *means measures that prevent the migration of*
21 *work debris. Containment barriers shall be at least as effective at protecting human health and the*
22 *environment as those contained in the most current HUD Guidelines. refers to various measures that*
23 *prevent the migration of work debris beyond the regulated area, and usually includes the use of*
24 *disposable polyethylene plastic sheeting that is at least 6 mils thick (or two layers each 3 mil thick) to*
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1 protect the ground, floor or other interior surfaces, and to seal off windows, doors and ventilation
2 openings.

3 CONTRACTOR means any person, whether or not in possession of a valid State
4 contractor's license, who undertakes to or offers to undertake to or purports to have the
5 capacity to undertake to or submits a bid to, or does, by himself or herself or by or through
6 others, any action that may or will disturb or remove lead-based paint. For purpose of this
7 section, "contractor" shall also include subcontractors.

8 DISTURB OR REMOVE LEAD-BASED PAINT means any action that creates friction,
9 pressure, heat or a chemical reaction upon any lead-based paint on an interior or exterior
10 surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.
11 This term shall include all demolition and surface preparation activities that are performed
12 upon any surface containing lead-based paint.

13 EXTERIOR means the outside of a building or steel structure and the areas around it
14 within the boundaries of the property, including without limitations the outside of any detached
15 structures, including but not limited to outside and common walls, stairways, fences, light
16 wells, breezeways, sheds, and garages.

17 HEPA means a high efficiency particulate air filter.

18 ~~HUD Guidelines means the most recent "Guidelines for Evaluation and Control of Lead-Based~~
19 ~~Paint Hazards" promulgated by the United States Department of Housing and Urban Development.~~

20 INTERIOR means the inside of a building, including but not limited to, the inside of any
21 detached structures, interior common walls, common areas, and overhangs (projections).

22 LEAD means metallic lead and all inorganic compounds of lead.

23 LEAD-BASED PAINT or LEAD PAINT means (a) any paint, varnish, shellac, or other
24 coating on surfaces with lead in excess of 1.0 mg/cm² (milligram per square centimeter) as
25 measured by x-ray fluorescence (XRF) detector or laboratory analysis or in excess of 0.5

1 percent by weight, also expressed as 5,000 ppm (parts per million), 5,000 µg/g (micrograms
2 per gram), or 5,000 mg/kg (milligrams per kilogram) as measured by laboratory analysis; or
3 ~~(b2)~~ any paint, varnish, shellac, or other coating found in the interior or on the exterior of pre-
4 1979 buildings, structures, or properties or on the exterior of any steel structures, unless such
5 paint, varnish, shellac or other coating is shown, by a lead-based paint testing, that it does not
6 have the characteristics specified in (a).

7 LEAD-BASED PAINT TESTING means testing of surfaces, by laboratory analysis of
8 bulk sample or measurement using x-ray fluorescence detector, to determine the presence of
9 lead-based paint performed by an independent ~~c~~Certified ~~Lead Inspector/Assessor~~. Where
10 laboratory analysis is used as a method of testing-bulk paint samples, the laboratory shall be
11 ~~analyzed by~~ an accredited laboratory.

12 PERSON shall have the same meaning as that defined in Chapter 2 of this code and
13 shall also includes any department, agency, or commission of the City and County of San
14 Francisco, and State or federal agencies and departments to the extent allowable by law.

15 PRE-1979 BUILDING means any building whose original construction was completed
16 on or before December 31, 1978.

17 PROHIBITED PRACTICES means any work practice that disturbs or removes lead-
18 based paint using any of the following methods: (1) open flame burning or torching; (2) heat
19 guns without containment and barrier systems, or operating above 1,100 degrees Fahrenheit
20 (611.1 degrees Celsius) or causing the charring of paint; ~~(3) machine sanding or grinding;~~
21 ~~abrasive blasting or sandblasting without containment barriers or a HEPA vacuum local exhaust tool;~~
22 ~~(4) hydroblasting or high-pressure washing without containment and barrier systems; (54) dry~~
23 manual sanding or scraping, or machine sanding or grinding, or abrasive blasting or sandblasting
24 without containment and barrier systems or a HEPA vacuum local exhaust tool. ~~without containment~~
25 ~~barriers, with the exception that dry manual scraping without containment barriers is allowed in the~~

1 ~~following instances: (a) in conjunction with heat guns operating below 1,100 degrees Fahrenheit~~
2 ~~(611.1 degrees Celsius); (b) within 1.0 ft. (0.30 m) of electrical outlets; or (c) when treating defective~~
3 ~~paint spots totaling no more than 20 ft² (2.0 m²) on exterior surfaces.~~

4 REGULATED AREA means an area in the interior of any pre-1979 buildings, structures
5 or properties with one of the following occupancy classifications: Group E3 and Group R,
6 Divisions 1 and 3; or on the exterior of any pre-1979 buildings or any steel structures, in which
7 work is being performed that disturbs or removes lead-based paint, and to which access is
8 restricted in order to prevent migration of work debris. "Regulated area" shall also include any
9 area contaminated with work debris as a result of a breach or lack of containment and barriers
10 system, which constitutes ~~or a violation of the containment~~ requirement set forth in Section
11 3407.4.2.

12 RESPONSIBLE PARTY means either (1) the owner of the property where the owner or
13 the owner's employees or persons otherwise under the control of the owner are performing
14 the activities regulated under this section; or (2) the owner and the contractor where the
15 owner has entered into a contract with another to carry out the activities regulated under this
16 section.

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

20 WORK DEBRIS means any debris, including without limitations paint chips and dust,
21 resulting from any activity that disturbs or removes lead-based paint.

22 **3407.3 GENERAL PROHIBITIONS.**

23 No person shall disturb or remove lead-based paint through the use of
24 prohibited practices, or in any other way that generates work debris during demolition or work
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1 on the interior of Occupancy Group E3 and Group R, Divisions 1 and 3 or exterior of any pre-1979
2 buildings or any steel structure except in accordance with the requirements of this section.

3 For purposes of this section, all paint on the exterior of any pre-1979 building or any
4 steel structure shall be presumed to be lead-based paint. Any person seeking to rebut this
5 presumption shall establish through lead-based paint testing, or other means satisfactory to
6 the Director, that the paint on the building or steel structure in question is not lead-based
7 paint. Exemption: Work that disturbs or removes lead-based paint from the interior of an
8 owner-occupied pre-1979 ~~owner-occupied~~ dwelling unit shall be exempted from the
9 requirements for demolition or work on the interior of Occupancy Group R, Divisions 1 and 3 of
10 Section 3407.4, provided that such unit is not a licensed childcare facility. Notwithstanding this
11 exemption, the responsible parties shall take all reasonable measures to prevent the
12 migration of work debris from the interior of the owner-occupied dwelling unit to the outside of
13 such unit which includes without limitations, any interior common areas ~~in a multi-unit~~
14 ~~residential building~~ and the exterior of the building, during the course of any work that disturbs
15 or removes lead-based paint.

16 3407.4 PERFORMANCE STANDARDS.

17 3407.4.1 **Restrict Access.** Any person performing work subject to this section
18 shall restrict access by third parties to the regulated area, except as authorized by this section
19 or until the regulated area is cleaned in accordance with Section 3407.4.4. This sSubsection
20 ~~3407.4.1~~ shall not apply to regulated areas that are required for access or egress during the
21 course of the work, such as common areas, and where no alternative exists for access or
22 egress, in which case dust generation and migration shall be controlled through the use of
23 HEPA-attached tools or other feasible containment and barriers systems that allows for access
24 or egress.

1 3407.4.2 **Containment ~~and~~ Barriers Systems**. Any person performing work
2 subject to this section shall establish ~~a~~-containment and barrier systems that contains the work
3 debris within the regulated area.

4 3407.4.2.1 **Protect Ground**. Any person performing exterior work subject to
5 this section shall, to the maximum extent possible, protect the ground from contamination by
6 work debris by laying 6 mil plastic (or two layers each 3 mil thick) ~~a protective covering~~ on the
7 ground extending at least 10 feet from the work surface when possible.

8 3407.4.2.2 **Protect Floor and Furnishings**. Any person performing interior
9 work subject to this section shall protect with the use of 6 mil plastic (or two layers each 3
10 mil thick) any floors and other interior horizontal surfaces, carpets, rugs, drapes,
11 curtains, blinds, shades and furniture in the regulated areas from work debris when it is
12 impracticable to remove such items from the regulated areas during the course of the
13 work.

14 3407.4.3 **Prevent Migration**. Any person performing work subject to this
15 section shall make all reasonable efforts to prevent the migration of work debris beyond the
16 established containment and barriers systems during the course of the work. Such efforts may
17 include, but are not limited to, providing secure 6 mil plastic (or two layers each 3 mil thick)
18 protective covering, bagging, shrouding, and/or other safe containment and barrier systems ~~that~~
19 ~~is used~~ to prevent the migration of work debris; covering and sealing any windows, vent
20 openings and doors in the regulated area to prevent migration; and instituting measures to
21 prevent the tracking of dust from the regulated areas.

22 3407.4.4 **Clean up standards**. At the completion of any work that disturbs
23 or removes lead-based paint or when access to the regulated areas are required by State law
24 or local ordinance during the course of such work, the responsible party shall:
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1 3407.4.4.1 for interior work, make all efforts to remove all visible work debris
2 from the regulated areas. Such efforts shall include but are not limited to wet clean with
3 detergent any exposed interior horizontal hard surfaces in the regulated areas and HEPA
4 vacuum the regulated areas.

5 3407.4.4.2 for exterior work, make all efforts to remove all visible work debris
6 from the regulated areas.

7 **3407.5 NOTIFICATION REQUIREMENTS.**

8 **3407.5.1 Notification to the Director.** Except as otherwise authorized by this
9 section, prior to the commencement of exterior work subject to this section, the owner or
10 contractor shall provide written notice to the Director, either in person, by U.S. Mail or by fax,
11 of the following:

12 3407.5.1.1 The address and location of the project;

13 3407.5.1.2 The scope of work, including the specific location of the work
14 to be performed;

15 3407.5.1.3 The methods and tools for paint disturbance and/or
16 removal;

17 3407.5.1.4 The approximate age of the building or steel structure;

18 3407.5.1.5 The anticipated job start and completion dates for work
19 subject to this section;

20 3407.5.1.6 Whether the building is residential or nonresidential, and
21 whether it is owner-occupied or rental property;

22 3407.5.1.7 The dates by which the responsible party has or will fulfill any
23 ~~tenant~~ residential occupant or adjacent property notification requirements as described in
24 Sections 3407.5.4, 3407.5.5 and 3407.5. 6 below; and
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1 3407.5.1.8 The name, address, telephone number and, if available, pager
2 number of the party who will perform the specified work.

3 3407.5.1.9 The Director shall make available to the public a form
4 containing blank spaces for the information required by Sections 3407.5.1.1 to 3407.5.1.8,
5 inclusive.

6 3407.5.1.10 In lieu of the submission of the form set forth in Section
7 3407.5.1.9, the owner or contractor may submit the Lead Work Pre-Job Notification form
8 required by the California Division of Occupational Health and Safety pursuant to Section
9 1532.1 of Title 8 of the California Code of Regulations.

10 3407.5.2 **De Minimis Exemption.** Any person performing exterior work that
11 disturbs or removes less than 100 square feet or 100 linear feet of lead-based paint in total
12 shall be exempted from the requirements of Section 3407.5.1.

13 3407.5.3 **Sunset.** Unless extended by the Board of Supervisors, the
14 requirements of Section 3407.5.1 shall terminate two years from this effective date of this
15 subparagraph.

16 3407.5.4 **Post Sign** ~~when containment is required.~~ Not later than the
17 commencement of work subject to this section, the owner or, where the owner has entered
18 into a contract with a contractor to perform work subject to this section, the contractor shall
19 post signs in a location or locations clearly visible at the access points to interior regulated
20 areas, such as at the entrances of the affected residential unit(s) or common areas, and in the
21 case of exterior work, shall post signs in a location or locations clearly visible to adjacent
22 properties stating the following:

23 LEAD WORK IN PROGRESS

24 PUBLIC ACCESS TO REGULATED AREA PROHIBITED

25 POSTED IN ACCORDANCE WITH

1 SF BUILDING CODE SECTION 3407.5.45

2 3407.5.5 **Requirements for sign** ~~when containment is required~~. The sign
3 required by Section 3407.5.4 shall be not less than 24 inches (609.6 mm) square and shall be
4 in large boldface capital letters no less than 1/2 inch (12.7 mm) in size. The Director shall
5 make available to the public a sign form that complies with these requirements and states the
6 required information in English, Chinese and Spanish. The sign required by this section shall
7 remain in place until the work subject to this section has been completed. Where it is not
8 possible to post signs in a conspicuous location or locations clearly visible at the access points
9 to interior regulated areas, such as at the entrances of the affected residential unit(s) or common areas,
10 and in the case of exterior work, in a location or locations clearly visible to the adjacent properties,
11 the owner or, where the owner has entered into a contract with a contractor to perform work
12 subject to this section, the contractor shall provide the notice in written form, such as a letter
13 or memorandum, to the occupants of adjacent properties.

14 3407.5.6 **Notice to residential occupants**. Except as may be otherwise
15 inconsistent with state law, where work subject to the requirements of this section is to be
16 performed on a residential property or structure regulated by this section and occupied by one
17 or more residential occupants, not less than three business days before work subject to this
18 section is to commence, the owner shall provide the following information:

19 3407.5.6.1 The notice shall be in the form of a sign, letter or
20 memorandum and shall prominently state the following:

21 "Work is scheduled to be performed beginning [date] on this property that may disturb
22 or remove lead-based paint. The persons performing this work are required to follow sState
23 and local laws regulating work with lead-based paint. You may obtain information regarding
24 State laws by calling the California Department of Health Services. You may obtain information
25 regarding local laws requirements, or report any suspected violations of these requirements, by

1 calling the San Francisco Department of Building Inspection, ~~at a phone number designated by the~~
2 ~~Department of Building Inspection. Information regarding State laws may be obtained by calling the~~
3 ~~California Department of Health Services. In addition, you may obtain information regarding your~~
4 ~~rights as a tenant under the San Francisco Administrative Code, by calling the San Francisco Rent~~
5 ~~Stabilization Board. Finally,~~ The owner of this property is ~~also~~ required to provide residential
6 occupants with a copy of the U.S. Environmental Protection Agency pamphlet ~~entitled~~ "Protect
7 Your Family From Lead-Based Paint in Your Home", unless the owner has previously
8 provided this pamphlet to ~~the~~ residential occupants. ~~In addition, you may obtain information~~
9 ~~regarding your rights as a tenant under the San Francisco Administrative Code, by calling the Rent~~
10 ~~Board."~~

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

13 ~~3407.5.6.2 Availability of pamphlet. The owner shall provide to all residential~~
14 ~~occupants in the building the U.S. Environmental Protection Agency pamphlet entitled "Protect Your~~
15 ~~Family From Lead-Based Paint in Your Home," except that an owner shall not be required to comply~~
16 ~~with this requirement with respect to residential occupants to whom the owner has previously provided~~
17 ~~a copy of the pamphlet.~~

18 **3407.5.7 Early commencement of work.** An owner may commence, or may
19 authorize a contractor to commence, work subject to this section less than three business
20 days after providing notices required in Sections 3407.5.67 ~~and 3407.5.8~~ above when the
21 owner determines that such work must be commenced immediately in order to correct life-
22 safety hazards.

23 **3407.5.8 Early commencement of work requested by residential occupant**
24 ~~tenant.~~ Upon written request of residential occupant tenants, an owner may commence, or
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1 authorize a contractor to commence, work subject to this section less than three business
2 days after providing notices required in Sections 3407.5.6 *and 3407.5.7 above*.

3 **3407.6 INSPECTION AND SAMPLING.**

4 **3407.6.1 Authority to inspect.** The Director is authorized to inspect the
5 interior or exterior of any building or steel structure upon which work subject to the
6 requirements of this section is being performed for the purpose of determining whether the
7 work is being carried out in accordance with the requirements of this section. This inspection
8 authority shall be exercised in accordance with Section 104.2.3 of this code.

9 **3407.6.2 Response to complaint.** Upon receiving a complaint, the Director
10 shall (1) review the complaint; (2) determine whether a valid notification form has been filed
11 *with the Director* for the property in compliance with the requirements of Section 3407.5.12;
12 and (3) where deemed necessary by the Director, conduct an inspection at the job site within
13 two business days to determine the validity of the complaint.

14 **3407.6.3 Evaluation of complaint.** When determining the validity of a
15 complaint, if the Director is not able to observe the actual performance of any work practices
16 constituting violations of Sections 3407.3, 3407.4 and/or 3407.54, the Director shall investigate
17 and consider the following:

18 **3407.6.3.1** The containment *and barrier systems, work* measures and work
19 tools being used by the responsible party;

20 **3407.6.3.2** The color(s) of paint being disturbed or removed by the
21 responsible party;

22 **3407.6.3.3** The color(s), quantities, nature and locations of work debris;

23 **3407.6.3.4** The color(s), locations and conditions of paint on buildings or
24 steel structures adjacent to the regulated area, including without limitations adjacent
25 properties, to determine if such paint could be a source of the work debris;

1 3407.6.3.5 Any work being performed on adjacent properties which could
2 be a source of the work debris; and

3 3407.6.3.6 A record of clearance inspection of the regulated area
4 performed after the completion of the work regulated under this section or records of any lead-
5 based paint testing performed for the regulated area, if available-; and.

6 3407.6.3.7 Any other relevant evidence that the Director determines in
7 the exercise of his or her discretion would help to determine whether a violation of this section
8 has occurred.

9 3407.6.4 **Authority of Director.** The Director or the Director of the Department
10 of Public Health may also collect paint, dust and soil samples from the property where the
11 work is being performed and from adjacent properties in order to determine the validity of a
12 complaint. The Director shall have the authority to order a clearance inspection of the
13 regulated area if he or she determines that there has been a violation of the requirements of
14 Sections 3407.3 or 3407.4.

15 3407.7 **ENFORCEMENT.**

16 In addition to the enforcement authorities granted to the Director by Chapter 1 of
17 this code, whenever the Director determines that a violation of the provisions of this section
18 has occurred, the Director may assess an administrative penalty against the responsible
19 parties pursuant to Section 3407.8. The notice of penalty shall be served on the party against
20 whom the penalty is being assessed. The notice of penalty shall be final and shall be adopted by
21 the Director as a Director's Order if the responsible party fails to appeal the notice of penalty as
22 provided for in Subsection 3407.8. ~~Such party may appeal the imposition of the administrative penalty~~
23 by requesting, in writing, a Director's hearing. ~~Such appeal shall be made within fifteen (15) business~~
24 days from the issuance of the notice of penalty and shall specify grounds for appealing the imposition
25 of the administrative penalty. ~~Upon a timely request for a Director's hearing, the Director shall~~

1 ~~conduct an administrative hearing in accordance with Section 3407.9. The notice of penalty shall be~~
2 ~~final and shall be adopted by the Director as a Director's Order if the responsible party fails to appeal~~
3 ~~the notice of penalty as provided for in this subsection.~~

4 **3407.87 PENALTIES.**

5 3407.8.1 In addition to any other penalties authorized by law, the Director may
6 impose administrative penalties for violations of this section. Such penalty shall not exceed
7 \$500 per violation per day. In addition to the administrative penalties assessed pursuant to
8 this section, the Director may assess additional fees to cover the reasonable costs incurred in
9 enforcing the administrative penalties. Penalties and fees assessed shall continue to accrue
10 against the responsible party or parties until the violation of this section is abated or otherwise
11 remedied in the judgment of the Director. Each day in which the violation continues unabated
12 constitutes a separate and distinct violation.

13 3407.8.1.1 **Use of penalty.** Any administrative penalty and fee received by the
14 Treasurer of the City and County of San Francisco shall be placed in the Building
15 Inspection Fund and used to offset the Department's costs in connection with the
16 administration and enforcement of this section.

17 3407.8.2 Appeal penalty. A responsible party may appeal the imposition of the
18 administrative penalty by requesting, in writing, a Director's hearing. Such appeal shall be made
19 within fifteen (15) business days from the issuance of the notice of penalty and shall specify grounds
20 for appealing the imposition of the administrative penalty. Upon a timely request for a Director's
21 hearing, the Director shall conduct an administrative hearing in accordance with Section 3407.9.

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23 3407.8.2.1 **Alternative penalty.** The Director, in his or her discretion, may
24 allow a responsible party found to be in violation of this section to attend a training course
25 approved by the State of California Department of Health Services in lead-related construction

1 supervision and project monitoring in lieu of paying an administrative penalty pursuant to
2 Section 3407.8.1 in which case the penalty is stayed until such time that the responsible party
3 provides proof of satisfactory completion of the course. The Director shall require proof of
4 attendance and satisfactory completion of the course, including certification from the instructor
5 or provider of the course before dismissing the penalty assessed against the person. Failure
6 to provide such proof when requested by the Director shall result in the re-instatement of the
7 assessed penalty against the responsible party.

8 3407.8.2.1 **1 Applicability.** The alternative penalty set forth in Section
9 3407.8.2 shall only be available to persons who have not previously completed such a training
10 course and who have not been previously found by the Director to be in violation of this
11 section.

12 **3407.9 ADMINISTRATIVE ENFORCEMENT PROCEDURES.**

13 3407.9.1 **Action by the Director.** If the responsible parties failed to comply
14 with ~~the n~~Notice of ~~v~~Violation, ~~or~~ Stop Work Order and/or notice of penalty issued pursuant to
15 this code, the Director may:

16 3407.9.1.1 Refer the matter for a hearing in accordance to the provision
17 of this subsection or

18 3407.9.1.2 Issue another notice of violation, stop work order, and/or
19 notice of penalty, if appropriate or

20 3407.9.1.3 In the case where the responsible party is a contractor, file a
21 complaint with the State Contractor Licensing Board.

22 3407.9.2 **Notice of Hearing.** Notice of any hearing conducted under this
23 section shall be given in accordance with Chapter 1 of this code.

24 3407.9.3 **Hearing.** Any hearing held pursuant to this section shall be
25 conducted in accordance with Chapter 1 of this code.

1 3407.9.4 **Decision.** Except as otherwise provided for in this subsection, any
2 decision issued pursuant to this subsection shall be issued accordance with Chapter 1 of this
3 code.

4 3407.9.4.1. Where the order imposes administrative penalties, the order
5 shall apprise the responsible parties of their rights to seek judicial review in the Superior Court
6 of San Francisco pursuant to Section 1094.6 of the California Code of Civil Procedure.

7 3407.9.5 **Posting and Service of Order.** The Director's order shall be posted
8 and served in accordance with Chapter 1 of this code.

9 3407.9.6 **Appeal of Order.** Any person may appeal the non-monetary portion
10 of the Director's order issued pursuant to Section 3407.9.4 provided that such appeal is in
11 writing and filed with the Abatement Appeals Board pursuant to Chapter 1 of this code. Upon
12 the perfection of the appeal to the Abatement Appeals Board determination of the Clerk of the
13 Abatement Appeals Board that all requirements to make an appeal have been met, the monetary
14 portion of the Director's order shall be stayed pending the appeal.

15 3407.9.6.1 A responsible party against whom administrative penalties
16 are imposed may seek judicial review of the monetary portion of the order by filing a writ of
17 mandate with the Superior Court of San Francisco pursuant to Section 1094.6 of the
18 California Code of Civil Procedure.

19 3407.9.7 **Referral to the City Attorney's Office.** If the responsible parties fail
20 to comply with a final and non-appealable order, the Director may refer the order to the City
21 Attorney's Office for civil prosecution. In any action brought by the City Attorney's Office to
22 enforce a final and non-appealable order, the Responsible Party shall be liable for all costs
23 and fees including, but are not limited, to attorneys' fees incurred by the City.

24 3407.10 **MISCELLANEOUS.**
25

1 3407.10.1 **Method of Service.** Unless otherwise specified, any notices and
2 orders issued pursuant to this section shall be served in accordance with Chapter 1 of this
3 code.

4 3407.10.2 **Proof of Service.** The person serving the notice or order as
5 provided herein shall file an affidavit or declaration thereof under the penalty of perjury,
6 certifying the time and manner in which such notice was given. Such person shall also file
7 therewith any receipt card of such Notice or Order if service was performed by certified mail.

8 **3407.11 REMEDIES AND ENFORCEMENT BY CITY OFFICIALS.**

9 3407.11.1 **No obligation by city.** In undertaking the enforcement of this
10 section, the City and County of San Francisco is assuming an undertaking only to promote the
11 general welfare. It is not assuming, nor is it imposing on its officers and employees, an
12 obligation for breach of which it is liable in money damages to any person who claims that
13 such breach proximately caused injury.

14 3407. 11.2 **Discretionary duty.** Subject to the limitations of due process,
15 notwithstanding any other provision of this section, whenever the words "shall" or "must" are
16 used in establishing a responsibility or duty of the City, its elected or appointed officers,
17 employees or agents, it is the legislative intent that such words establish a discretionary
18 responsibility or duty requiring the exercise of judgment and discretion.

1 3407.12. **SEVERABILITY.** If any Section, paragraph, sentence, clause or phrase of
2 this section is for any reason held to be unconstitutional, invalid or ineffective by any court of
3 competent jurisdiction, such decision shall not affect the validity or effectiveness of the
4 remaining portions of this section. The Board of Supervisors declares that it would have
5 passed each section, paragraph, sentence, clause or phrase of this section irrespective of the
6 fact that any portion of this section could be declared unconstitutional, invalid or ineffective.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10
11 By: 
12 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 041577

Date Passed:

Ordinance amending Section 3407 et seq. of the Building Code, to amend the definitions of Clearance Inspection, Containment and Barrier Systems, and Prohibited Practices; to clarify scope of prohibitions on the removal or disturbance of lead-based paint; to specify the type of covering required to prevent contamination by lead debris; to specify where signs noticing lead work must be posted, to make further minor technical corrections to the work practices program for lead-based paint disturbance and removal; and to make findings in accordance with California Health and Safety Code Section 17958.5 as to the local climatic, topological and geological reasons for amending the State Building Code.

January 25, 2005 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

February 1, 2005 Board of Supervisors — FINALLY PASSED


Ayes: 10 - Alioto-Pier, Ammiano, Daly, Elsbernd, Ma, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Dufty

File No. 041577

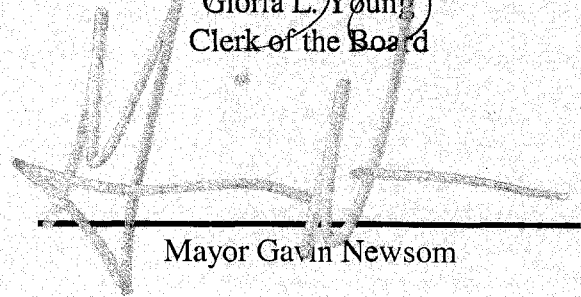
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on February 1, 2005
by the Board of Supervisors of the City and
County of San Francisco.

FEB 11 2005

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom