

[Lead-Based Paint Practices]

AMENDING PART II, CHAPTER I OF THE SAN FRANCISCO MUNICIPAL CODE (BUILDING CODE) BY AMENDING CHAPTER 36 TO CLARIFY ENFORCEMENT AUTHORITY AND THE RESPONSIBILITIES OF OWNERS AND CONTRACTORS CONCERNING WORK THAT DISTURBS LEAD PAINT ON BUILDING EXTERIORS AND MAKING MISCELLANEOUS CLARIFICATIONS AND CORRECTIONS BY REPEALING SECTIONS 3601 AND 3602 IN THEIR ENTIRETY; BY REPEALING SUBSECTIONS 3603.10, 3603.14, 3603.15, 3603.16, 3603.17, 3603.18, 3606.2.6, 3606.10, AND 3606.11; BY AMENDING SECTION 3608; BY AMENDING SUBSECTIONS 3604.1, 3605.1, 3606.1, 3606.2, 3606.2.2, 3606.2.7, 3606.4, 3606.5, 3606.6, 3606.6.1, 3606.6.2, 3606.7, 3606.8, 3606.9, 3607.1, 3607.2, 3607.3, 3607.4, 3609.1.1, 3609.1.2, 3609.1.4, 3609.1.5, 3609.2.1; BY RENUMBERING SUBSECTIONS 3603.11, 3603.12, 3603.13 TO 3603.10, 3603.11, 3603.12; BY RENUMBERING SUBSECTIONS 3603.19, 3603.20, 3603.21, 3603.22, 3603.23, TO 3603.14, 3603.15, 3603.16, 3603.17, 3603.18; RENUMBERING SUBSECTIONS 3606.2.7, 3606.2.8, 3606.2.9 TO 3606.2.6, 3606.2.7, 3606.2.8; AND BY ADDING SUBSECTIONS 3603.13, 3607.3.6 3608.1

Note: In Section 1, additions are underlined; deletions are in ((double parentheses)). Sections 2 and 3 are uncodified.

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

Section 1. Chapter 36 of the San Francisco Building Code is hereby amended by amending Chapter 36 to read as follows:

CHAPTER 36

WORK PRACTICES FOR EXTERIOR LEAD-BASED PAINT

((SECTION 3601. FINDINGS.

The Board of Supervisors finds that:

BUILDING INSPECTION COMMISSION
BOARD OF SUPERVISORS

1 **3601.1** Lead poisoning is preventable. Childhood lead poisoning is caused by
2 children ingesting lead from their environment. From 1991 through 1996, 459 children under
3 the age of six received services from the Department of Public Health (DPH) in response to
4 diagnosed lead poisoning. With the elimination of leaded gasoline, the major source of lead in
5 the environment in San Francisco comes from deteriorated (i.e., peeling, chipping) and
6 disturbed (i.e., by dry scraping, sanding, pressure blasting or burning) lead-based paint on
7 residential, commercial and public pre-1950 (224,797 units) and ninety-four percent is pre-
8 1980 (307,954 units). With this predominantly older housing stock, it can be assumed that
9 the majority of building exteriors have layers of lead-based paint, either as surface layers or
10 underneath non-lead paints. DPH case investigations have measured exterior paints with
11 lead content as high as 49% lead. Half of the worst-case exterior paint samples measured by
12 DPH were greater than 81,400 parts per million (or 8%) lead, sixteen times the definition of
13 lead-based paint. The uncontrolled disturbance and removal of exterior lead-based paint is
14 one of the major contributors of lead to the San Francisco environment. Furthermore, the
15 close proximity of buildings to one another in San Francisco, along with the small lot size
16 typical of many residential buildings, increases the risk of contamination of adjacent
17 properties by lead paint debris.

18 **3601.2** In the past, steel structures such as bridges, walkways, water towers,
19 billboards steel tanks and railway or roadway overpasses were painted with anti-corrosion
20 paints containing a high lead content. Disturbance or removal of such paints without proper
21 controls can create a significant lead dust hazard to surrounding residential areas.

22 **3601.3** Currently, the exterior surfaces of buildings are frequently prepared for
23 new painting by dry scraping, sanding, pressure blasting, or burning off the old paint. These
24 surface preparation methods generate waste products that include large quantities of paint
25 debris, paint dust, and pressure blasting agents. Depending on the concentration of lead in

1 the paint, these waste streams may constitute hazardous waste under state hazardous waste
2 laws. Currently, most waste products generated by exterior surface preparation in San
3 Francisco are not contained and are instead discharged directly into the air, soil, and sewer
4 system.

5 **3601.4** City Departments receive at least one call per day from residents
6 identifying an uncontrolled exterior paint disturbance and/or removal in a residential
7 neighborhood. During such a project, numerous small pieces of paint debris and sometimes
8 the blasting agents are deposited throughout the neighborhood—inside homes, on parked
9 cars, on sidewalks, and in back yards. San Francisco children and pets have been poisoned
10 with lead as a result of uncontrolled exterior paint disturbance and removal. Painters and
11 other workers working without personal protective equipment may also suffer health effects.
12 These persons can in turn transfer lead dust from their work clothes to their children and their
13 home environment.

14 **3601.5** Uncontrolled exterior paint disturbance and removal, including surface
15 preparation, deposits lead and other metals on the ground, and often in stormwater and
16 sewer drains. For example, when water blasting is used as a surface preparation or paint
17 removal method, the resulting wastewater may contain lead levels exceeding established
18 pollution limits. Once environmental contamination has occurred, the efforts and costs for
19 cleaning up such wide-spread damage are prohibitive. Preventing the spread of paint debris
20 and blasting agents is the best way to eliminate this major source of lead contamination.

21 **3601.6** Open-flame burning or torching of lead paint produces a lead fume in the
22 form of a fine particulate emission from the surface of the heated metal. Once the particulate
23 cools, it settles as a non-visible solid lead contaminant in the environment. Because burning
24 processes are extreme fire hazards and because lead fume contamination cannot be visually
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1 assessed, it is difficult to design and verify appropriate containment and cleanup. For these
2 reasons, this ordinance prohibits acetylene and propane open-flame burning and torching.

3 **3601.7** Currently, exterior paint disturbance and removal is subject to only
4 minimal regulation. Employers of workers performing paint work, regardless of the lead
5 content level of the paint, must adhere to the Occupational Safety and Health standards
6 promulgated by Cal/OSHA. Waste streams to soil and water are regulated after the lead has
7 been released into these environments. The Bay Area Air Quality Management District
8 (BAAQMD) governs the use of approved blasting agents and the production of gross
9 amounts of visible emissions, in addition to industrial lead emissions. Many projects that
10 disturb or remove paint, including most residential projects, do not generate emissions that
11 exceed the BAAQMD visible emissions and lead toxic air contaminant standards;
12 nevertheless, these operations can contaminate the worksite and the surrounding properties
13 with toxic paint debris. The Board intends to address the hazards caused by uncontrolled
14 exterior lead-based paint disturbance and removal, including surface preparation, by
15 establishing requirements governing these activities.))

16 **((SECTION 3602. GOALS.**

17 **3602.1** The goals of this law are to:

18 **3602.1.1** Ensure that persons performing exterior lead-based paint
19 disturbance or removal, including surface preparation, on residential, commercial, and
20 public buildings and steel structures use work practices that reduce environmental
21 contamination; and

22 **3602.1.2** Reduce childhood lead poisoning and other dust-related health
23 effects in San Francisco caused by uncontrolled exterior lead-based paint disturbance and
24 removal, including surface preparation.))

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1 **SECTION 3603. DEFINITIONS.**

2 **3603.1.** "Accredited Laboratory" means a laboratory which operates within the EPA
3 National Lead Laboratory Accreditation Program.

4 **3603.2.** "Adjacent Properties" means properties that adjoin the regulated area of the
5 property in question, including at the corners of lot lines.

6 **3603.3.** "Certified" means a process used by the State of California Department of
7 Health Services (DHS) and the US Environmental Protection Agency (EPA) to identify
8 individuals who have completed training and other requirements to permit the safe execution
9 of lead risk assessments and inspections, or lead hazard reduction and control work.
10 "Certified" includes current "Interim Certification" by DHS, unless and until this status is
11 modified by state legislation.

12 **3603.4.** "Containment Barriers" means measures that prevent the migration of lead
13 paint contaminants. Containment barriers shall be at least as effective at protecting human
14 health and the environment as those contained in the most current HUD Guidelines.

15 **3603.5.** "Contractor" means any person, whether or not in possession of a valid state
16 contractor's license, who undertakes to or offers to undertake to or purports to have the
17 capacity to undertake to or submits a bid to, or does by himself or herself or by or through
18 others, any action that may or will disturb or remove paint. For purpose of this Chapter,
19 "Contractor" shall also include subcontractors.

20 **3603.6.** "Disturb or Remove Paint" means any action that creates friction, pressure,
21 heat or a chemical reaction upon any lead-based paint on an exterior surface so as to
22 abrade, loosen, penetrate, cut through or eliminate paint from that surface. This term shall
23 include all demolition and surface preparation activities that are performed upon an exterior
24 surface containing lead-based paint.

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1 **3603.7.** "Exterior" means the outside of a building or steel structure and the areas
2 around it within the boundaries of the property, including the outside of any detached
3 structures, including but not limited to, outside and common walls, stairways, fences, light
4 wells, breezeways, sheds and garages.

5 **3603.8.** "HEPA" means a High Efficiency Particulate Air Filter.

6 **3603.9.** "HUD Guidelines" means the most recent "*Guidelines for Evaluation and*
7 *Control of Lead-Based Paint Hazards*" promulgated by the United States Department of
8 Housing and Urban Development (HUD).

9 **((3603.10** "Landlord" means an owner, lessor, or sublessor who receives or is
10 entitled to receive rent for the use or occupancy of any commercial or residential rental
11 property in the City and County of San Francisco, and the agent, representative or successor
12 of any of the foregoing.))

13 **3603.((11))10.** "Lead" means metallic lead and all inorganic and organic compounds
14 of lead.

15 **3603.((12))11.** "Lead-Based Paint" or "Lead Paint" means any paint, varnish, shellac
16 or other coating on surfaces with lead in excess of 1.0 mg/cm² (milligrams per square
17 centimeter) as measured by x-ray fluorescence (XRF) detector or laboratory analysis or in
18 excess of 0.5 percent by weight, also expressed as 5,000 ppm (parts per million), 5,000 µg/g
19 (micrograms per gram), or 5,000 mg/kg (milligrams per kilogram) as measured by laboratory
20 analysis.

21 **3603.((13))12.** "Lead-Based Paint Testing" means testing of surfaces to determine the
22 presence of lead-based paint performed by an independent Certified Risk
23 Assessor/Inspector, in accordance with the HUD Guidelines, and where testing includes bulk
24 paint samples, such samples are analyzed by an Accredited Laboratory.

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1 ((3603.14 "Lead-Contaminated Dust" means surface dust that contains an area or
2 mass concentration of Lead in excess of 100 µg/ft² (micrograms per square foot) on
3 uncarpeted floors, 500 µg/ft² on interior window sills, and 800 µg/ft² on exterior window sills
4 and exterior horizontal surfaces.))

5 ((3603.15 "Lead Dust Testing" means tests conducted in accordance with the most
6 recent federal guidelines to determine the presence or absence of Lead-Contaminated Dust
7 within a defined area.))

8 ((3603.16 "Lead-Contaminated Soil" means areas that contain total Lead in excess
9 of 400 ppm (parts per million) in bare soil.))

10 ((3603.17 "Lead Soil Testing" means tests conducted in accordance with the most
11 recent federal guidelines to determine the presence or absence of Lead-Contaminated Soil
12 within a defined area.))

13 ((3603.18 "Lead Paint Contaminants" means substances containing lead paint
14 which are potentially hazardous to human health or the environment, including but not limited
15 to paint chips and paint-containing soil, debris, dust, abrasives, fumes and water.))

16 **3603.13.** "Owner" means the owner of a property or the owner's authorized agent.

17 **3603.((19))14.** "Person" means a natural person, his or her heirs, executors,
18 administrators or assigns, and also includes a municipal or state agency to the extent
19 allowable by law, a firm, joint stock company, business concern, association, partnership or
20 corporation, its or their successors or assigns, or the agent of any of the aforesaid.

21 **3603.((20))15.** "Prohibited Practices" means work practices prohibited under section
22 3605 of this Chapter.

23 **3603.((21))16.** "Responsible Party" means either (1) the owner of the property where
24 the owner or the owner's employees or persons otherwise under the control of the owner are
25 performing the activities regulated under this Chapter; or (2) the owner and the contractor

1 where the owner has entered into a contract with another to carry out ((contractor is
2 performing)) the activities regulated under this Chapter.

3 **3603.~~((22))17.~~** "Regulated Area" means an area in which work is being performed that
4 disturbs or removes paint, and to which access is restricted in order to prevent migration of
5 paint contaminants. "Regulated area" shall also include any area contaminated with lead
6 paint contaminants as a result of a breach or lack of containment barriers or a violation of the
7 containment requirement set forth in section 3605.1.

8 **3603.~~((23))18.~~** "Steel Structure" means any structure that is not a building and which
9 has exterior surfaces made of steel or other metal, such as bridges, billboards, walkways,
10 water towers, steel tanks and roadway or railway overpasses.

11 **SECTION 3604. PROHIBITION.**

12 **3604.1. Generally.** No person shall disturb or remove lead paint, or in any other way
13 generate lead paint contaminants during demolition or work on the exterior of any existing ((
14 residential, commercial or public)) building((,)) or steel structure except in accordance with the
15 requirements of this Chapter.

16 **3604.2. Exemptions.** This Chapter shall not apply to activities that disturb or remove
17 paint where those activities are being performed on buildings or steel structures on which
18 construction was completed after 1978, or on new construction. For purposes of this
19 Chapter, all paint on the exterior of any building or steel structure on which the original
20 construction was completed prior to December 31, 1978, shall be presumed to be lead-based
21 paint. Any person seeking to rebut this presumption shall establish through lead-based paint
22 testing, or other means satisfactory to the Director, that the paint on the building or steel
23 structure in question is not lead-based paint.

24 **3604.3. De Minimis Notification Exemption.** Any person performing work subject to
25 this Chapter who disturbs or removes less than ten (10) square feet of lead-based paint in

1 total shall not be required to comply with the notification requirements set forth in Section
2 3606 of this Chapter.

3 **SECTION 3605. PERFORMANCE STANDARDS.**

4 **3605.1. Containment Barriers.** Any person performing work subject to this Chapter
5 shall establish containment barriers at least as effective at protecting human health and the
6 environment as those contained in the HUD Guidelines or the *Lead Paint Removal Guide*
7 published by the Steel Structure Painting Council, whichever is applicable.

8 **3605.2. Prohibited Practices.** No person performing work subject to this Chapter
9 shall use prohibited practices, including but not limited to:

10 **3605.2.1** Acetylene or propane burning and torching;

11 **3605.2.2** Scraping, sanding or grinding without containment barriers or a
12 HEPA local vacuum exhaust tool;

13 **3605.2.3** Hydroblasting or high-pressure wash without containment barriers;

14 **3605.2.4** Abrasive blasting or sandblasting without containment barriers or a
15 HEPA local vacuum exhaust tool;

16 **3605.2.5** Heat guns operating above 1,100 degrees Fahrenheit;

17 **3605.3. Migration.** Any person performing work subject to this Chapter shall make all
18 reasonable efforts to prevent migration of lead paint contaminants beyond containment
19 barriers during the course of the work.

20 **3605.4. Visible Lead Paint Contaminants.** The responsible party performing work
21 subject to this Chapter shall make all reasonable efforts to remove all visible lead paint
22 contaminants from all regulated areas of the property prior to completion of the work.

23 **SECTION 3606. NOTIFICATION REQUIREMENTS.**

24 **3606.1. Notifying Bidders.** In any instance where a property owner or contractor is
25 requesting bids for work that is subject to this Chapter, the property owner or contractor shall

1 notify all bidders of any paint inspection reports verifying the presence ((or absence)) of any
2 lead-based paint in the regulated area of the proposed project.

3 **3606.2. Contents of Notice.** Except as otherwise authorized by this Chapter, prior to
4 the commencement of work subject to this Chapter, the ((responsible party)) owner or
5 contractor shall provide written notice to the Director, either in person, by U.S. Mail or by fax,
6 of the following:

7 **3606.2.1.** the location of the project;

8 **3606.2.2.** the ((nature and approximate square footage of the painted
9 surface being disturbed and/or removed)) scope of work;

10 **3606.2.3.** the methods and tools for paint disturbance and/or removal;

11 **3606.2.4.** the approximate age of the building;

12 **3606.2.5.** the anticipated job start and completion dates for work subject to
13 this Chapter;

14 ((**3606.2.6.** whether the responsible party has reason to know or presume that
15 lead-based paint is present;))

16 **3606.2.((7))6.** whether the building is residential or non-residential, and
17 whether it is owner-occupied or rental property((, and the approximate number of dwelling
18 units, if any, on the property));

19 **3606.2.((8))7.** the dates by which the responsible party has or will fulfill
20 any tenant or adjacent property notification requirements as described in sections 3606.4 and
21 3606.5 below; and

22 **3606.2.((9))8.** the name, address, telephone number, and if available,
23 pager number, of the party who will perform the specified work.

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1 **3606.3. Contents of Notice.** The Director shall make available to the public a form
2 that complies with the requirements of section 3606.2 and contains blank spaces for the
3 required information.

4 **3606.4. Sign When Containment is Required.** ((Where containment is required to
5 prevent migration of lead paint contaminants to another property, n)) Not later than the
6 commencement of work subject to this Chapter, the ((responsible party)) owner, or where the
7 owner has entered into a contract with a contractor to perform work subject to this Chapter,
8 the contractor shall post signs in a location or locations clearly visible to the adjacent
9 properties stating the following:

10 **LEAD WORK IN PROGRESS**

11 **PUBLIC ACCESS TO WORK AREA PROHIBITED**

12 **POSTED IN ACCORDANCE WITH BUILDING CODE SECTION 3606**

13 **3606.5. Requirements for Sign When Containment is Required.** The sign required
14 by section 3606.4 shall be not less than 24 inches square, and shall be in large boldface
15 capital letters no less than one-half inch in size. The Director shall make available to the
16 public a form that complies with these requirements and states the required information in
17 English, Chinese and Spanish. The sign required by this section shall remain in place until
18 the work subject to this Chapter has been completed. Where it is not possible to post signs in
19 a conspicuous location or locations clearly visible to the adjacent properties, the ((responsible
20 party)) owner, or where the owner has entered into a contract with a contractor to perform
21 work subject to this Chapter, the contractor shall provide the notice in written form, such as a
22 letter or memorandum, to the occupants of adjacent properties.

23 **3606.6. Notice ((by Landlord)) to Tenants.** Where ((the responsible party is a
24 landlord, a person or persons in the employ of a landlord, or where a landlord has entered
25 into a contract with a contractor to perform work subject to this Chapter)) work subject to the

1 requirements of this Chapter is to be performed on a residential property occupied by one or
2 more tenants, not less than three business days before work subject to this Chapter is to
3 commence, the ((landlord)) owner shall provide the following information:

4 **3606.6.1. ((Required)) Contents of Notice ((To Tenants)).** Except as may be
5 otherwise inconsistent with state law, provide written notice to tenants of the building on
6 which the work is being performed that lead-related work is being performed. This notice
7 shall be in the form of a sign, letter, or memorandum; and shall prominently state the
8 following:

9 "Work is scheduled to be performed beginning [date] on this property that may disturb
10 or remove lead-based paint. The persons performing this work are required to follow
11 state and local laws regulating work with lead-based paint. You may obtain
12 information regarding these laws, or report any suspected violations of these laws, by
13 calling the Department of Building Inspection at 558-6598. The owner of this property
14 is also required to provide tenants with a copy of the U.S. Environmental Protection
15 Agency pamphlet entitled *Protect Your Family From Lead-Based Paint in Your Home,*
16 unless the owner has previously provided this pamphlet to the tenant."

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

19 **3606.6.2. Availability of Pamphlet.** ((Make known, and available upon
20 request)) The owner shall provide to all tenants in the building, the U.S. Environmental
21 Protection Agency pamphlet entitled *Protect Your Family From Lead-Based Paint in Your*
22 *Home*, except that an owner ((landlord)) shall not be required to comply with this requirement
23 with respect to tenants to whom the owner ((landlord)) has previously provided a copy of the
24 pamphlet.

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1 **3606.7. Notice by Contractor.** Where work subject to the requirements of this
2 Chapter is being performed by ((the responsible party is)) a contractor, the ((responsible
3 party)) contractor shall, at least ((72 hours)) three business days prior to the commencement
4 of work on residential property subject to this Chapter, notify the property owner of potential
5 lead hazards during the project by distributing the U.S. Environmental Protection Agency
6 pamphlet entitled *Protect Your Family From Lead in Your Home*.

7 **3606.8. Early Commencement of Work by Owner.** A property owner may
8 commence, or may authorize a contractor to commence, work subject to this Chapter less
9 than three business days after providing notices required in sections ((3606.2, 3606.4))
10 3606.6 and 3606.7 above when the property owner determines that such work must be
11 commenced immediately in order to correct an emergency condition such that a delay would
12 pose an immediate threat to the safety or well-being of the building's occupants, or to correct
13 life-safety hazards.

14 **3606.9. Early Commencement of Work Requested by Tenant.** Upon written
15 request of tenants, ((the landlord)) an owner may commence or authorize a contractor to
16 commence, work subject to this Chapter less than three business days after providing notices
17 required in sections ((3606.2, 3606.4,)) 3606.6 and 3606.7 above.

18 **((SECTION 3606.10. Notice of Lead Contaminated Dust or Soil.** Except as may be
19 otherwise inconsistent with state law, any property owner that has performed lead dust testing
20 or lead soil testing in a regulated area shall provide written notice to tenants of the property of
21 the presence of any lead-contaminated dust or lead-contaminated soil verified by the test
22 results within five business days of receipt of written results. This notice shall be in the form
23 of a sign or signs clearly visible from locations outside the regulated areas and shall
24 prominently state the following:

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1 **WARNING: Results of tests for lead contamination received by the owner**
2 **of this property on [date] indicate the presence of lead-contaminated [dust**
3 **or soil] in [state area]. For more information, contact [property owner or**
4 **representative at xxx-xxxx]. Removal of this sign does not necessarily**
5 **mean that the lead contamination has been eliminated.**

6 The Director shall make available to the public a form that complies with the above
7 requirements and restates the generic information required by the notice in Chinese and
8 Spanish.))

9 **((SECTION 3606.11. Removal of Notice of Lead Contaminated Dust or Soil.** The
10 owner may remove such signs when: (1) all visible lead paint contaminants have been
11 removed from the regulated area in accordance with section 3605.4, prior to the completion of
12 the work; or (2) upon receipt of results of additional lead dust or lead soil testing indicating
13 that no lead-contaminated dust or lead-contaminated soil remains in the regulated area.))

14 **SECTION 3607. INSPECTION AND SAMPLING.**

15 **3607.1. Authority to Inspect.** The Director is authorized to inspect the exterior of any
16 building or steel structure upon which work subject to the requirements of this Chapter is
17 being performed for the purpose of determining whether the work is being carried out in
18 accordance with the requirements of this Chapter. This inspection authority shall be
19 exercised in accordance with section 104.2.3 of this Code ((only at reasonable hours, and
20 entry shall be made onto property only with the consent of the owner or tenants thereof, or
21 with a proper inspection warrant or other remedy provided by law to secure entry)).

22 **3607.2. Response to Complaint.** Upon receiving a citizen complaint, the Director
23 shall (1) review the complaint; (2) determine whether a ((responsible party has filed a)) valid
24 notification form has been filed for the property in compliance with the requirements of
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1 Section 3606.2; and (3) where deemed necessary by the Director, conduct an inspection at
2 the job site within ((48 hours)) two business days to determine the validity of the complaint.

3 **3607.3. Evaluation of Complaint.** When determining the validity of a complaint, if
4 the Director is not able to observe the actual performance of any work practices constituting
5 violations of the performance standards of Section 3605, the Director shall investigate and
6 consider the following:

7 **3607.3.1** the containment measures and work tools being used by the
8 responsible party;

9 **3607.3.2** the color(s) of paint being disturbed or removed by the responsible
10 party;

11 **3607.3.3** the color(s), quantities, nature, and locations of alleged visible lead
12 paint contaminants;

13 **3607.3.4** the colors, locations, and conditions of paint on adjacent
14 properties, to determine if such paint could be a source of the alleged visible
15 lead paint contaminants; and

16 **3607.3.5** any work being performed on adjacent properties which could be a
17 source of the alleged visible lead paint contaminants.

18 **3607.3.6** any other relevant evidence that the Director determines in the
19 exercise of his or her discretion would help to determine whether a violation of
20 this Chapter has occurred.

21 **3607.4. Authority of Director to Sample.** The Director or the Director of the
22 Department of Public Health may also collect paint, dust, and soil samples from the property
23 where the work is being performed and from adjacent properties in order to determine the
24 validity of a complaint.

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1 **SECTION 3608. ENFORCEMENT.** The Director is authorized to make use of all
2 enforcement authority authorized by law, including, but not limited to, the authority set forth in
3 sections 102 and 103 of this Code to enforce against any violation of this Chapter. Where the
4 owner and the contractor are both responsible parties, the Director may proceed against
5 either the owner or the contractor, or against both. The Director is further authorized,
6 pursuant to Chapter 17 of this Code, following issuance of a Notice of Violation, to require as
7 a condition of resuming work, that the responsible party conduct a special inspection by a
8 certified risk assessor in order to establish that the regulated area is in compliance with this
9 Chapter.

10 **3608.1 Stop Work Orders.** The Director shall have the power to stop any work that is
11 disturbing or removing lead paint or otherwise generating lead paint contaminants in violation
12 of this Chapter or the construction, alteration or repairs of any steel structure or building
13 subject to the requirements of this Chapter when, in the opinion of the Director, such work is
14 being done in violation of any of the provisions of this Chapter and to order all work to be
15 stopped by notice in writing served upon any persons engaged in the doing or causing such
16 work to be done. The work shall be stopped immediately and shall not be resumed without
17 authorization.

18 **SECTION 3609. PENALTIES.** In addition to any other penalties authorized by law,
19 the Director may impose the following penalties for violations of this Chapter.

20 **3609.1. Administrative Penalties.** The Director may impose administrative penalties
21 for violations of this Chapter in accordance with the following procedure:

22 **3609.1.1. Notice.** The Director shall notify the responsible party ((in violation
23 of)) to whom a Notice of Violation has been issued that he or she has ((72 hours)) up to three
24 business days to correct or otherwise ((remedy)) abate the violation or be subject to the
25 imposition of administrative penalties. For those violations that create an immediate danger

1 to health or safety and violations of notification requirements pursuant to section 3606, the
2 responsible party to whom a Notice of Violation has been issued shall immediately ((remedy))
3 abate the violation or be subject to the imposition of administrative penalties. In
4 circumstances where the Director is aware that there is more than one responsible party, the
5 Director shall make reasonable efforts to give notice to all responsible parties.

6 **3609.1.2. Limits.** Administrative penalties assessed against a violator
7 pursuant to section 3609.1.1 shall not exceed \$((1,000)) 500 per day per violation.

8 **3609.1.3. Additional Fees.** In addition to the administrative penalty
9 assessed pursuant to sections 3609.1.1 and 3609.1.2, the Director may assess additional
10 fees to cover the reasonable costs incurred in enforcing the administrative penalty.

11 **3609.1.4. Length of Penalties.** Penalties and fees assessed under sections
12 3609.1.1 and 3609.1.3 shall continue to accrue against the responsible party or parties until
13 the violation of this Chapter is ((corrected)) abated or otherwise remedied in the judgment of
14 the Director.

15 **3609.1.5. Collection.** The Director, or his or her designated representative,
16 is responsible for charging and collecting any penalty or fee assessed pursuant to this
17 section. The Director shall notify the responsible party or parties in writing of the cost of the
18 penalty and fee and declare that such costs are due and payable to the Treasurer of the City
19 and County of San Francisco. If the penalty and fee are not paid within 30 days of this notice,
20 the Director shall request that the Tax Collector ~~to~~ pursue collection of the penalty and fee, up
21 to and including imposition of a special assessment lien in accordance with the requirements
22 of Article XX of Chapter 10 of the San Francisco Administrative Code (commencing with
23 section 10.230).

24 **3609.1.6. Use of Penalty.** Any administrative penalty and fee received by the
25 Treasurer of the City and County of San Francisco shall be placed in the Building Inspection

1 Fund and used to offset the Department's costs in connection with the administration and
2 enforcement of this Chapter.

3 **3609.1.7. Review of Imposition of Penalty.** Any person that is designated as
4 the a party responsible for a violation or is subject to an administrative penalty or fee may
5 seek administrative review of the designation or the assessment of the penalty or fee.

6 Administrative review shall be initiated by the filing of an appeal with Director that specifies in
7 detail the basis for contesting the designation of the responsible party or the assessment of
8 the penalty or fee. Such appeal shall be filed within 15 business days of the imposition of the
9 penalty or fee. Within ten days of the receipt of the appeal, unless extended by mutual
10 agreement of the affected parties, the Director shall cause a hearing to be held before a
11 hearing officer. The decision of the hearing officer shall be final.

12 **3609.2. Alternative Penalty.**

13 **3609.2.1. Scope.** A ((person)) responsible party in violation of this Chapter
14 may elect to attend a training course approved by the state Department of Health Services in
15 lead-related construction supervision and project monitoring in lieu of paying an
16 administrative penalty pursuant to section 3609.1. The Director shall require proof of
17 attendance and satisfactory completion of the course, including certification from the
18 instructor or provider of the course before dismissing the penalty assessed against the
19 person.

20 **3609.2.2. Applicability.** The election set forth in section 3609.2.1 shall only
21 be available to persons who have not previously completed such a training course, and who
22 have not been previously found by the Director to be in violation of this Chapter.

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1 **SECTION 3610. REMEDIES AND ENFORCEMENT BY CITY OFFICIALS.**

2 **3610.1. No Obligation by City.** In undertaking the enforcement of this ordinance, the
3 City and County of San Francisco is assuming an undertaking only to promote the general
4 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for
5 breach of which it is liable in money damages to any person who claims that such breach
6 proximately caused injury.

7 **3610.2. Discretionary Duty.** Subject to the limitations of due process,
8 notwithstanding any other provision of this code whenever the words "shall" or "must" are
9 used in establishing a responsibility or duty of the City, its elected or appointed officers,
10 employees, or agents, it is the legislative intent that such words establish a discretionary
11 responsibility or duty requiring the exercise of judgment and discretion.

12 **SECTION 3611. SEVERABILITY.** If any section, paragraph, sentence, clause or
13 phrase of this Chapter is for any reason held to be unconstitutional, invalid or ineffective by
14 any court of competent jurisdiction, such decision shall not affect the validity or effectiveness
15 of the remaining portions of this Article. The Board of Supervisors declares that it would have
16 passed each section, paragraph, sentence, clause or phrase of this Chapter irrespective of
17 the fact that any portion of this Chapter could be declared unconstitutional, invalid or
18 ineffective.

19 Section 2. The Board of Supervisors finds that:

20 (a) Lead poisoning is preventable. Childhood lead poisoning is caused by children
21 ingesting lead from their environment. From 1991 through 1996, 459 children under the age
22 of six received services from the Department of Public Health (DPH) in response to
23 diagnosed lead poisoning. With the elimination of leaded gasoline, the major source of lead in
24 the environment in San Francisco comes from deteriorated (i.e., peeling, chipping) and
25 disturbed (i.e., by dry scraping, sanding, pressure blasting or burning) lead-based paint on

1 residential, commercial and public buildings. Sixty-eight percent of San Francisco's housing
2 stock is pre-1950 (224,797 units) and ninety-four percent is pre-1980 (307,954 units). With
3 this predominantly older housing stock, it can be assumed that the majority of building
4 exteriors have layers of lead-based paint, either as surface layers or underneath non-lead
5 paints. DPH case investigations have measured exterior paints with lead content as high as
6 49% lead. Half of the worst-case exterior paint samples measured by DPH were greater than
7 81,400 parts per million (or 8%) lead, sixteen times the definition of lead-based paint. The
8 uncontrolled disturbance and removal of exterior lead-based paint is one of the major
9 contributors of lead to the San Francisco environment. Furthermore, the close proximity of
10 buildings to one another in San Francisco, along with the small lot size typical of many
11 residential buildings, increases the risk of contamination of adjacent properties by lead paint
12 debris.

13 (b) In the past, steel structures such as bridges, walkways, water towers, billboards
14 steel tanks and railway or roadway overpasses were painted with anti-corrosion paints
15 containing a high lead content. Disturbance or removal of such paints without proper controls
16 can create a significant lead dust hazard to surrounding residential areas.

17 (c) Currently, the exterior surfaces of buildings are frequently prepared for new painting
18 by dry scraping, sanding, pressure blasting, or burning off the old paint. These surface
19 preparation methods generate waste products that include large quantities of paint debris,
20 paint dust, and pressure blasting agents. Depending on the concentration of lead in the
21 paint, these waste streams may constitute hazardous waste under state hazardous waste
22 laws. Currently, most waste products generated by exterior surface preparation in San
23 Francisco are not contained and are instead discharged directly into the air, soil, and sewer
24 system.

1 (d) City Departments receive at least one call per day from residents identifying an
2 uncontrolled exterior paint disturbance and/or removal in a residential neighborhood. During
3 such a project, numerous small pieces of paint debris and sometimes the blasting agents are
4 deposited throughout the neighborhood—inside homes, on parked cars, on sidewalks, and in
5 back yards. San Francisco children and pets have been poisoned with lead as a result of
6 uncontrolled exterior paint disturbance and removal. Painters and other workers working
7 without personal protective equipment may also suffer health effects. These persons can in
8 turn transfer lead dust from their work clothes to their children and their home environment.

9 (e) Uncontrolled exterior paint disturbance and removal, including surface preparation,
10 deposits lead and other metals on the ground, and often in stormwater and sewer drains. For
11 example, when water blasting is used as a surface preparation or paint removal method, the
12 resulting wastewater may contain lead levels exceeding established pollution limits. Once
13 environmental contamination has occurred, the efforts and costs for cleaning up such wide-
14 spread damage are prohibitive. Preventing the spread of paint debris and blasting agents is
15 the best way to eliminate this major source of lead contamination.

16 (f) Open-flame burning or torching of lead paint produces a lead fume in the form of a
17 fine particulate emission from the surface of the heated metal. Once the particulate cools, it
18 settles as a non-visible solid lead contaminant in the environment. Because burning
19 processes are extreme fire hazards and because lead fume contamination cannot be visually
20 assessed, it is difficult to design and verify appropriate containment and cleanup. For these
21 reasons, this ordinance prohibits acetylene and propane open-flame burning and torching.

22 (g) Currently, exterior paint disturbance and removal is subject to only minimal
23 regulation. Employers of workers performing paint work, regardless of the lead content level
24 of the paint, must adhere to the Occupational Safety and Health standards promulgated by
25 Cal/OSHA. Waste streams to soil and water are regulated after the lead has been released

1 into these environments. The Bay Area Air Quality Management District (BAAQMD) governs
2 the use of approved blasting agents and the production of gross amounts of visible
3 emissions, in addition to industrial lead emissions. Many projects that disturb or remove
4 paint, including most residential projects, do not generate emissions that exceed the
5 BAAQMD visible emissions and lead toxic air contaminant standards; nevertheless, these
6 operations can contaminate the worksite and the surrounding properties with toxic paint
7 debris. The Board intends to address the hazards caused by uncontrolled exterior lead-
8 based paint disturbance and removal, including surface preparation, by establishing
9 requirements governing these activities.

10 Section 3. The goals of this Ordinance are to:

11 (a) Ensure that persons performing exterior lead-based paint disturbance or removal,
12 including surface preparation, on residential, commercial, and public buildings and steel
13 structures use work practices that reduce environmental contamination; and

14 (b) Reduce childhood lead poisoning and other dust-related health effects in San
15 Francisco caused by uncontrolled exterior lead-based paint disturbance and removal,
16 including surface preparation.

17
18 APPROVED AS TO FORM:

19
20 LOUISE H. RENNE
21 City Attorney

22
23 By:  _____

24 William Chan
25 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: 981967

Date Passed:

Ordinance amending Building Code by amending Chapter 36 to clarify enforcement authority and the responsibilities of owners and contractors concerning work that disturbs lead paint on building exteriors, and making miscellaneous clarifications and corrections by repealing Sections 3601 and 3602 in their entirety; by repealing subsections 3603.10, 3603.14, 3603.15, 3603.16, 3603.17, 3603.18, 3606.2.6, 3606.10, and 3606.11; by amending Section 3608; by amending subsections 3604.1, 3605.1, 3606.1, 3606.2, 3606.2.2, 3606.2.7, 3606.4, 3606.5, 3606.6, 3606.6.1, 3606.6.2, 3606.7, 3606.8, 3606.9, 3607.1, 3607.2, 3607.3, 3607.4, 3609.1.1, 3609.1.2, 3609.1.4, 3609.1.5, 3609.2.1; by renumbering subsections 3603.11, 3603.12, 3603.13 to 3603.10, 3603.11, 3603.12; by renumbering subsections 3603.19, 3603.20, 3603.21, 3603.22, 3603.23, to 3603.14, 3603.15, 3603.16, 3603.17, 3603.18; renumbering subsections 3606.2.7, 3606.2.8, 3606.2.9 to 3606.2.6, 3606.2.7, 3606.2.8; and by adding subsections 3603.13, 3607.3.6, 3608.1.

January 5, 1999 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Medina, Newsom, Teng, Yaki, Yee

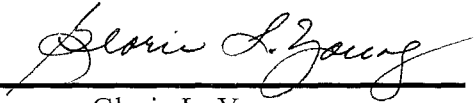
January 11, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

Absent: 1 - Medina

File No. 981967

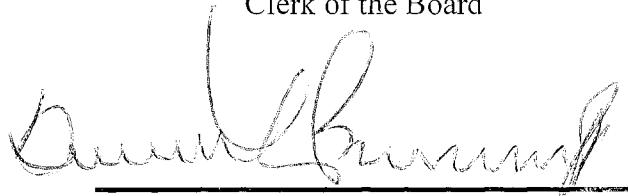
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on January 11, 1999 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young
Clerk of the Board

JAN 22 1999

Date Approved



Mayor Willie L. Brown Jr.