

AN ACT

Codification
District of
Columbia
Official Code

2001 Edition

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Supp.

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Lead Hazard Prevention and Elimination Act of 2008 to expand protections for pregnant women and children under 6 years of age, to modify disclosure requirements, to expand the permissible use of the Lead Poisoning Prevention Fund, to require the Mayor to report on its implementation, to require permission of a tenant for inspections unless a warrant is obtained, and to amend the Housing Regulations of the District of Columbia to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Lead Hazard Prevention and Elimination Amendment Act of 2010”.

Sec. 2. The Lead Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 8-231.01) is amended as follows:

Amend
§ 8-231.01

(1) Paragraph (1) is amended by striking the phrase “set of measures that eliminate” and inserting the phrase “a set of measures, except interim controls, that eliminates” in its place.

(2) Paragraph (4) is amended by striking the phrase “March 1,”.

(3) A new paragraph (9A) is added to read as follows:

“(9A) “Dust action level” means the concentration of lead that constitutes a lead-based paint hazard for dust and requires lead-based paint hazard elimination.”.

(4) Paragraph (13) is amended by striking the phrase “and adopted by the Mayor” and inserting the phrase “or adopted by the Mayor” in its place.

(5) Paragraph (20) is amended by striking the phrase “and adopted” and inserting the phrase “which shall be adopted” in its place.

(6) Paragraph (24) is amended to read as follows:

“(24) Lead-contaminated dust” means surface dust based on a wipe sample that contains a mass per area concentration of lead equal to or exceeding:

“(A) For dust action levels or for the purpose of clearance examination:

“(i) 40 micrograms per square foot (“µg/ft²”) on floors; or

“(ii) 250 µg/ft² on interior windowsills;

“(B) For the purpose of clearance examination:

“(i) 400 $\mu\text{g}/\text{ft}^2$ on window troughs; or

“(ii) 800 $\mu\text{g}/\text{ft}^2$ on concrete or other rough exterior surfaces; or

“(C) Such more stringent standards as may be:

“(i)(I) Specified in federal law; or

“(II) Specified in regulations promulgated by the United

States Environmental Protection Agency or the United States Department of Housing and Urban Development; or

“(ii) Adopted by the Mayor by rule.”.

(7) Paragraph (26) is amended as follows:

(A) Strike the phrase “lead hazards” and insert the phrase “lead-based paint hazards” in its place.

(B) Strike the phrase “to prospective rental tenants” and insert the phrase “to tenants, purchasers, or prospective tenants or purchasers” in its place.

(8) Paragraph (29) is amended by striking the phrase “March 1,”.

(9) Paragraph (32) is amended by striking the phrase “March 1,”.

(b) Section 3(a) (D.C. Official Code § 8-231.02(a)) is amended by striking the phrase “March 1,”.

Amend
§ 8-231.02

(c) Section 4 (D.C. Official Code § 8-231.03) is amended as follows:

(1) Subsection (b) is amended as follows:

Amend
§ 8-231.03

(A) Strike the phrase “, in his or her discretion,”.

(B) Strike the phrase “March 1,”.

(2) Subsection (c) is amended by striking the phrase “and order the property owner to perform those measures required to eliminate the lead-based paint hazards and underlying conditions, and any other action considered necessary by the Mayor to protect the health and safety of the occupants of the property” and inserting the phrase “and may order the property owner to perform any action considered necessary by the Mayor to protect the health and safety of the occupants of the property, including relocation in accordance with subsection (d)(1)(D) of this section” in its place.

(3) Subsection (d)(2)(A) is amended by striking the word “examination” and inserting the phrase “examination and a reasonable amount of time has passed to allow the tenant to return to the dwelling unit” in its place.

(d) Section 5 (D.C. Official Code § 8-231.04) is amended to read as follows:

“Sec. 5. Disclosure and risk reduction requirements.

Amend
§ 8-231.04

“(a)(1) The owner of a dwelling unit constructed before 1978 shall disclose to the purchaser or tenant of the dwelling unit information reasonably known to the owner about the presence of any of the following conditions in the unit:

“(A) Lead-based paint;

“(B) Lead-based paint hazards; and

“(C) Pending actions ordered by the Mayor pursuant to this act.

“(2) The disclosures shall be provided on the lead disclosure form provided by the Mayor.

“(3) The disclosures shall be provided before the purchaser or tenant is obligated under any contract to purchase or lease the dwelling unit.

“(b) The owner of a dwelling unit constructed before 1978, which unit will be occupied or regularly visited by a person at risk, shall provide to the tenant an accurately and fully completed lead disclosure form and a clearance report issued within the previous 12 months. The disclosures required by this subsection shall be disclosed before the tenant is obligated under any contract to lease the dwelling unit.

“(c) If a tenant of a dwelling unit constructed before 1978, in which unit a person at risk resides or which unit a person at risk regularly visits, notifies the owner of the property in writing that a person at risk resides in or regularly visits the dwelling unit, the owner of the dwelling unit shall provide to the tenant within 30 days a clearance report issued within the previous 12 months.

“(d) Instead of providing the disclosure form and clearance report required by this section, an owner may provide:

“(1) A report from a risk assessor or inspector certifying that the dwelling unit is a lead-free unit; provided, that for the purposes of this subsection, the term “lead-free unit” shall mean the definition of lead-free unit in effect at the time of unit certification; or

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

“(e) The owner of a dwelling unit shall provide notice to its tenants of their rights under this act on a form provided by the Mayor whenever the tenant executes or renews a lease for the unit and whenever the owner provides notice of a rent increase.

“(f) If the owner of a dwelling unit learns of the presence of lead-based paint in a dwelling unit, the owner shall:

“(1) Notify the tenant of the presence of lead-based paint within 10 days after discovering its presence; and

“(2) Provide the tenant with a Lead Warning Statement described in 40 C.F.R. § 745.113 and the lead hazard information pamphlet described in section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, approved October 28, 1992 (106 Stat. 3910; 42 U.S.C. § 4852d); provided, that the Lead Warning Statement and lead hazard information pamphlet need not be provided if they have been provided to the tenant within the prior 12 months.

“(g) Twelve months after the effective date of rules implementing this act, the Mayor shall submit a report on the status of the implementation of this section. The report shall include:

“(1) A statement on the capacity, to date, of both the private and public sector to

carry out the provisions of this section in all units in buildings built before 1950; and

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

“(h)(1) Within 90 days after the effective date of the Lead Hazard Prevention and Elimination Amendment Act of 2010, passed on 2nd reading on December 7, 2010 (Enrolled version of Bill 18-64), the Mayor shall:

“(A) Provide the lead disclosure form to be used as the basis for the lead disclosure statement required by subsections (a) and (b) of this section; and

“(B) Petition for approval from the EPA certifying that the District’s form meets the federal disclosure standards.

“(2) The form issued by the Mayor as required by paragraph (1)(A) of this subsection shall include all elements required by 24 CFR §§ 35.90 and 35.92 and 40 CFR § 745.107, promulgated by Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, Final Rule, including the Lead Warning Statement, to meet the Federal standard for use of alternative disclosure forms.”.

(e) Section 6 (D.C. Official Code § 8-231.05) is amended as follows:

Amend
§ 8-231.05

(1) Subsection (a) is amended by striking the phrase “14 DCMR § 707.18” and inserting the phrase “subsection (f) of this section” in its place.

(2) Subsection (b)(1) is amended by striking the word “order” and inserting the phrase “order, or any other order necessary to protect the public health or welfare and the environment,” in its place.

(3) A new subsection (f) is added to read as follows:

“(f) No entry or inspection of any residential premises shall be made without the permission of the occupant of the premises unless a warrant is obtained from the Superior Court of the District of Columbia pursuant to D.C. Official Code § 11-941, authorizing entry and inspection of the premises for the purpose of determining compliance with provisions of this act.”.

(f) Section 7(a) (D.C. Official Code § 8-231.06(a)) is amended to read as follows:

Amend
§ 8-231.06

“(a) A tenant shall allow access to his or her dwelling unit, at reasonable times, to the unit owner or the owner’s employee or representative to facilitate any work or inspection required under this act following the provision of written notice by the owner at least 48 hours prior to the work or inspection; provided, that entry or inspection of any residential premises shall not be made without the permission of the occupant of the premises unless a warrant is obtained first from the Superior Court of the District of Columbia pursuant to D.C. Official Code § 11-941.”.

(g) Section 10(a) (D.C. Official Code § 8-231.09(a)) is amended to read as follows:

Amend
§ 8-231.09

“(a) There is established as a nonlapsing fund the Lead Poisoning Prevention Fund (“Fund”), which shall be used by the Mayor solely for the purposes of lead poisoning prevention, ensuring compliance with and enforcement of this act, and providing low-income residents of the District with assistance to comply with the requirements of section 4; provided,

that the low-income residents qualify for such assistance in accordance with rules issued by the Mayor.”.

(h) Section 11(a) (D.C. Official Code § 8-231.10(a)) is amended as follows:

Amend
§ 8-231.10

(1) Strike the phrase “dwelling unit or child-occupied facility” and insert the phrase “any structure” in its place.

(2) Strike the phrase “March 1,”.

(i) Section 12 (D.C. Official Code § 8-231.11)) is amended as follows:

Amend
§ 8-231.11

(1) Subsection (a) is amended by striking the phrase “March 1,”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1)(C) is amended by striking the phrase “24 C.F.R. § 35.1330” and inserting the phrase “Chapter 35 of Title 24 of the Code of Federal Regulations” in its place.

(B) Paragraph (4) is amended to read as follows:

“(4) Adhere to other requirements for renovations listed at 40 C.F.R. §§ 745.80 through 745.91 and any other requirements established by the Mayor.”.

(3) Subsection (f)(1) is amended to read as follows:

“(f)(1) A clearance examination following elimination of a lead-based paint hazard ordered by the Mayor, or after such work performed in response to a child with an elevated blood lead level, shall not be conducted by:

“(A) A risk assessor or lead inspector who is related to the owner or any tenant by blood or marriage;

“(B) A risk assessor or lead inspector who is an employee or owner of the abatement firm performing the work;

“(C) A risk assessor or lead inspector who is an employee or owner of an entity in which the abatement firm has a financial interest; or

“(D) A dust sampling technician.”.

(j) Section 14 (D.C. Official Code § 8-231.13) is amended by adding a new subsection (c) to read as follows:

Amend
§ 8-231.13

“(c) An owner shall maintain copies of all lead-related reports related to the building or any part thereof and make the reports available to tenants, tenants’ agents, and government officials for review and photocopying at reasonable hours and at a location reasonably close to the property.”.

(k) Section 16(a) (D.C. Official Code § 8-231.15(a)) is amended to read as follows:

Amend
§ 8-231.15

“(a) Any notice or order served upon a respondent or other person pursuant to this act may be personally served, delivered to the respondent’s or other person’s last known home or business address and left with a person of suitable age and discretion residing or employed therein, or mailed to the respondent or other person by first-class mail to the respondent or other person’s last known home or business address. When service is by mail, 5 additional days shall be added to the time period in the notice or order within which the respondent or other person may, or is required to, take any action specified in the notice order.”.

(l) A new section 19a is added to read as follows:

“Sec. 19a. Conforming amendment.

“The presence of loose or peeling paint in residential premises in violation of the housing code regulations codified in Title 14 of the District of Columbia Municipal Regulations which constitutes a lead-based paint hazard under this act, shall be enforced by the Mayor according to the provisions of this act.”.

(m) A new section 20a is added to read as follows:

“Sec. 20a. Authorization to seek delegation.

“The Mayor is authorized to take actions necessary to obtain authorization from the United States Environmental Protection Agency for the Mayor to administer and enforce state programs pursuant to the Renovation, Repair and Painting and Pre-Renovation Education programs under Part 745 of Chapter 1 of Title 40 of the Code of Federal Regulations.”.

Sec. 3. Chapter 26 of the Housing Regulations of the District of Columbia, issued August 11, 1955 (C.O. 55-1503; 14 DCMR § 707.1 *et seq.*), is amended as follows:

DCMR

(a) Section 2605.3 (14 DCMR § 707.3) is amended to read as follows:

“707.3 The presence of loose or peeling paint in residential premises in violation of this chapter and constructed before 1978, and which constitutes a lead-based paint hazard as defined in section 2(22) of the Lead Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01(22)) (“Lead Hazard Prevention and Elimination Act”), shall be enforced by the Mayor according to the provisions of the Lead Hazard Prevention and Elimination Act.”.

(b) Section 2605.4 through 2605.17 (14 DCMR § 707.4 through 707.17) is repealed.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia