

1 [Lead-Based Paint Practices]

2 AMENDING PART II, CHAPTER I OF THE SAN FRANCISCO MUNICIPAL CODE (BUILDING  
3 CODE) BY AMENDING CHAPTER 36 TO CLARIFY ENFORCEMENT AUTHORITY AND THE  
4 RESPONSIBILITIES OF OWNERS AND CONTRACTORS CONCERNING WORK THAT  
5 DISTURBS LEAD PAINT ON BUILDING EXTERIORS AND MAKING MISCELLANEOUS  
6 CLARIFICATIONS AND CORRECTIONS BY REPEALING SECTIONS 3601 AND 3602 IN  
7 THEIR ENTIRETY; BY REPEALING SUBSECTIONS 3603.10, 3603.14, 3603.15, 3603.16,  
8 3603.17, 3603.18, 3606.2.6, 3606.10, AND 3606.11; BY AMENDING SECTION 3608; BY  
9 AMENDING SUBSECTIONS 3604.1, 3605.1, 3606.1, 3606.2, 3606.2.2, 3606.2.7, 3606.4,  
10 3606.5, 3606.6, 3606.6.1, 3606.6.2, 3606.7, 3606.8, 3606.9, 3607.1, 3607.2, 3607.3, 3607.4,  
11 3609.1.1, 3609.1.2, 3609.1.4, 3609.1.5, 3609.2.1; BY RENUMBERING SUBSECTIONS  
12 3603.11, 3603.12, 3603.13 TO 3603.10, 3603.11, 3603.12; BY RENUMBERING  
13 SUBSECTIONS 3603.19, 3603.20, 3603.21, 3603.22, 3603.23, TO 3603.14, 3603.15, 3603.16,  
14 3603.17, 3603.18; RENUMBERING SUBSECTIONS 3606.2.7, 3606.2.8, 3606.2.9 TO 3606.2.6,  
15 3606.2.7, 3606.2.8; AND BY ADDING SUBSECTIONS 3603.13, 3607.3.6 3608.1

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

13 Be it ordained by the People of the City and County of San Francisco:  
14 Section 1. Chapter 36 of the San Francisco Building Code is hereby amended by  
15 amending Chapter 36 to read as follows:

16 **CHAPTER 36**  
17 **WORK PRACTICES FOR EXTERIOR LEAD-BASED PAINT**  
18 **((SECTION 3601. FINDINGS.**

19 The Board of Supervisors finds that:

20 **3601.1** Lead poisoning is preventable. Childhood lead poisoning is caused by  
21 children ingesting lead from their environment. From 1991 through 1996, 459 children under the  
22 age 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 disturbed  
25 (i.e., by dry scraping, sanding, pressure blasting or burning) lead-based paint on residential,  
commercial and public pre-1950 (224,797 units) and ninety-four percent is pre-1980 (307,954  
units). With this predominantly older housing stock, it can be assumed that the majority of  
building exteriors have layers of lead-based paint, either as surface layers or underneath non-  
lead paints. DPH case investigations have measured exterior paints with lead content as high as  
49% lead. Half of the worst-case exterior paint samples measured by DPH were greater than  
81,400 parts per million (or 8%) lead, sixteen times the definition of lead-based paint. The  
uncontrolled disturbance and removal of exterior lead-based paint is one of the major  
contributors of lead to the San Francisco environment. Furthermore, the close proximity of

1 buildings to one another in San Francisco, along with the small lot size typical of many residential  
2 buildings, increases the risk of contamination of adjacent properties by lead paint debris.

3 **3601.2** In the past, steel structures such as bridges, walkways, water towers,  
4 billboards steel tanks and railway or roadway overpasses were painted with anti-corrosion paints  
5 containing a high lead content. Disturbance or removal of such paints without proper controls can  
6 create a significant lead dust hazard to surrounding residential areas.

7 **3601.3** Currently, the exterior surfaces of buildings are frequently prepared for new  
8 painting by dry scraping, sanding, pressure blasting, or burning off the old paint. These surface  
9 preparation methods generate waste products that include large quantities of paint debris, paint  
10 dust, and pressure blasting agents. Depending on the concentration of lead in the paint, these  
11 waste streams may constitute hazardous waste under state hazardous waste laws. Currently,  
12 most waste products generated by exterior surface preparation in San Francisco are not  
13 contained and are instead discharged directly into the air, soil, and sewer system.

14 **3601.4** City Departments receive at least one call per day from residents identifying  
15 an uncontrolled exterior paint disturbance and/or removal in a residential neighborhood. During  
16 such a project, numerous small pieces of paint debris and sometimes the blasting agents are  
17 deposited throughout the neighborhood—inside homes, on parked cars, on sidewalks, and in  
18 back yards. San Francisco children and pets have been poisoned with lead as a result of  
19 uncontrolled exterior paint disturbance and removal. Painters and other workers working without  
20 personal protective equipment may also suffer health effects. These persons can in turn transfer  
21 lead dust from their work clothes to their children and their home environment.

22 **3601.5** Uncontrolled exterior paint disturbance and removal, including surface  
23 preparation, deposits lead and other metals on the ground, and often in stormwater and sewer  
24 drains. For example, when water blasting is used as a surface preparation or paint removal  
25 method, the resulting wastewater may contain lead levels exceeding established pollution limits.  
Once environmental contamination has occurred, the efforts and costs for cleaning up such wide-  
spread damage are prohibitive. Preventing the spread of paint debris and blasting agents is the  
best way to eliminate this major source of lead contamination.

26 **3601.6** Open-flame burning or torching of lead paint produces a lead fume in the  
27 form of a fine particulate emission from the surface of the heated metal. Once the particulate  
28 cools, it settles as a non-visible solid lead contaminant in the environment. Because burning  
29 processes are extreme fire hazards and because lead fume contamination cannot be visually  
30 assessed, it is difficult to design and verify appropriate containment and cleanup. For these  
31 reasons, this ordinance prohibits acetylene and propane open-flame burning and torching.

32 **3601.7** Currently, exterior paint disturbance and removal is subject to only minimal  
33 regulation. Employers of workers performing paint work, regardless of the lead content level of

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

7 **((SECTION 3602. GOALS.**

8 **3602.1** The goals of this law are to:

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10 **3602.1.1** Ensure that persons performing exterior lead-based paint  
11 disturbance or removal, including surface preparation, on residential, commercial, and  
12 public buildings and steel structures use work practices that reduce environmental  
13 contamination; and

13 **3602.1.2** Reduce childhood lead poisoning and other dust-related health  
14 effects in San Francisco caused by uncontrolled exterior lead-based paint disturbance and  
15 removal, including surface preparation.))

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16 **SECTION 3603. DEFINITIONS.**

17 **3603.1.** “Accredited Laboratory” means a laboratory which operates within the EPA  
18 National Lead Laboratory Accreditation Program.

19 **3603.2.** “Adjacent Properties” means properties that adjoin the regulated area of the  
20 property in question, including at the corners of lot lines.

21 **3603.3.** “Certified” means a process used by the State of California Department of Health  
22 Services (DHS) and the US Environmental Protection Agency (EPA) to identify individuals who  
23 have completed training and other requirements to permit the safe execution of lead risk  
24 assessments and inspections, or lead hazard reduction and control work. “Certified” includes  
25 current “Interim Certification” by DHS, unless and until this status is modified by state legislation.

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

1           **3603.5.** “Contractor” means any person, whether or not in possession of a valid state  
2 contractor’s license, who undertakes to or offers to undertake to or purports to have the capacity  
3 to undertake to or submits a bid to, or does by himself or herself or by or through others, any  
4 action that may or will disturb or remove paint. For purpose of this Chapter, “Contractor” shall  
also include subcontractors.

5           **3603.6.** “Disturb or Remove Paint” means any action that creates friction, pressure, heat  
6 or a chemical reaction upon any lead-based paint on an exterior surface so as to abrade, loosen,  
7 penetrate, cut through or eliminate paint from that surface. This term shall include all demolition  
8 and surface preparation activities that are performed upon an exterior surface containing lead-  
based paint.

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9           **3603.7.** “Exterior” means the outside of a building or steel structure and the areas around  
10 it within the boundaries of the property, including the outside of any detached structures, including  
11 but not limited to, outside and common walls, stairways, fences, light wells, breezeways, sheds  
and garages.

12           **3603.8.** “HEPA” means a High Efficiency Particulate Air Filter.

13           **3603.9.** “HUD Guidelines” means the most recent “*Guidelines for Evaluation and*  
14 *Control of Lead-Based Paint Hazards*” promulgated by the United States Department of  
15 Housing and Urban Development (HUD).

16           **((3603.10**     “Landlord” means an owner, lessor, or sublessor who receives or is entitled  
17 to receive rent for the use or occupancy of any commercial or residential rental property in the  
18 City and County of San Francisco, and the agent, representative or successor of any of the  
foregoing.))

19           **3603.((11))10.** “Lead” means metallic lead and all inorganic and organic compounds of  
20 lead.

21           **3603.((12))11.** “Lead-Based Paint” or “Lead Paint” means any paint, varnish, shellac or  
22 other coating on surfaces with lead in excess of 1.0 mg/cm<sup>2</sup> (milligrams per square centimeter)  
23 as measured by x-ray fluorescence (XRF) detector or laboratory analysis or in excess of 0.5  
percent by weight, also expressed as 5,000 ppm (parts per million), 5,000 µg/g (micrograms per  
gram), or 5,000 mg/kg (milligrams per kilogram) as measured by laboratory analysis.

24           **3603.((13))12.** “Lead-Based Paint Testing” means testing of surfaces to determine the  
25 presence of lead-based paint performed by an independent Certified Risk Assessor/Inspector, in

1 accordance with the HUD Guidelines, and where testing includes bulk paint samples, such  
2 samples are analyzed by an Accredited Laboratory.

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4 ((**3603.14** “Lead-Contaminated Dust” means surface dust that contains an area or  
5 mass concentration of Lead in excess of 100 µg/ft<sup>2</sup> (micrograms per square foot) on uncarpeted  
6 floors, 500 µg/ft<sup>2</sup> on interior window sills, and 800 µg/ft<sup>2</sup> on exterior window sills and exterior  
7 horizontal surfaces.))

8 ((**3603.15** “Lead Dust Testing” means tests conducted in accordance with the most  
9 recent federal guidelines to determine the presence or absence of Lead-Contaminated Dust  
10 within a defined area.))

11 ((**3603.16** “Lead-Contaminated Soil” means areas that contain total Lead in excess of  
12 400 ppm (parts per million) in bare soil.))

13 ((**3603.17** “Lead Soil Testing” means tests conducted in accordance with the most  
14 recent federal guidelines to determine the presence or absence of Lead-Contaminated Soil  
15 within a defined area.))

16 ((**3603.18** “Lead Paint Contaminants” means substances containing lead paint which  
17 are potentially hazardous to human health or the environment, including but not limited to paint  
18 chips and paint-containing soil, debris, dust, abrasives, fumes and water.))

19 **3603.13.** “Owner” means the owner of a property or the owner’s authorized agent.

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

24 **3603.((20))15.** “Prohibited Practices” means work practices prohibited under section  
25 3605 of this Chapter.

**3603.((21))16.** “Responsible Party” means either (1) the owner of the property where the  
owner or the owner’s employees or persons otherwise under the control of the owner are  
performing the activities regulated under this Chapter; or (2) the owner and the contractor where  
the owner has entered into a contract with another to carry out ((contractor is performing)) the  
activities regulated under this Chapter.

1           **3603.~~((22))17.~~** “Regulated Area” means an area in which work is being performed that  
2 disturbs or removes paint, and to which access is restricted in order to prevent migration of paint  
3 contaminants. “Regulated area” shall also include any area contaminated with lead paint  
4 contaminants as a result of a breach or lack of containment barriers or a violation of the  
5 containment requirement set forth in section 3605.1.

6           **3603.~~((23))18.~~** “Steel Structure” means any structure that is not a building and which has  
7 exterior surfaces made of steel or other metal, such as bridges, billboards, walkways, water  
8 towers, steel tanks and roadway or railway overpasses.

9           **SECTION 3604.     PROHIBITION.**

10          **3604.1. Generally.** No person shall disturb or remove lead paint, or in any other way  
11 generate lead paint contaminants during demolition or work on the exterior of any existing ((  
12 residential, commercial or public)) building((,)) or steel structure except in accordance with the  
13 requirements of this Chapter.

14          **3604.2. Exemptions.** This Chapter shall not apply to activities that disturb or remove  
15 paint where those activities are being performed on buildings or steel structures on which  
16 construction was completed after 1978, or on new construction. For purposes of this Chapter, all  
17 paint on the exterior of any building or steel structure on which the original construction was  
18 completed prior to December 31, 1978, shall be presumed to be lead-based paint. Any person  
19 seeking to rebut this presumption shall establish through lead-based paint testing, or other  
20 means satisfactory to the Director, that the paint on the building or steel structure in question is  
21 not lead-based paint.

22          **3604.3. De Minimis Notification Exemption.** Any person performing work subject to  
23 this Chapter who disturbs or removes less than ten (10) square feet of lead-based paint in total  
24 shall not be required to comply with the notification requirements set forth in Section 3606 of this  
25 Chapter.

**SECTION 3605. PERFORMANCE STANDARDS.**

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

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

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

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

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

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

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

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

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

**SECTION 3606. NOTIFICATION REQUIREMENTS.**

**3606.1. Notifying Bidders.** In any instance where a property owner or contractor is requesting bids for work that is subject to this Chapter, the property owner or contractor shall notify all bidders of any paint inspection reports verifying the presence ((or absence)) of any lead-based paint in the regulated area of the proposed project.

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

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

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

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

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

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

1 ((**3606.2.6.** whether the responsible party has reason to know or presume that  
lead-based paint is present;))

2 **3606.2.~~(7)~~6.** whether the building is residential or non-residential, and  
3 whether it is owner-occupied or rental property((, and the approximate number of dwelling units, if  
4 any, on the property));

5 **3606.2.~~(8)~~7.** the dates by which the responsible party has or will fulfill any  
6 tenant or adjacent property notification requirements as described in sections 3606.4 and  
3606.5 below; and

7 **3606.2.~~(9)~~8.** the name, address, telephone number, and if available, pager  
8 number, of the party who will perform the specified work.

9 **3606.3. Contents of Notice.** The Director shall make available to the public a  
10 form that complies with the requirements of section 3606.2 and contains blank spaces for the  
required information.

11 **3606.4. Sign When Containment is Required.** ((Where containment is  
12 required to prevent migration of lead paint contaminants to another property, n)) Not later than the  
13 commencement of work subject to this Chapter, the ((responsible party)) owner, or where the  
14 owner has entered into a contract with a contractor to perform work subject to this Chapter, the  
15 contractor shall post signs in a location or locations clearly visible to the adjacent properties  
stating the following:

16 **LEAD WORK IN PROGRESS**  
17 **PUBLIC ACCESS TO WORK AREA PROHIBITED**  
18 **POSTED IN ACCORDANCE WITH BUILDING CODE SECTION 3606**

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

1           **3606.6. Notice ((by Landlord)) to Tenants.** Where ((the responsible party is a  
2 landlord, a person or persons in the employ of a landlord, or where a landlord has entered into a  
3 contract with a contractor to perform work subject to this Chapter)) work subject to the  
4 requirements of this Chapter is to be performed on a residential property occupied by one or  
more tenants, not less than three business days before work subject to this Chapter is to  
commence, the ((landlord)) owner shall provide the following information:

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

9           “Work is scheduled to be performed beginning [date] on this property that may disturb or  
10 remove lead-based paint. The persons performing this work are required to follow state  
11 and local laws regulating work with lead-based paint. You may obtain information  
12 regarding these laws, or report any suspected violations of these laws, by calling the  
13 Department of Building Inspection at 558-6598. The owner of this property is also  
14 required to provide tenants with a copy of the U.S. Environmental Protection Agency  
15 pamphlet entitled *Protect Your Family From Lead-Based Paint in Your Home*, unless the  
16 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 Protection  
21 Agency pamphlet entitled *Protect Your Family From Lead-Based Paint in Your Home*, except  
22 that an owner ((landlord)) shall not be required to comply with this requirement with respect to  
23 tenants to whom the owner ((landlord)) has previously provided a copy of the pamphlet.

24           **3606.7. Notice by Contractor.** Where work subject to the requirements of this Chapter  
25 is being performed by ((the responsible party is)) a contractor, the ((responsible party)) contractor  
shall, at least ((72 hours)) three business days prior to the commencement of work on residential  
property subject to this Chapter, notify the property owner of potential lead hazards during the  
project by distributing the U.S. Environmental Protection Agency pamphlet entitled *Protect Your*  
*Family From Lead in Your Home*.

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

1           **3606.9. Early Commencement of Work Requested by Tenant.** Upon written request  
2 of tenants, ((the landlord)) an owner may commence or authorize a contractor to commence, work  
3 subject to this Chapter less than three business days after providing notices required in sections  
4 ((3606.2, 3606.4,)) 3606.6 and 3606.7 above.

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

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

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

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

## 24           **SECTION 3607. INSPECTION AND SAMPLING.**

25           **3607.1. Authority to Inspect.** The Director is authorized to inspect the exterior of any  
building or steel structure upon which work subject to the requirements of this Chapter is being  
performed for the purpose of determining whether the work is being carried out in accordance  
with the requirements of this Chapter. This inspection authority shall be exercised in accordance  
with section 104.2.3 of this Code ((only at reasonable hours, and entry shall be made onto  
property only with the consent of the owner or tenants thereof, or with a proper inspection warrant  
or other remedy provided by law to secure entry)).

**3607.2. Response to Complaint.** Upon receiving a citizen complaint, the Director shall  
(1) review the complaint; (2) determine whether a ((responsible party has filed a)) valid  
notification form has been filed for the property in compliance with the requirements of Section

1 3606.2; and (3) where deemed necessary by the Director, conduct an inspection at the job site  
2 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 the  
4 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 properties,  
14 to determine if such paint could be a source of the alleged visible lead paint  
15 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 validity  
24 of a complaint.

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

1           **3608.1 Stop Work Orders.** The Director shall have the power to stop any work that is  
2 disturbing or removing lead paint or otherwise generating lead paint contaminants in violation of  
3 this Chapter or the construction, alteration or repairs of any steel structure or building subject to  
4 the requirements of this Chapter when, in the opinion of the Director, such work is being done in  
5 violation of any of the provisions of this Chapter and to order all work to be stopped by notice in  
6 writing served upon any persons engaged in the doing or causing such work to be done. The  
7 work shall be stopped immediately and shall not be resumed without authorization.

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

10           **3609.1. Administrative Penalties.** The Director may impose administrative penalties  
11 for violations of this Chapter in accordance with the following procedure:

12           **3609.1.1. Notice.** The Director shall notify the responsible party ((in violation of))  
13 to whom a Notice of Violation has been issued that he or she has ((72 hours)) up to three  
14 business days to correct or otherwise ((remedy)) abate the violation or be subject to the  
15 imposition of administrative penalties. For those violations that create an immediate danger to  
16 health or safety and violations of notification requirements pursuant to section 3606, the  
17 responsible party to whom a Notice of Violation has been issued shall immediately ((remedy))  
18 abate the violation or be subject to the imposition of administrative penalties. In circumstances  
19 where the Director is aware that there is more than one responsible party, the Director shall  
20 make reasonable efforts to give notice to all responsible parties.

21           **3609.1.2. Limits.** Administrative penalties assessed against a violator pursuant  
22 to section 3609.1.1 shall not exceed \$((1,000)) 500 per day per violation.

23           **3609.1.3. Additional Fees.** In addition to the administrative penalty  
24 assessed pursuant to sections 3609.1.1 and 3609.1.2, the Director may assess additional fees  
25 to cover the reasonable costs incurred in enforcing the administrative penalty.

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

**3609.1.5. Collection.** The Director, or his or her designated representative,  
is responsible for charging and collecting any penalty or fee assessed pursuant to this section.  
The Director shall notify the responsible party or parties in writing of the cost of the penalty and  
fee and declare that such costs are due and payable to the Treasurer of the City and County of  
San Francisco. If the penalty and fee are not paid within 30 days of this notice, the Director shall

1 request that the Tax Collector to pursue collection of the penalty and fee, up to and including  
2 imposition of a special assessment lien in accordance with the requirements of Article XX of  
3 Chapter 10 of the San Francisco Administrative Code (commencing with section 10.230).

4 **3609.1.6. Use of Penalty.** Any administrative penalty and fee received by the  
5 Treasurer of the City and County of San Francisco shall be placed in the Building Inspection Fund  
6 and used to offset the Department's costs in connection with the administration and enforcement  
7 of this Chapter.

8 **3609.1.7. Review of Imposition of Penalty.** Any person that is designated as  
9 ~~the~~ a party responsible for a violation or is subject to an administrative penalty or fee may seek  
10 administrative review of the designation or the assessment of the penalty or fee. Administrative  
11 review shall be initiated by the filing of an appeal with Director that specifies in detail the basis for  
12 contesting the designation of the responsible party or the assessment of the penalty or fee. Such  
13 appeal shall be filed within 15 business days of the imposition of the penalty or fee. Within ten  
14 days of the receipt of the appeal, unless extended by mutual agreement of the affected parties,  
15 the Director shall cause a hearing to be held before a hearing officer. The decision of the  
16 hearing officer shall be final.

## 12 **3609.2. Alternative Penalty.**

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

19 **3609.2.2. Applicability.** The election set forth in section 3609.2.1 shall only be  
20 available to persons who have not previously completed such a training course, and who have not  
21 been previously found by the Director to be in violation of this Chapter.

## 19 **SECTION 3610. REMEDIES AND ENFORCEMENT BY CITY OFFICIALS.**

20 **3610.1. No Obligation by City.** In undertaking the enforcement of this ordinance, the  
21 City and County of San Francisco is assuming an undertaking only to promote the general  
22 welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for  
23 breach of which it is liable in money damages to any person who claims that such breach  
24 proximately caused injury.

25 **3610.2. Discretionary Duty.** Subject to the limitations of due process, notwithstanding  
any other provision of this code whenever the words "shall" or "must" are used in establishing a

1 responsibility or duty of the City, its elected or appointed officers, employees, or agents, it is the  
2 legislative intent that such words establish a discretionary responsibility or duty requiring the  
exercise of judgment and discretion.

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

7 Section 2. The Board of Supervisors finds that:

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

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

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

25 (d) City Departments receive at least one call per day from residents identifying an  
uncontrolled exterior paint disturbance and/or removal in a residential neighborhood. During

1 such a project, numerous small pieces of paint debris and sometimes the blasting agents are  
2 deposited throughout the neighborhood—inside homes, on parked cars, on sidewalks, and in  
3 back yards. San Francisco children and pets have been poisoned with lead as a result of  
4 uncontrolled exterior paint disturbance and removal. Painters and other workers working without  
5 personal protective equipment may also suffer health effects. These persons can in turn transfer  
6 lead dust from their work clothes to their children and their home environment.

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

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

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

Section 3. The goals of this Ordinance are to:

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

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

APPROVED AS TO FORM:

BUILDING INSPECTION COMMISSION  
BOARD OF SUPERVISORS

Page 15  
8/10/99

1 LOUISE H. RENNE  
2 City Attorney

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4 William Chan  
5 Deputy City Attorney  
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