

1 [Work Practices for Lead-Based Paint.]

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Ordinance amending Section 3407 *et seq.* of the San Francisco Building Code to regulate work that disturbs or removes lead-based paint in the interior of pre-1979 buildings that are in Group E3, R1 or R3 occupancy classification, as well as, the exterior of pre-1979 buildings and all steel structures; establish performance standards for work that disturbs or removes lead-based paint in the interior and exterior of such buildings and steel structure; conform the process for assessing administrative penalties with that for the issuance of an Order of Abatement, and make findings in accordance with California Health and Safety Code Section 17958.5 as to the local climatic, topological and geological reasons for amending the State Building Code.

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

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

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

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

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

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

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

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

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

12 **3407.1.1.2 Intent.** *The intent of this section is to encourage safe work practices*
13 *for activities resulting in the disturbance or removal of lead-based paint while providing a reasonable*
14 *level of health and safety for the occupants and the public at large.*

15 **3407.1.1.3. Scope.**

16 **3407.1.1.3.1 Interior.** *The requirements of this section apply to any activity*
17 *resulting in the disturbance or removal of lead-based paint in the interior of pre-1979 buildings,*
18 *structures and properties or portions thereof with one of the following occupancy classifications:*
19 *Group E3 and Group R, Divisions 1 and 3. The requirements of this section with regard to the interior*
20 *of a facility shall include, but are not limited to, residential-based family childcare facilities licensed by*
21 *the State of California.*

22 **3407.1.1.3.2 Exterior.** *The requirements of this section apply to any activity*
23 *resulting in the disturbance or removal of lead-based paint on the exterior of any pre-1979 buildings,*
24 *structures and properties and any steel structures.*

1 3407.2~~1~~ **DEFINITIONS.** Except as otherwise specified herein, the terms used in this section
2 shall have the same meanings as those set forth in Chapter 2 of this code. For the purposes of this
3 Section, the following definitions shall apply:

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

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

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

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

17 CLEARANCE INSPECTION means an on-site limited investigation performed by an
18 independent certified lead inspector/assessor to verify the absence lead-based paint hazards. Any
19 analytical testing of sample(s) collected during such inspection shall be performed by an accredited
20 laboratory.

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

1 CONTAINMENT BARRIERS means measures that prevent the migration of ~~lead paint~~
2 ~~contaminants~~ work debris. Containment barriers shall be at least as effective at protecting
3 human health and the environment as those contained in the most current HUD Guidelines.

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

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

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

18 HEPA means a high efficiency particulate air filter.

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

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

24 LEAD means metallic lead and all inorganic compounds of lead.
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1 LEAD-BASED PAINT or LEAD PAINT means (a) any paint, varnish, shellac, or other
2 coating on surfaces with lead in excess of 1.0 mg/cm² (milligram per square centimeter) as
3 measured by x-ray fluorescence (XRF) detector or laboratory analysis or in excess of 0.5
4 percent by weight, also expressed as 5,000 ppm (parts per million), 5,000 µg/g (microgram_s
5 per gram), or 5,000 mg/kg (milligrams per kilogram) as measured by laboratory analysis; or
6 (b) any paint, varnish, shellac, or other coating found in the interior or on the exterior of pre-1979
7 buildings, structures, or properties or on the exterior of any steel structures, unless such paint, varnish,
8 shellac or other coating is shown, by a lead-based paint testing, that it does not have the characteristics
9 specified in (a).

10 LEAD-BASED PAINT TESTING means testing of surfaces, by laboratory analysis of bulk
11 sample or measurement using x-ray fluorescence detector, to determine the presence of lead-
12 based paint performed by an independent Certified Lead Inspector/Risk Assessor, Inspector, in
13 accordance with the HUD Guidelines, and ~~where~~ Where laboratory analysis is used as a method of testing
14 ~~includes~~ bulk paint samples, such samples are shall be analyzed by an accredited laboratory.

15 ~~OWNER means the owner of a property or the owner's authorized agent.~~

16 PERSON shall have the same meaning as that defined in Chapter 2 of this code means a
17 natural person, his or her heirs, executors, administrators or assigns, and shall also includes a
18 municipal any department, agency, or commission of the City and County of San Francisco, and ~~State~~
19 or federal agency agencies and departments to the extent allowable by law, ~~a firm, joint stock~~
20 ~~company, business concern, association, partnership or corporation, its or their successors or assigns,~~
21 ~~or the agent of any of the aforesaid.~~

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

24 PROHIBITED PRACTICES means any work practices that disturbs or removes lead-based
25 paint using any of the following: open flame burning or torching; machine sanding or grinding without

1 containment barriers or a HEPA local vacuum exhaust tool; hydroblasting or high-pressure wash
2 without containment barriers; abrasive blasting or sandblasting without containment barriers or a
3 HEPA local vacuum exhaust tool; heat guns operating above 1,100 degrees Fahrenheit (611.1 degrees
4 Celsius) or causing the charring of the paint; dry sanding or dry scraping without containment barriers
5 or a HEPA local vacuum exhaust tool, except dry scraping in conjunction with heat guns operating
6 below 1,100 degrees Fahrenheit (611.1 degrees Celsius) or within 1.0 ft (0.30 m) of electrical outlets,
7 or when treating defective paint spots totaling no more than 20 ft² (2.0 m²) on exterior surfaces.

8 REGULATED AREA means an area in the interior of any pre-1979 buildings, structures or
9 properties with one of the following occupancy classifications: Group E3 and Group R, Divisions 1 and
10 3; or on the exterior of any pre-1979 buildings or any steel structures, in which work is being
11 performed that disturbs or removes lead-based paint, and to which access is restricted in order
12 to prevent migration of paint contaminants work debris. “Regulated area” shall also include any
13 area contaminated with lead paint contaminants work debris as a result of a breach or lack of
14 containment barriers or a violation of the containment requirement set forth in Section
15 3407.4.23.1.

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

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

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

1 3407.~~32~~ **GENERAL PROHIBITIONS.**

2 ~~3407.2.1 Generally.~~ No person shall disturb or remove lead-based paint through
3 the use of prohibited practices, or in any other way that generates work debris ~~lead paint~~
4 ~~contaminants~~ during demolition or work on the interior or exterior of any ~~existing building or pre-~~
5 1979 buildings or any steel structure except in accordance with the requirements of this section.

6 ~~3407.2.2 Exemptions. This section shall not apply to activities that disturb or remove paint where those~~
7 ~~activities are being performed on buildings or steel structures on which construction was completed~~
8 ~~after 1978, or on new construction.~~ For purposes of this section, all paint on the exterior of any
9 building or steel structure on which the original construction was completed prior to December
10 31, 1978, shall be presumed to be lead-based paint. Any person seeking to rebut this
11 presumption shall establish through lead-based paint testing, or other means satisfactory to
12 the Director, that the paint on the building or steel structure in question is not lead-based
13 paint. Work that disturbs or removes lead-based paint from the interior of a pre-1979 owner-occupied
14 dwelling unit shall be exempted from the requirements of Section 3407.4, provided that such unit is not
15 a licensed childcare facility. Notwithstanding this exemption, the responsible parties shall take all
16 reasonable measures to prevent the migration of work debris from the interior of the owner-occupied
17 dwelling unit to the outside of such unit which includes without limitations, any interior common areas
18 in a multi-unit residential building and the exterior of the building, during the course of any work that
19 disturbs or removes lead-based paint.

20 ~~3407.2.3 De Minimis Notification Exemption. Any person performing work subject to~~
21 ~~this section who disturbs or removes less than 10 square feet (0.929 m2) of lead-based paint in total~~
22 ~~shall not be required to comply with the notification requirements set forth in Section 3407.4 of this~~
23 ~~section.~~

24 3407.~~43~~ **PERFORMANCE STANDARDS.**

1 3407.4.1 **Restrict Access.** Any person performing work subject to this section shall
2 restrict access by third parties to the regulated area, except as authorized by this section or until the
3 regulated area is cleaned in accordance with Section 3407.4.4. Subsection 3407.4.1 shall not apply to
4 regulated areas that are required for access or egress during the course of the work, such as common
5 areas, and where no alternative exists for access or egress, in which case dust generation and
6 migration shall be controlled through the use of HEPA-attached tools or other feasible containment
7 barriers that allows for access or egress.

8 3407.4.2~~3.1~~ **Containment Barriers.** Any person performing work subject to this
9 section shall establish a containment barrier *that contains the work debris within the regulated*
10 area. ~~Establish containment barriers at least as effective at protecting human health and the~~
11 environment as those contained in the HUD Guidelines or the Lead Paint Removal Guide published by
12 the Steel Structure Painting Council, whichever is applicable.

13 3407.4.2.1 **Protect Ground.** Any person performing exterior work subject to
14 this section shall, to the maximum extent possible, protect the ground from contamination by work
15 debris by laying a protective covering on the ground extending at least 10 feet from the work surface
16 when possible.

17 3407.4.2.2 **Protect Floor and Furnishings.** Any person performing interior
18 work subject to this section shall protect any floors and other interior horizontal surfaces, carpets,
19 rugs, drapes, curtains, blinds, shades and furniture in the regulated areas from work debris when it is
20 impracticable to remove such items from the regulated areas during the course of the work.

21 3407.4.3 **Prevent Migration.** Any person performing work subject to this section shall
22 make all reasonable efforts to prevent the migration of work debris beyond the containment barriers
23 during the course of the work. Such efforts may include, but are not limited to, providing secure
24 protective covering, bagging, shrouding, and/or other safe containment that is used to prevent the
25 migration of work debris; covering and sealing any windows, vent openings and doors in the regulated

1 area to prevent migration; and instituting measures to prevent the tracking of dust from the regulated
2 areas.

3 3407.4.4 **Clean up standards.** At the completion of any work that disturbs or
4 removes lead-based paint or when access to the regulated areas are required by State law or local
5 ordinance during the course of such work, the responsible party shall:

6 3407.4.4.1 for interior work, make all efforts to remove all visible work debris from
7 the regulated areas. Such efforts shall include but are not limited to wet clean with detergent any
8 exposed interior horizontal hard surfaces in the regulated areas and HEPA vacuum the regulated
9 areas.

10 3407.4.4.2 for exterior work, make all efforts to remove all visible work debris from
11 the regulated areas.

12 ~~3407.3.2 Prohibited practices. No person performing work subject to this section shall~~
13 ~~use prohibited practices, including but not limited to: torching~~

14 ~~3407.3.2.1 Acetylene or propane Open flame burning and or.~~

15 ~~3407.3.2.2 Scraping, sanding or grinding without containment barriers or a HEPA~~
16 ~~local vacuum exhaust tool.~~

17 ~~3407.3.2.3 Hydroblasting or high pressure wash without containment barriers.~~

18 ~~3407.3.2.4 Abrasive blasting or sandblasting without containment barriers or a HEPA~~
19 ~~local vacuum exhaust tool.~~

20 ~~3407.3.2.5 Heat guns operating above 1,100 degrees Fahrenheit (611.11 degrees C.).~~

21 ~~3407.3.3 Migration. Any person performing work subject to this section shall make all~~
22 ~~reasonable efforts to prevent migration of lead paint contaminants beyond containment barriers during~~
23 ~~the course of the work.~~

1 ~~3407.3.4 Visible lead paint contaminants. The responsible party performing work~~
2 ~~subject to this section shall make all reasonable efforts to remove all visible lead paint contaminants~~
3 ~~from all regulated areas of the property prior to completion of the work.~~

4 **3407.54 NOTIFICATION REQUIREMENTS.**

5 3407.5.14.2 Notification to the Director ~~Contents of notice.~~ Except as otherwise
6 authorized by this section, prior to the commencement of exterior work subject to this section,
7 the owner or contractor shall provide written notice to the Director, either in person, by U.S.
8 Mail or by fax, of the following:

9 3407.5.1.14.2.1 The address and location of the project;

10 3407.5.1.24.2.2 The scope of work, including the specific location of the work
11 to be performed;

12 3407.5.1.34.2.3 The methods and tools for paint disturbance and/or
13 removal;

14 3407.5.1.44.2.4 The approximate age of the building or steel structure;

15 3407.5.1.54.2.5 The anticipated job start and completion dates for work
16 subject to this section;

17 3407.5.1.64.2.6 Whether the building is residential or nonresidential, and
18 whether it is owner-occupied or rental property;

19 3407.5.1.74.2.7 The dates by which the responsible party has or will fulfill
20 any tenant or adjacent property notification requirements as described in Sections 3407.5.84.4
21 and 3407.5.84.5 below; and

22 3407.5.1.84.2.8 The name, address, telephone number and, if available,
23 pager number of the party who will perform the specified work.

24 3407.5.1.9 The Director shall make available to the public a form containing
25 blank spaces for the information required by Sections 3407.5.1.1 to 3407.5.1.8, inclusive.

1 3407.5.1.10 In lieu of the submission of the form set forth in Section 3407.5.1.9,
2 the owner or contractor may submit the Lead Work Pre-Job Notification form required by the
3 California Division of Occupational Health and Safety pursuant to Section 1532.1 of Title 8 of the
4 California Code of Regulations.

5 ~~3407.4.3 Contents of notice. The Director shall make available to the public a form that~~
6 ~~complies with the requirements of Section 3407.4.2 and contains blank spaces for the required~~
7 ~~information.~~

8 3407.5.2 De Minimis Exemption. Any person performing exterior work that disturbs
9 or removes less than 100 square feet or 100 linear feet of lead-based paint in total shall be exempted
10 from the requirements of Section 3407.5.1.

11 3407.5.3 Sunset. Unless extended by the Board of Supervisors, the requirements of
12 Section 3407.5.1 shall terminate two years from this effective date of this subparagraph.

13 3407.5.4.4 Sign when containment is required. Not later than the
14 commencement of work subject to this section, the owner or, where the owner has entered
15 into a contract with a contractor to perform work subject to this section, the contractor shall
16 post signs in a location or locations clearly visible ~~to~~ at the access points to interior regulated
17 areas, such as at the entrances of the affected residential unit(s) or common areas, and in the case of
18 exterior work, shall post signs in a location or locations clearly visible to the adjacent properties
19 stating the following:

20 LEAD WORK IN PROGRESS

21 PUBLIC ACCESS TO REGULATED WORK AREA PROHIBITED POSTED IN
22 ACCORDANCE WITH BUILDING CODE SECTION 3407.5.54

23 ~~3407.5.54.5~~ **Requirements for sign when containment is required.** The sign
24 required by Section 3407.5.4.4 shall be not less than 24 inches (609.6 mm) square and shall
25 be in large boldface capital letters no less than 1/2 inch (12.7 mm) in size. The Director shall

1 make available to the public a form that complies with these requirements and states the
2 required information in English, Chinese and Spanish. The sign required by this section shall
3 remain in place until the work subject to this section has been completed. Where it is not
4 possible to post signs in a conspicuous location or locations clearly visible to the adjacent
5 properties, the owner or, where the owner has entered into a contract with a contractor to
6 perform work subject to this section, the contractor shall provide the notice in written form,
7 such as a letter or memorandum, to the occupants of adjacent properties.

8 3407.5.64.6 **Notice to occupants.** *Except as may be otherwise inconsistent with*
9 *state law,* ~~Where~~ work subject to the requirements of this section is to be performed on a
10 ~~residential~~ property *or structure regulated by this section* and occupied by one or more
11 occupants, not less than three business days before work subject to this section is to
12 commence, the owner shall provide the following information:

13 3407.5.6.14.6.1 **Contents of notice.** ~~Except as may be otherwise inconsistent~~
14 ~~with state law, provide written notice to tenants of the building on which the work is being performed~~
15 ~~that lead-related work is being performed. This~~ *The* notice shall be in the form of a sign, letter or
16 memorandum and shall prominently state the following:

17 “Work is scheduled to be performed beginning [date] on this property that may disturb or
18 remove lead-based paint. The persons performing this work are required to follow state and
19 local laws regulating work with lead-based paint. You may obtain information *regarding local*
20 ~~requirements these laws,~~ or report any suspected violations of ~~these requirements these laws,~~ by
21 calling the Department of Building Inspection *at a phone number designated by the Department of*
22 *Building Inspection 415-558-6598. Information regarding State laws may be obtained by calling the*
23 *California Department of Health Services.* The owner of this property is also required to provide
24 ~~tenants-occupants~~ with a copy of the U.S. Environmental Protection Agency pamphlet entitled
25 Protect Your Family From Lead-Based Paint in Your Home, unless the owner has previously

1 provided this pamphlet to the occupant tenant. In addition, you may obtain information regarding
2 your rights as a tenant under the San Francisco Administrative Code, by calling the Rent Board."

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

5 3407.5.6.24.6.2 **Availability of pamphlet.** The owner shall provide to all
6 residential occupants tenants in the building the U.S. Environmental Protection Agency pamphlet
7 entitled "Protect Your Family From Lead-Based Paint in Your Home," except that an owner
8 shall not be required to comply with this requirement with respect to residential occupants
9 tenants to whom the owner has previously provided a copy of the pamphlet.

10 ~~3407.4.7 **Notice by contractor.** Where work subject to the requirements of this section~~
11 ~~is being performed by a contractor, the contractor shall, at least three business days prior to the~~
12 ~~commencement of work on residential property subject to this section, notify the property owner of~~
13 ~~potential lead hazards during the project by distributing the U.S. Environmental Protection Agency~~
14 ~~pamphlet entitled "Protect Your Family From Lead in Your Home."~~

15 3407.5.74.8 **Early commencement of work by owner.** An property owner may
16 commence, or may authorize a contractor to commence, work subject to this section less than
17 three business days after providing notices required in Section_s 3407.5.74.6 and 3407.5.84.7
18 above when the property owner determines that such work must be commenced immediately
19 in order ~~to correct an emergency condition such that a delay would pose an immediate threat to the~~
20 ~~safety or well being of the building's occupants, or~~ to correct life-safety hazards.

21 3407.5.84.9 **Early commencement of work requested by tenant.** Upon
22 written request of tenants, an owner may commence, or authorize a contractor to commence,
23 work subject to this section less than three business days after providing notices required in
24 Sections 3407.5.64.6 and 3407.5.74.7 above.

25 3407.65 **INSPECTION AND SAMPLING.**

1 3407.~~6.15.1~~ **Authority to inspect.** The Director is authorized to inspect the
2 *interior or* exterior of any building or steel structure upon which work subject to the
3 requirements of this section is being performed for the purpose of determining whether the
4 work is being carried out in accordance with the requirements of this section. This inspection
5 authority shall be exercised in accordance with Section 104.2.3 of this code.

6 3407.~~6.25.2~~ **Response to complaint.** Upon receiving a ~~citizen~~ complaint, the
7 Director shall (1) review the complaint; (2) determine whether a valid notification form has
8 been filed for the property in compliance with the requirements of Section 3407.~~5.24.2~~; and (3)
9 where deemed necessary by the Director, conduct an inspection at the job site within two
10 business days to determine the validity of the complaint.

11 3407.~~6.35.3~~ **Evaluation of complaint.** When determining the validity of a
12 complaint, if the Director is not able to observe the actual performance of any work practices
13 constituting violations of ~~the performance standards of~~ Sections ~~3407.3 and/or~~ 3407.~~43~~, the
14 Director shall investigate and consider the following:

15 3407.~~6.3.15.3.1~~ The containment measures and work tools being used by
16 the responsible party;

17 3407.~~6.3.25.3.2~~ The color(s) of paint being disturbed or removed by the
18 responsible party;

19 3407.~~6.3.35.3.3~~ The color(s), quantities, nature and locations of ~~alleged~~
20 ~~work debris visible lead paint contaminants~~;

21 3407.~~6.3.45.3.4~~ The color(s), locations and conditions of paint on ~~buildings~~
22 ~~or steel structures adjacent to the regulated area, including without limitations~~ adjacent properties,
23 to determine if such paint could be a source of the ~~alleged work debris visible lead paint~~
24 ~~contaminants~~;

1 3407.6.3.55-3.5 Any work being performed on adjacent properties which
2 could be a source of the ~~alleged visible work debris lead paint contaminants~~; and

3 3407.6.3.65-3.6 A record of clearance inspection of the regulated area
4 performed after the completion of the work regulated under this section or records of any lead-based
5 paint testing performed for the regulated area, if available.

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

9 3407.6.45-4 **Authority of Director to sample.** The Director or the Director of the
10 Department of Public Health may also collect paint, dust and soil samples from the property
11 where the work is being performed and from adjacent properties in order to determine the
12 validity of a complaint. The Director shall have the authority to order a clearance inspection of the
13 regulated area if he or she determines that there has been a violation of the requirements of Sections
14 3407.3 or 3407.4.

15 3407.76 **ENFORCEMENT.** ~~The Director is authorized to make use of all enforcement~~
16 ~~authority authorized by law, including, but not limited to, the authority set forth in Sections 102 and~~
17 ~~103 of this code to enforce against any violation of this section. Where the owner and the contractor~~
18 ~~are both responsible parties, the Director may proceed against either the owner or the contractor, or~~
19 ~~against both. The Director is further authorized, pursuant to Chapter 17 of this code, following~~
20 ~~issuance of a Notice of Violation, to require, as a condition of resuming work, that the responsible~~
21 ~~party conduct a special inspection by a certified risk assessor in order to establish that the regulated~~
22 ~~area is in compliance with this section.~~

23 ~~3407.6.1 Stop work orders. The Director shall have the power to stop any work that is~~
24 ~~disturbing or removing lead paint or otherwise generating lead paint contaminants in violation of this~~
25 ~~section or the construction, alteration or repairs of any steel structure or building subject to the~~

1 ~~requirements of this section when, in the opinion of the Director, such work is being done in violation~~
2 ~~of any of the provisions of this section and to order all work to be stopped by notice in writing served~~
3 ~~upon any persons engaged in the doing or causing such work to be done. The work shall be stopped~~
4 ~~immediately and shall not be resumed without authorization.~~

5 In addition to the enforcement authorities granted to the Director by Chapter 1 of this
6 code, whenever the Director determines that a violation of the provisions of this section has occurred,
7 the Director may assess an administrative penalty against the responsible parties pursuant to Section
8 3407.8. The notice of penalty shall be served on the party against whom the penalty is being assessed.
9 Such party may appeal the imposition of the administrative penalty by requesting, in writing, a
10 Director's hearing. Such appeal shall be made within fifteen (15) business days from the issuance of
11 the notice of penalty and shall specify grounds for appealing the imposition of the administrative
12 penalty. Upon a timely request for a Director's hearing, the Director shall conduct an administrative
13 hearing in accordance with Section 3407.9. The notice of penalty shall be final and shall be adopted
14 by the Director as a Director's Order if the responsible party fails to appeal the notice of penalty as
15 provided for in this subsection.

16 **3407.87 PENALTIES.**

17 3407.8.1 In addition to any other penalties authorized by law, the Director may
18 impose ~~the following administrative~~ penalties for violations of this section. Such penalty shall not
19 exceed \$500 per violation per day. In addition to the administrative penalties assessed pursuant to this
20 section, the Director may assess additional fees to cover the reasonable costs incurred in enforcing the
21 administrative penalties. Penalties and fees assessed shall continue to accrue against the responsible
22 party or parties until the violation of this section is abated or otherwise remedied in the judgment of the
23 Director. Each day in which the violation continues unabated constitutes a separate and distinct
24 violation. ÷
25

1 ~~3407.7.1 Administrative penalties. The Director may impose administrative penalties~~
2 ~~for violations of this section in accordance with the following procedure:~~

3 ~~3407.7.1.1 Notice. The Director shall notify the responsible party to whom a~~
4 ~~Notice of Violation has been issued that he or she has up to three business days to correct or otherwise~~
5 ~~abate the violation or be subject to the imposition of administrative penalties. For those violations that~~
6 ~~create an immediate danger to health or safety and violations of notification requirements pursuant to~~
7 ~~Section 3407.4, the responsible party to whom a Notice of Violation has been issued shall immediately~~
8 ~~abate the violation or be subject to the imposition of administrative penalties. In circumstances where~~
9 ~~the Director is aware that there is more than one responsible party, the Director shall make reasonable~~
10 ~~efforts to give notice to all responsible parties.~~

11 ~~3407.7.1.2 Limits. Administrative penalties assessed against a violator pursuant~~
12 ~~to Section 3407.7.1.1 shall not exceed \$500 per day per violation.~~

13 ~~3407.7.1.3 Additional fees. In addition to the administrative penalty assessed~~
14 ~~pursuant to Sections 3407.7.1.1 and 3407.7.1.2, the Director may assess additional fees to cover the~~
15 ~~reasonable costs incurred in enforcing the administrative penalty.~~

16 ~~3407.7.1.4 Length of penalties. Penalties and fees assessed under Sections~~
17 ~~3407.7.1.1 and 3407.7.1.3 shall continue to accrue against the responsible party or parties until the~~
18 ~~violation of this section is abated or otherwise remedied in the judgment of the Director.~~

19 ~~3407.7.1.5 Collection. The Director, or his or her designated representative, is~~
20 ~~responsible for charging and collecting any penalty or fee assessed pursuant to this section. The~~
21 ~~Director shall notify the responsible party or parties in writing of the cost of the penalty and fee and~~
22 ~~declare that such costs are due and payable to the Treasurer of the City and County of San Francisco.~~
23 ~~If the penalty and fee are not paid within 30 days of this notice, the Director shall request that the Tax~~
24 ~~Collector pursue collection of the penalty and fee, up to and including imposition of a special~~
25

1 ~~assessment lien in accordance with the requirements of Article XX of Chapter 10 of the San Francisco~~
2 ~~Administrative Code (commencing with Section 10.230).~~

3 **3407.8.1.17.1.6 Use of penalty.** Any administrative penalty and fee
4 received by the Treasurer of the City and County of San Francisco shall be placed in the
5 Building Inspection Fund and used to offset the Department's costs in connection with the
6 administration and enforcement of this section.

7 ~~3407.7.1.7 Review of imposition of penalty. Any person that is designated as a~~
8 ~~party responsible for a violation or is subject to an administrative penalty or fee may seek~~
9 ~~administrative review of the designation or the assessment of the penalty or fee. Administrative review~~
10 ~~shall be initiated by the filing of an appeal with the Director that specifies in detail the basis for~~
11 ~~contesting the designation of the responsible party or the assessment of the penalty or fee. Such appeal~~
12 ~~shall be filed within 15 business days of the imposition of the penalty or fee. Within 10 days of the~~
13 ~~receipt of the appeal, unless extended by mutual agreement of the affected parties, the Director shall~~
14 ~~cause a hearing to be held before a hearing officer. The decision of the hearing officer shall be final.~~

15 **3407.8.27.2 Alternative penalty.**

16 ~~3407.7.2.1 Scope. The Director, in his or her discretion, may allow a A~~
17 responsible party found to be in violation of this section ~~may elect~~ to attend a training course
18 approved by the State of California Department of Health Services in lead-related construction
19 supervision and project monitoring in lieu of paying an administrative penalty pursuant to
20 Section 3407.8.17.1 in which case the penalty is stayed until such time that the responsible party
21 provides proof of satisfactory completion of the course. The Director shall require proof of
22 attendance and satisfactory completion of the course, including certification from the instructor
23 or provider of the course before dismissing the penalty assessed against the person. Failure
24 to provide such proof when requested by the Director shall result in the re-instatement of the assessed
25 penalty against the responsible party.

1 3407.8.2.17.2.2 **Applicability.** The ~~election~~alternative penalty set forth in
2 Section 3407.8.27.2 shall only be available to persons who have not previously completed
3 such a training course and who have not been previously found by the Director to be in
4 violation of this section.

5 3407.98 **ADMINISTRATIVE ENFORCEMENT PROCEDURES.**

6 3407.9.1 Action by the Director. If the responsible parties failed to comply with Notice
7 of Violation or Stop Work Order issued pursuant to this code, the Director may:

8 3407.9.1.1 Refer the matter for a hearing in accordance to the provision of this
9 subsection or

10 3407.9.1.2 Issue another notice of violation, stop work order, and/or notice of
11 penalty, if appropriate or

12 3407.9.1.3 In the case where the responsible party is a contractor, file a
13 complaint with the State Contractor Licensing Board.

14 3407.9.2 Notice of Hearing. Notice of any hearing conducted under this section shall
15 be given in accordance with Chapter 1 of this code.

16 3407.9.3 Hearing. Any hearing held pursuant to this section shall be conducted in
17 accordance with Chapter 1 of this code.

18 3407.9.4 Decision. Except as otherwise provided for in this subsection, any decision
19 issued pursuant to this subsection shall be issued accordance with Chapter 1 of this code.

20 3407.9.4.1. Where the order imposes administrative penalties, the order shall
21 apprise the responsible parties of their rights to seek judicial review in the Superior Court of San
22 Francisco pursuant to Section 1094.6 of the California Code of Civil Procedure.

23 3407.9.5 Posting and Service of Order. The Director's order shall be posted and
24 served in accordance with Chapter 1 of this code.

1 3407.9.6 **Appeal of Order.** Any person may appeal the non-monetary portion of the
2 Director's order issued pursuant to Section 3407.9.4 provided that such appeal is in writing and filed
3 with the Abatement Appeals Board pursuant to Chapter 1 of this code. Upon the perfection of the
4 appeal to the Abatement Appeals Board, the monetary portion of the Director's order shall be stayed
5 pending the appeal.

6 3407.9.6.1 A responsible party against whom administrative penalties are
7 imposed may seek judicial review of the monetary portion of the order by filing a writ of mandate with
8 the Superior Court of San Francisco pursuant to Section 1094.6 of the California Code of Civil
9 Procedure.

10 3407.9.7 **Referral to the City Attorney's Office.** If the responsible parties fail to
11 comply with a final and non-appealable order, the Director may refer the order to the City Attorney's
12 Office for civil prosecution. In any action brought by the City Attorney's Office to enforce a final and
13 non-appealable order, the Responsible Party shall be liable for all costs and fees including, but are not
14 limited, to attorneys' fees incurred by the City.

15 **3407.10 MISCELLANEOUS.**

16 3407.10.1 **Method of Service.** Unless otherwise specified, any notices and orders
17 issued pursuant to this section shall be served in accordance with Chapter 1 of this code.

18 3407.10.2 **Proof of Service.** The person serving the notice or order as provided herein
19 shall file an affidavit or declaration thereof under the penalty of perjury, certifying the time and
20 manner in which such notice was given. Such person shall also file therewith any receipt card of such
21 Notice or Order if service was performed by certified mail.

22 **3407.118 REMEDIES AND ENFORCEMENT BY CITY OFFICIALS.**

23 **3407.118.1 No obligation by city.** In undertaking the enforcement of this
24 section ~~ordinance~~, the City and County of San Francisco is assuming an undertaking only to
25 promote the general welfare. It is not assuming, nor is it imposing on its officers and

1 employees, an obligation for breach of which it is liable in money damages to any person who
2 claims that such breach proximately caused injury.

3 3407. ~~11~~8.2 **Discretionary duty.** Subject to the limitations of due process,
4 notwithstanding any other provision of this section code, whenever the words “shall” or “must”
5 are used in establishing a responsibility or duty of the City, its elected or appointed officers,
6 employees or agents, it is the legislative intent that such words establish a discretionary
7 responsibility or duty requiring the exercise of judgment and discretion.

8 3407. ~~12~~9. **SEVERABILITY.** If any Section, paragraph, sentence, clause or phrase of
9 this section is for any reason held to be unconstitutional, invalid or ineffective by any court of
10 competent jurisdiction, such decision shall not affect the validity or effectiveness of the
11 remaining portions of this section. The Board of Supervisors declares that it would have
12 passed each section, paragraph, sentence, clause or phrase of this section irrespective of the
13 fact that any portion of this section could be declared unconstitutional, invalid or ineffective.

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16 APPROVED AS TO FORM:
17 DENNIS J. HERRERA, City Attorney

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By:

Kate Herrmann Stacy
Deputy City Attorney

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