

Collecting Dust

*How NYC is Failing to Penalize Landlords
for Exposing Tenants to Lead Dust*

Acknowledgements



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Founded more than 40 years ago by leaders of the bar, New York Lawyers for the Public Interest is a community-driven civil rights organization that pursues equality and justice for New Yorkers. NYLPI works toward a New York where all people can thrive in their communities, with quality healthcare and housing, safe jobs, good schools, and healthy neighborhoods. In our vision, all New Yorkers live with dignity and independence, with the access and resources they need to succeed. NYLPI's community-driven approach powers its commitments to civil rights and to disability, health, immigrant, and environmental justice. NYLPI seeks lasting change through litigation, community organizing, policy advocacy, pro bono service, and education.



About Cooper Square Committee

The Cooper Square Committee (CSC) works with area residents to contribute to the preservation and development of affordable, environmentally healthy housing and community/cultural spaces so that the Cooper Square area remains racially, economically, and culturally diverse. The Cooper Square Committee has spearheaded significant neighborhood victories in its history, comprising nearly 60 years of tenant organizing, community-based planning, advocacy and development. It relies on the active involvement of its members in the organization's work to advance its affordable housing agenda.



About Northern Manhattan Improvement Corporation

Northern Manhattan Improvement Corporation, a community-based multi-services agency, has been active in organizing, educating, and litigating on childhood lead poisoning prevention for a quarter of a century, serving as counsel to the New York City Coalition to End Lead Poisoning.



About NYLCVEF

The New York League of Conservation Voters Education Fund (NYLCVEF) educates, engages, and empowers New Yorkers to be effective advocates for the environment. Through policy forums, civic engagement campaigns, and nonpartisan electoral work, NYLCVEF encourages New Yorkers to participate in the environmental decision-making process and get involved in local sustainability issues, including climate change, public health, and natural resource protection. Learn more at www.nylcvef.org



About WE ACT

Founded in 1988, WE ACT for Environmental Justice is a Northern Manhattan community-based organization whose mission is to build healthy communities by ensuring that people of color and/or low income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. As a result of our ongoing work to educate and mobilize the more than 630,000 residents of Northern Manhattan on environmental issues affecting their quality of life, WE ACT has become a leader in the nationwide movement for environmental justice, influencing the creation of federal, state and local policies affecting the environment.

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*Cover Image: Dust accumulated thickly enough to
make boot prints at 138 Ludlow Street*

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Workers disturbing old paint without protective materials or clothing at 332 East 4th Street
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IN 2004, THE CITY OF NEW YORK took a major step to address the serious public health issue of lead poisoning, including poisoning resulting from exposure to lead-based paint dust. By enacting Local Law 1 of 2004, the City mandated the use of safe work practices to protect tenants and workers from harm. The law applies to all buildings with a presumed presence of lead-based paint; in other words, it applies to the nearly two million New York City housing units built before 1960, when lead-based paint was common.

The Department of Health and Mental Hygiene (DOHMH) holds the primary enforcement role of the safe work practices provisions of Local Law 1. As the enforcement agency, DOHMH is responsible for ensuring safe work practices, investigating complaints, and assessing penalties. Our group of tenant and environmental justice advocacy organizations used publicly available data from the NYC Office of Administrative Trials and Hearings (OATH), FOIL requests to the DOHMH, and on-the-ground observations of tenant experiences to gain a deeper understanding of enforcement of safe work practices to protect tenants from lead exposure.

After 15 years, gaps in the enforcement of Local Law 1 of 2004 have come under scrutiny.

In the 15 years since Local Law 1 went into effect on August 2, 2004,

- OATH has processed 2,828 violations containing references to the safe work practices standards in Health Code § 173.14, which specifies procedures and methods for correcting lead-based paint hazards.
- Of the 2,828 total violations, 75% of the primary charges in these cases relate to building conditions that pose risks to tenant and worker health.
- In four out of five cases (79% of the total cases), the OATH hearing sustained the original violation finding, delivering an “in violation” or “default” result.
- Overall, 2,212 penalties for violations of Health Code § 173.14 have amassed \$1,976,870 in imposed fines.
- Our analysis indicated a shockingly low collection rate for these penalties. Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid.
- Only 12 penalties have been collected as a result of OATH adjudications in 15 years.

In contrast, DOHMH has a far greater collection rate for penalties in other areas it enforces. We compared violations for all of Health Code § 173.14 to a selection of the Health Code subsections also under DOHMH’s enforcement purview, related to mobile food vending. Our review showed that, over the 15-year study period, DOHMH has imposed 21 times the amount of penalties for mobile food vending violations than it did for lead-related violations, collecting a total of \$5 million from street vendors for infractions such as “cart touching or leaning against a building”—as opposed to just over \$10,000 for lead-related violations. Not only did DOHMH impose more penalties on street vendors than property owners, street vendors made payments on

these assessed fines at a dramatically higher rate. For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations.

One reason for the disparity in penalties imposed and collected may be differences in the DOHMH’s enforcement protocol for these different parts of the Health Code. While street vendors must submit to annual grading inspections, complaint-driven investigations, random checks, automatic fines determined by a fine schedule, and impediments to permit renewal, nothing so comprehensive exists to enforce Health Code § 173.14. Rather, the DOHMH’s enforcement protocols for Health Code § 173.14 are opaque, reactive to tenant complaints, unpredictable in their escalation, and rarely seem to result in meaningful financial penalties.

After 15 years, gaps in the enforcement of Local Law 1 of 2004 have come under scrutiny. Our Lead Loopholes report in 2018 found widespread underenforcement of the primary prevention measures in Local Law 1, which were designed to effectively end childhood lead poisoning from household sources throughout New York City. Low collection rates for unsafe work practices violations follow a similar pattern of underenforcement.

Given the health risks associated with lead dust exposure, especially for children, we urge the City to improve Health Code enforcement against landlords who endanger their tenants’ safety and wellbeing. The City must fully enforce existing laws and vigorously seek and collect penalties, break down agency silos, and increase transparency around DOHMH’s enforcement protocols.

Preventing Exposure to Lead Dust

THE DANGERS POSED BY LEAD-BASED PAINT to the health and safety of New York City’s children has long been recognized. In 1996, noting that “even relatively low levels can lead to significant nervous system damage” the New York Court of Appeals declared that “[c]hildhood lead paint poisoning may be the most significant environmental disease in New York City.”¹

Experts consider lead dust to be “the primary exposure pathway of childhood lead poisoning.”² Lead dust can be invisible to the naked eye and highly toxic even in vanishingly small quantities.³ Lead dust can be inhaled or swallowed when present on contaminated surfaces, such as children’s toys, hands, and food, and is generated not only from peeling or chalking lead paint on aging or damaged structures, but also from normal abrasion of intact painted surfaces, such as window and door frames.

Any construction or renovation work that disturbs lead-based paint—whether intended as part of lead abatement activities, as a renovation or repair, or as normal maintenance activities (such as preparation for repainting)—can easily generate lead-contaminated dust. In 2004 the New York State Department of Health (NYSDOH) stated that “Children living in dilapidated older houses or an older house undergoing renovations are at particular risk for lead poisoning due to lead contaminated dust and debris.”⁴ Therefore, construction, repair, renovation, or abatement work in housing built before 1960, which is presumed to contain lead paint, must employ practices to prevent the dispersion of dust and to properly clean up the work area at the end of the job, performed by persons with appropriate training.

For the past three decades the City of New York has been under a legal mandate to protect tenants during work disturbing or removing lead-based paint. As a result of a class action lawsuit brought on behalf of children in rental properties, in 1989 the City was ordered to promulgate regulations governing safe work practices for such activities.⁵ After the City was held in contempt of court

¹ *Juarez v. Wavecrest Management*, 88 N.Y.2d 628, at 641.

² *New York City Coalition to End Lead Poisoning (“NYCCELP”) v. Vallone*, 100 N.Y.2d 337, at 343 (2003). See also Jacobs, Clickner, Zhou, Viet, Marker, Rogers, Zeldin, Broene, Friedman, *The Prevalence of Lead-Based Paint Hazards in U.S. Housing*, 110 *Environmental Health Perspectives* (10) 599-606, at 599 (Oct 2002) (“A large body of evidence shows that a common source of lead exposure for children today is lead-based paint hazards in older housing and the contaminated dust and soil it generates Recent studies indicate that dust lead is the strongest predictor of childhood blood lead levels.”) (citations omitted); Lanphear, Weitzman, Winter, Eberly, Yakir, Tanner, Emond, Matte, *Lead-Contaminated House Dust and Urban Children’s Blood Lead Levels*, 86 *Amer. J. of Public Health* (10) 1416-1421, at 1420 (Oct. 1996) (“[T]his study confirms that lead-contaminated house dust is a significant source of lead exposure for urban children with low-level elevations in blood lead”); Lanphear, Matte, Rogers, Clickner, Dietz, Bornschein, Succop, Mahaffey, Dixon, Galke, Rabinowitz, Farfel, Rohde, Schwartz, Ashley, Jacobs, *The Contribution of Lead-Contaminated House Dust and Residential Soil to Children’s Blood Lead Levels: A Pooled Analysis of 12 Epidemiologic Studies*, 79 *Environmental Research* 51-68, at 57 (1998) (“In the multivariate regression, floor dust lead loading was the most significant environmental predictor of children’s blood lead levels . . .”).

³ In 1999 the U.S. Department of Housing and Urban Development (HUD) tightened its safety standards from 100 micrograms (millionths of a gram) per square foot of floor area ($\mu\text{g}/\text{ft}^2$) to only 40 $\mu\text{g}/\text{ft}^2$. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 *Fed. Reg.* 50140 (Sept. 15, 1999). In 2019, the New York City Council passed legislation tightening this standard to 10 $\mu\text{g}/\text{ft}^2$, with a further proviso that the level will be halved to 5 $\mu\text{g}/\text{ft}^2$ on June 1, 2021. Local Law 66 of 2019, amending Admin. Code § 27-2056.2.

⁴ NYSDOH, “Eliminating Childhood Lead Poisoning in New York State by 2010,” (Aug. 2004), at 10. Reported studies by NYSDOH have found that unsafe work practices expose children. See, e.g., EM. Franko et al, “Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remodeling Activities—New York, 1993-1994,” in CDC, *Mortality and Morbidity Weekly Report* Jan. 3, 1997; EM. Franko et al, “Children with Elevated Blood Lead Levels Related to Home Renovation, Repair, and Painting Activities—New York State, 2006-2007” in CDC, *Mortality and Morbidity Weekly Report* Jan. 30, 2009.

⁵ *NYCCELP v. Koch*, N.Y.L.J., July 21, 1989, at 18 (Sup. Ct. N.Y. Co.), *aff’d*, 170 A.D.2d 419 (1st Dep’t 1991)



*Stairway with dust accumulated
in corners at 138 Ludlow Street*
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for failing to do so,⁶ the City eventually promulgated regulations in 1993—as Health Code § 173.14. However, as originally written, these regulations applied only in the limited circumstances where a violation had already been cited by the City—which left landlords otherwise free to use unsafe work practices during ordinary repairs or renovations, and resulted in yet another court decision holding the City in contempt in 1997.⁷

It was not until the enactment of Local Law 1 of 2004, which specifically mandated (through Administrative Code § 27-2056.11) that the relevant agencies promulgate regulations covering work that disturbs lead paint—regardless of the existence of code violations—that Health Code § 173.14 was revised to cover all such work. These standards incorporated state-of-the-art safety measures to prevent dispersal of toxic lead dust during such activities, and addressed the multiple hazards posed by lead dust through, among other things, safe disposal of hazardous materials; prevention of lead dust contamination of the home, its contents, and surrounding areas; proper licensing and training of lead abatement workers; and safe cleanup after lead paint work, including stringent dust clearance testing to ascertain that no hazardous lead dust remains.

Local Law 1 of 2004 requires DOHMH the primary role to enforce the safe work regulations and investigate complaints regarding unsafe work practices.⁸

⁶ *NYCCELP v. Koch*, N.Y.L.J., May 12, 1993, at 29 (Sup. Ct. N.Y. Co.).

⁷ *NYCCELP v. Giuliani*, 173 Misc. 2d 235, 240 (Sup. Ct. N.Y. Co. 1997), *aff'd*, 248 A.D.2d 120 (1st Dep't 1998), rejecting the then-promulgated Health Code § 173.14 because “assumes no responsibility at all without the issuance of a lead paint violation by a City agency.”

⁸ Local Law 1 of 2005, adding Admin. Code § 17-185.

Enforcement of Local Law 1

AS DESCRIBED ABOVE, New York City in Health Code § 173.14 lays out work practices and safety standards for abatement of lead-based paint or other work that may disturb lead paint. Once DOHMH has inspected and determined that a violation is present, it applies the enforcement mechanisms of the Health Code as a whole, described in §3.11 and 3.12. These sections call for fines for each violation of a provision of the Health Code, which are set out in a fine schedule.

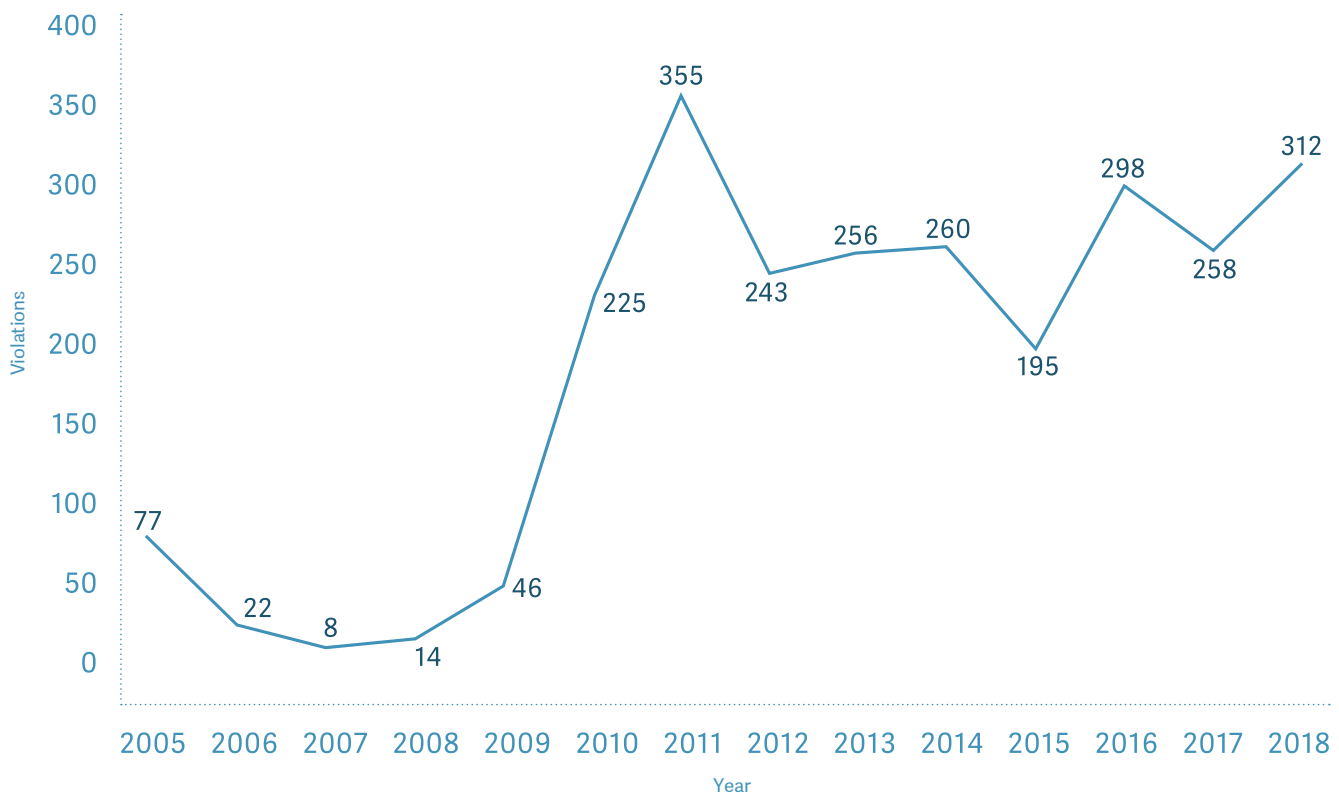
In order to impose fines for violations, DOHMH must bring a proceeding at the New York City Office of Admin-

istrative Trials and Hearings (OATH). Hearings at OATH require reasonable notice to the parties, and the burden of proof to substantiate violations is on the agency commencing the proceeding. OATH decisions are appealable. In most cases, the defendant must, however, pay the fine in order to appeal. If the defendant wins the appeal, they are issued a refund.

We used publicly available data from the NYC Office of Administrative Trials and Hearings (OATH) and FOIL requests to the Department of Health and Mental Hygiene (DOHMH) to gain a deeper understanding of enforce-

Fig. 1: Lead-related violations processed by OATH by year

In the 15 years since August 2, 2004, when NYC enacted Local Law 1 of 2004, OATH has processed 2,828 violations containing references to Health Code 173.14.



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. Chart shows violations processed per year for every full calendar year available. Violations from 2004 and 2019 not shown.

ment of penalties related to this portion of the City’s lead poisoning prevention measures.

Our research revealed that in the 15 years since Local Law 1 went into effect on August 2, 2004, OATH has processed 2,828 violations containing references to Health Code § 173.14 (Figure 1). A minority of the primary charges of these violations (17%) relate to administrative requirements of the law. The majority of violations (57%) are related to tenant protection, followed by violations relating to work methods and occupant relocation (19%) (Figure 2). In other words, three-quarters of the

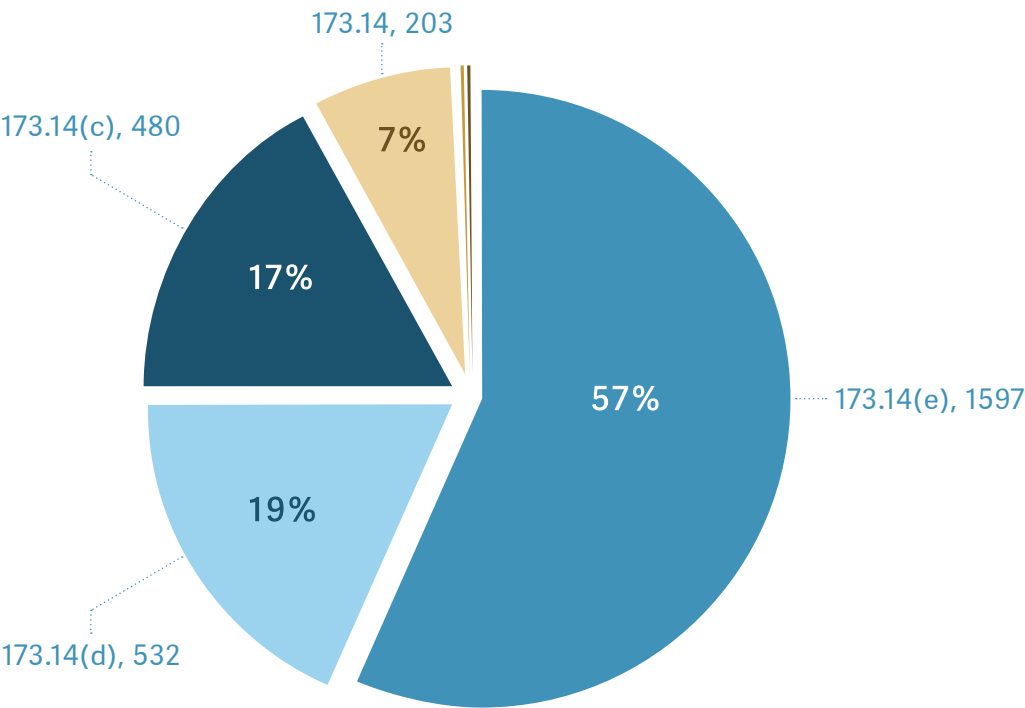
primary charges in these cases relate to building conditions that pose risks to tenant and worker health.

In 20% of cases, OATH dismissed the case and did not impose a penalty.⁹ However, for the great majority of the total alleged violations, the OATH hearing triggered a penalty: In 41% of cases, the hearing sustained the original violation and resulted in a penalty, and in an additional 38% of cases, the hearing yielded a “default” result,

⁹ This rate of dismissals is similar to the rate seen for violations in other areas of the health code.

Fig. 2: Charge #1 Code Section (simplified)

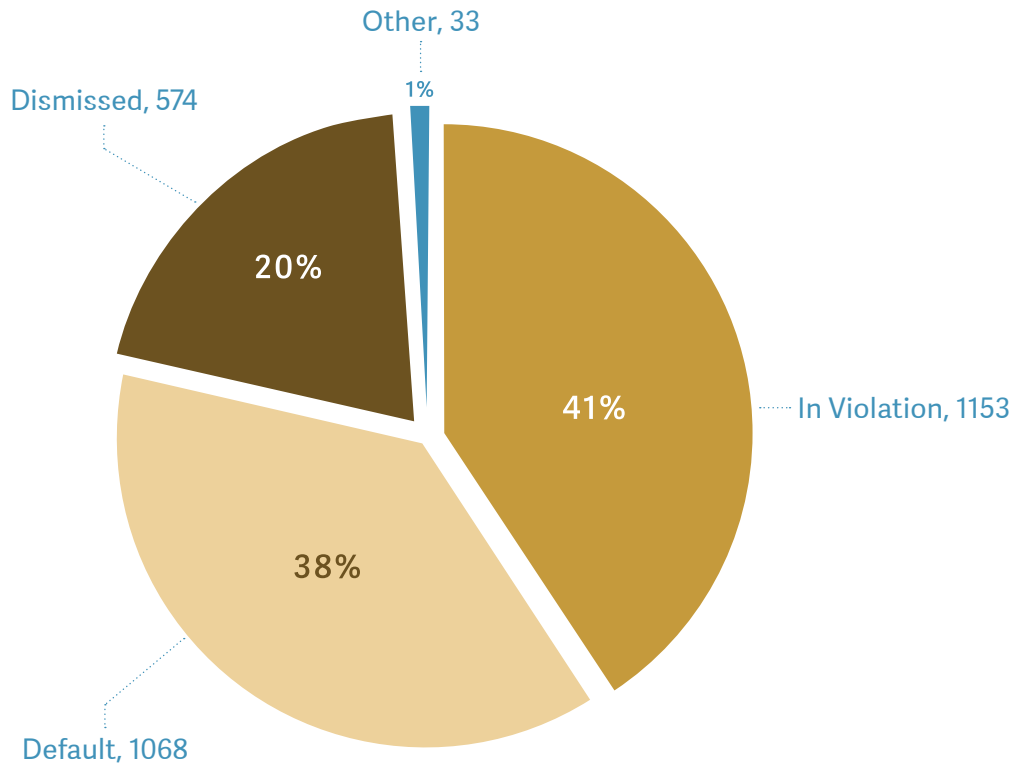
Of the 2,828 total violations, 75% of the primary charges correspond to sections of the health code related to occupant protection (173.14(e)) or work methods (173.14(d)).



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. Code subsections were reduced to their primary subsection, e.g. 173.14(e)(1)(A)(i) was simplified to 173.14(e). Records without code sections correspond to general safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

Fig. 3: Hearing results for lead-related violations processed by OATH

In 20% of cases, OATH dismissed the case and did not impose a penalty. However, for 79% of the total alleged violations, the OATH hearing delivered an “in violation” or “default” result.



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. “In Violation” means that OATH sustained the alleged violation and assigned a penalty. “Default” largely means that the party failed to appear at the hearing and OATH assigned a penalty. OATH also imposed penalties in 16 cases with blank hearing results and 4 cases “written off.”

meaning that the party failed to appear to contest the violation. Here, too, OATH imposed a penalty (Figure 3). Overall, 2,212 penalties for violations of Health Code § 173.14 have amassed \$1,976,870 in imposed penalties over the 15 years Local Law 1 has been in place (Figure 4).

However, although nearly \$2,000,000 in penalties have been imposed pursuant to Health Code § 173.14, our analysis indicated a shockingly low collection rate. Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid (Figure 5). Only 12 penalties have been collected as a result of OATH adjudication of safe work practices violations in 15 years.

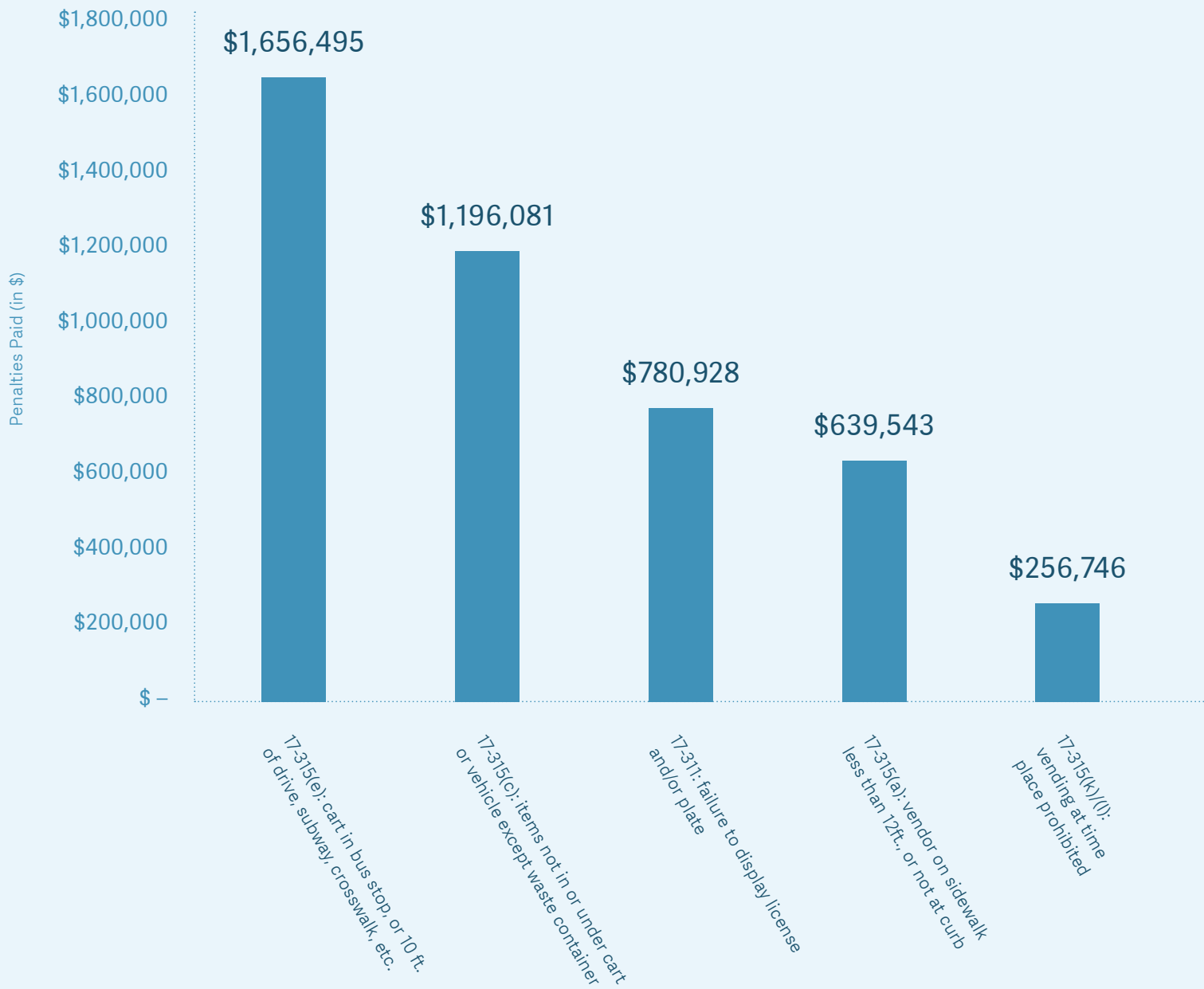
The 0.5 percent collection rate is extraordinarily low. Moreover, since there are approximately two million housing units built before 1960 that are presumed to contain lead-based paint, it is likely the nearly 3,000 violations registered through OATH represent only a small percentage of the overall scope of the problem. DOHMH does not publish its data on lead-related violations, investigations, or penalties, and thus this analysis of OATH-assigned penalties is the best we can conduct using publically available data.

Fig. 4: Summary of total hearings, penalties imposed, and penalties paid for lead-related violations and street vending violations.

	Lead-Related Violations		Street Vending Violations	
TOTAL HEARINGS (2004 to 2009)		2,828		118,729
Number of Penalties Imposed		2,212		93,487
Average Penalty Imposed	\$	894	\$	457
Maximum Penalty Imposed	\$	12,310	\$	4,000
TOTAL PENALTIES IMPOSED	\$	1,976,870	\$	42,745,442
Number of Penalties Paid		12		32,463
Average Paid Amount	\$	849	\$	154
Maximum Paid Amount	\$	2,532	\$	2,609
TOTAL PENALTIES PAID	\$	10,190	\$	5,015,124
PERCENTAGE COLLECTED		1%		12%

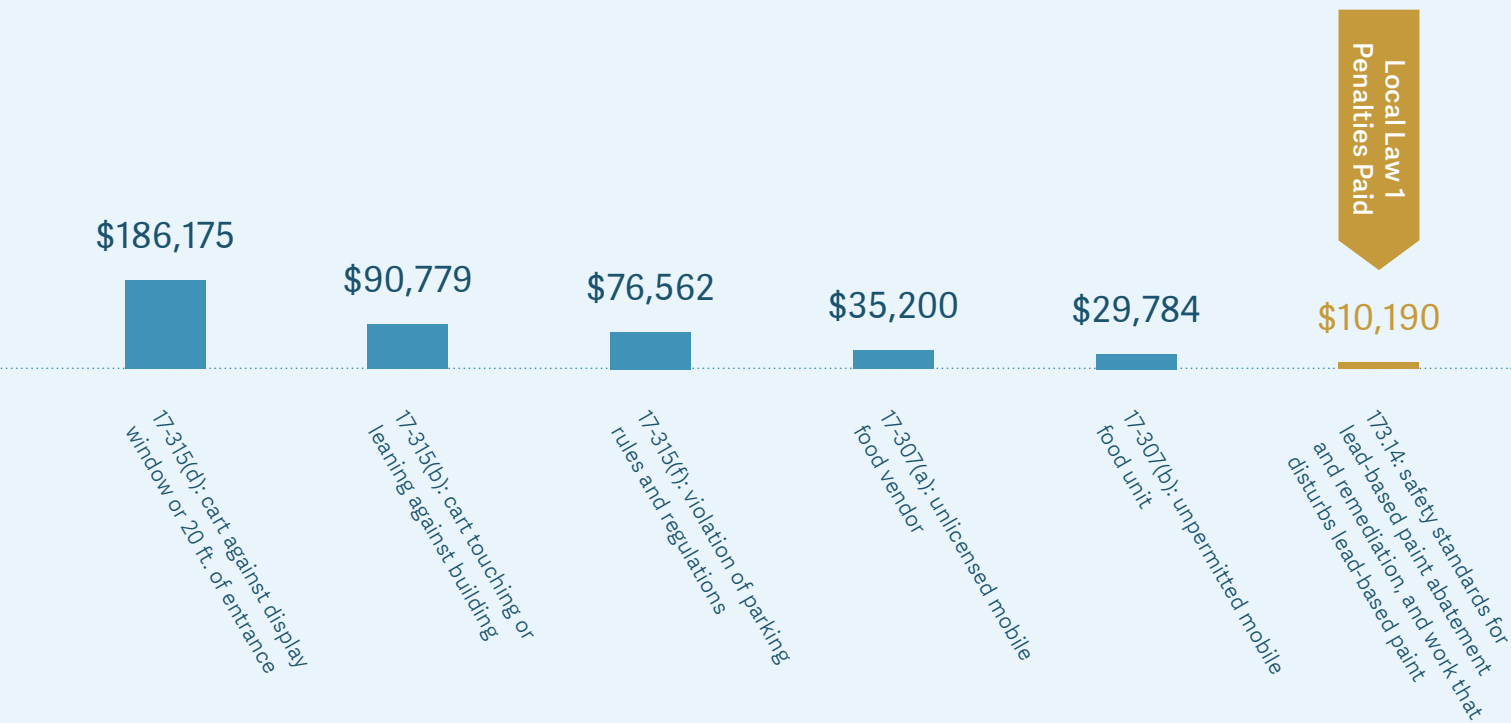
Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019. For violations related to safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint, the primary charge code section references administrative code section 173.14. The administrative code sections related to street vending include 17-307(a) and (b); 17-307(b); 17-311; 17-315(a), (b), (c), (d), (f), (k)/(l). Penalties Imposed and Penalties Paid calculations exclude when value is 0 or blank. Percentage Collected is proportion of total penalties paid (in dollars) to total penalties imposed (in dollars).

Fig. 5: Selected OATH-Adjudicated Health Department Penalties Paid for Violations Since Local Law 1 Enacted (8/2/04 to 8/2/19)



Source: NYC Open Data, OATH Hearings Division Case Status, Office of Administrative Trials and Hearings (OATH). Updated as of 9/26/2019.

Only \$10,190—or 0.5 percent—of the amount owed in penalties has been paid. Only 12 penalties have been collected as a result of OATH adjudication of safe work practices violations in 15 years.



Administrative Code Section

Health Code § 173.14 Enforcement Compared to Other Health Code Enforcement

DOHMH OVERSEES ENFORCEMENT across a wide range of areas beyond lead-based paint hazards, including tobacco sales, environmental hazards, restaurants, daycare providers, and street vendors. Our analysis of other areas of DOHMH's oversight portfolio, in particular its regulation of street food vendors, uncovered a disparity in enforcement of health code violations.

Street vendors, like landlords, run businesses that pose potential public health risks. They, too, must abide by laws meant to protect the health of New Yorkers. To comply with health and administrative codes, vendors interact with multiple enforcement agencies including the NYPD and a special unit within the Health Department (the Bureau of Food Safety and Community Sanitation). Vendors must submit to proactive annual grading inspections, complaint-driven investigations, and random inspections. They face automatic fines determined by a fine schedule. If they do not address an open violation, they cannot renew their vending permit, a consequence which seriously impacts their ability to do business. If vendors are caught operating without a permit, the City imposes an automatic \$1,000 fine, and this fine escalates after subsequent offenses.

Our analysis found that the most common violations that enforcement agencies assign to street vendors relate to vending in the wrong place and not keeping items in or on their cart.

We compared violations for all of Health Code § 173.14 to a handful of subsections related to street vending violations (17-307(a)(b), 17-311, 17-315(a)(b)(c)(d)(f)(k)(l)). Our review showed that over the 15-year study period DOHMH has imposed 21 times the amount of penalties for street vending violations than it did for lead-related violations.

Critically, street vendors make payments on assessed fines at a dramatically higher rate than property owners. For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations (Figure 4). Over the 15-year study period, street vendors paid over \$5 million in penalties. Over that same period, property owners paid just over \$10,000 for lead-related violations (Figure 5).

This disparity could exist for various reasons, including differences in staff levels across DOHMH or how easy certain types of violations may be to detect and enforce. However, regardless of possible explanations, the data nonetheless suggest that enforcement against landlords is far too lenient.

Ultimately, the data pose the question of whether the City cares more about ensuring food carts are placed correctly on the sidewalk than ensuring that landlords won't continue to poison their tenants with lead dust. Since 2004, the City's OATH procedures have resulted in \$90,779 collected from street vendors for allowing their cart to touch or lean against a building—nearly nine times what the City has collected from landlords who have disturbed dangerous lead dust inside residential buildings. Simply put, the penalties collected don't match the severity of health risks associated with the violation. As noted previously, street vendors are subject to automatic penalties with a predetermined fine schedule. Failure to resolve an open violation could prevent them from conducting business. In contrast, landlords appear to risk few if any consequences for failing to address an open violation, and they maintain their ability to collect rent.

Theresa Kimm

Theresa Kimm's family had been long time residents of 332 East 4th Street in Manhattan's Lower East Side when the building was sold to Frontier Fourth Development in early 2019. By March, tenants were subjected to intense renovations in both the common areas and in vacant apartments. As a mother of a two-year-old child, Theresa was particularly worried about the effects of lead exposure on her family.

Within a few hours of work beginning on the first day of construction, Theresa saw dusty, open bags being hauled through common areas and dust on the stairways, so she called 311. DOHMH inspected on March 13, 2019, and found elevated levels of lead in the dust. The landlord was notified of the lead contamination. Besides the commissioner's orders to clean up all debris and dust issued in April, the City took no other actions at that point.

Theresa and her neighbors continued to call 311 about high levels of dust and other unsafe work in the building. DOHMH inspected on numerous subsequent occasions, and while they did not find dust violations at the time of the inspections, Theresa and her neighbors continued to report high levels of dust before and after inspections.

During the period of heavy renovations, Theresa was advised by DOHMH inspectors to put a wet towel across the bottom of her doorway to protect her daughter from the onslaught of dust they were continuously experiencing. Even on the occasions when the Department of Buildings (DOB) temporarily stopped construction for illegal activity, Theresa was worried about letting her child walk up the stairs by herself. The stair railings and other parts of the common areas were frequently left dusty, as were tenants' doors.

Finally, on May 14, 2019, inspectors issued a stop-work order for unsafe work practices related to lead. Inspectors observed visible construction dust and debris on public

Since 2004, the City's OATH procedures have resulted in \$90,779 collected from street vendors for allowing their cart to touch or lean against a building—nearly nine times what the City has collected from landlords who have disturbed dangerous lead dust inside residential buildings. Simply put, the penalties collected don't match the severity of health risks associated with the violation.

hallway floors, window sills, and stairway treads from the first to the sixth floor, and issued a summons. According to NYC Open Data, a \$1300 penalty was assessed through default/no appearance at an OATH hearing, but the fine was never paid.

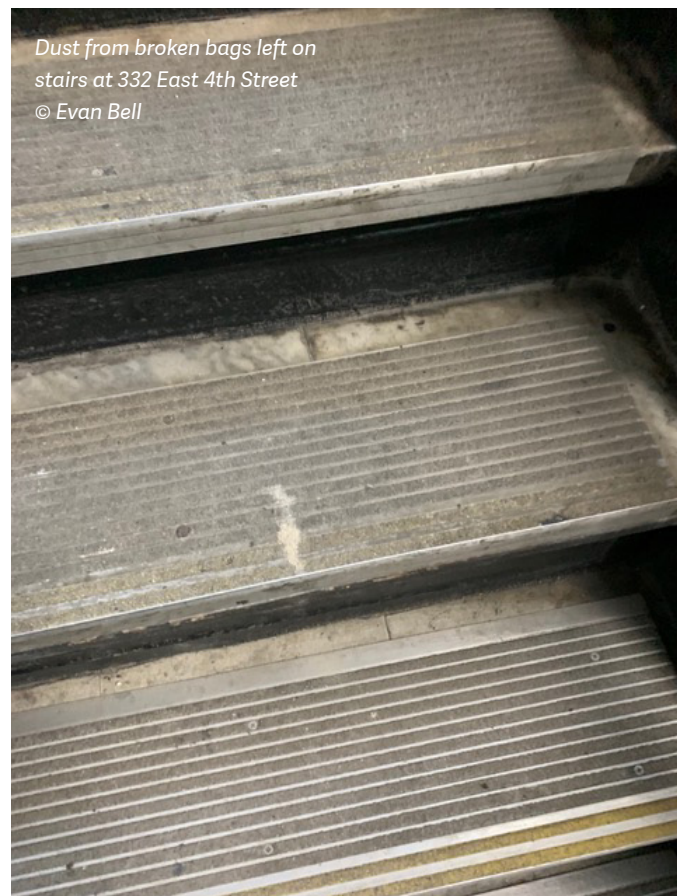
Inspectors went out the next day, and saw plastic containment with visible tears and holes over doors coated with construction dust. On the following day, May 16, inspectors noted that dust was being controlled, and allowed work to resume.

Months after potential exposure of Theresa's toddler to a dangerous neurotoxin in their home, our research showed no penalty or other consequences from DOHMH for not following safe work practices.

Mayra Hernandez

Mayra Hernandez's extended family has lived on the Lower East Side since the 1960's. She has been a resident of 138 Ludlow Street for close to 40 years. In early 2018 her building was sold to DelShah Capital and extensive renovations started. By July, tenants began reporting reckless construction and unsafe conditions to housing rights organizations.

At the same time, rent stabilized tenants reported they were being offered buy-outs, and other tenants' leases were not renewed. During the latter half of 2018, Mayra's disabled adult daughter fell ill repeatedly and had to be taken to the hospital on multiple occasions, which Mayra attributes to exposure to high levels of construction dust, causing her eye and ear infections. Mayra, too, experienced burning and irritation of her eyes, nose, and throat from the intense dust. Though workers began putting up plastic sheeting over doorways, the sheeting was often left open, and dust from renovations accumulated so thickly on stairs and halls that distinct footprints could be seen throughout the building. On December 24, 2018, DOHMH inspected and found lead over 36 times the legal limit, and ordered a cleanup.



Dust from broken bags left on stairs at 332 East 4th Street
© Evan Bell



Door left open and no plastic cover during renovations at 138 Ludlow Street
© DelShah

Mayra and her neighbors hoped that the attention paid to conditions in the building would improve their living situation. Inspectors visited on three additional occasions, but did not report uncontrolled dust, although the Department of Buildings found multiple unsafe construction activities. On February 4, around the same time the landlord sent information to tenants and the Cooper Square Committee about how the building had been cleaned up and safe work practices were being followed, tenants reported high levels of dust, and DOHMH was called to the building. Inspectors from DOHMH did not test for lead, but again ordered a clean-up. By mid-2019, only four original tenants remained in the building. According to Open Data NYC, OATH imposed \$2,600 in penalties, which remain unpaid. Though we have obtained the DOHMH report confirming lead found in the common areas of this building, the DOHMH FOIL request yielded no additional records. In any case, Mayra, her vulnerable daughter, and her neighbors were exposed to high levels of lead dust.

Holly Slayton

As a small business owner and mother of an elementary school-aged daughter, Holly Slayton has deep connections in her community. Holly's landlord, Raphael Toledano, recently reached a settlement with New York's Attorney General resolving allegations of widespread tenant harassment and other illegal behavior, after an LLC he controlled purchased her building in 2016 as one of a large portfolio managed by his property management company, Brookhill Properties. The landlord revoked the storefront lease where Holly had operated her business for 15 years. In addition, when he began renovations where she lived, conditions there also quickly deteriorated. Gut renovations of apartment units were happening at a rapid pace. Holly reported construction work outside of approved work hours and construction dust throughout the building that she was concerned contained lead. In March 2017, DOHMH inspected and found elevated lead levels. In addition to many other construction and maintenance problems, again in April

2017, Holly and her school-aged child were exposed to lead over five times the legal levels.

Though Toledano and his associated companies lost control of the buildings, the private equity fund Madison Realty Capital, which had loaned him the money to buy the buildings, took over management of the buildings through its property management arm, Silverstone Property Group. After the change in management, Holly reported that construction still dust lay on floors for a week and that cleanup wasn't performed according to the rules. Holly reported that blood vessels around her eyes burst from coughing, and her daughter suffered respiratory illnesses. Their doctor recommended that she and her daughter wear dust masks inside their own home. She struggled to connect to the correct City agencies, and felt her complaints were pushed from agency to agency.

In November of 2017 DOHMH inspected again and tested the dust for lead, revealing that Holly and her daughter had been again exposed to lead over four times the allowed levels. Holly experienced the loss of her business, multiple instances of unsafe construction, and the potential long-term consequences of repeated lead exposure on her and her daughter's health. A FOIL request to DOHMH didn't yield information about any fines and penalties paid by Raphael Toledano, his associated LLCs, Brookhill Properties, or Madison Realty Capital's Silverstone Property Group.

FULLY ENFORCE EXISTING LAWS, AND VIGOROUSLY SEEK AND COLLECT PENALTIES.

Even the best-intentioned statutory schemes for addressing the potential harm to vulnerable children from lead dust will be rendered useless unless offenders face meaningful consequences. If the City fails to take its enforcement mandates seriously, landlords will not take their responsibilities to control lead dust seriously.

- Scale up collection of fines. The City must seek to collect penalties assessed by OATH through both the Department of Finance as well as through parallel measures that prevent landlords from, for example, receiving certain approvals if there are outstanding unpaid penalties. Otherwise, many landlords will have little if any incentive to pay even the low fines currently allowed.
- Impose a structure of escalating fines for repeat violators of safe work practices. Landlords who trigger multiple enforcement actions for performing work unsafely in any of their buildings should face increased fines with each action. This escalating system should include criminal prosecution for landlords who flout the law.
- Introduce the possibility of criminal penalties for the most serious offenses. Lead violations should constitute a public nuisance. Allowing this classification within the legal system holds landlords personally liable for lead violations. This would be a powerful step towards holding to account those who are putting children at risk of irrevocable long-term harm.

BREAK DOWN GOVERNMENTAL SILOS. Creating more opportunities for coordination and collaboration between city agencies can help keep lead poisoning prevention from slipping through the cracks. On September 25, 2019, Comptroller Scott Stringer issued a report detailing the results of his office's audit of the City's lead poisoning prevention program.¹⁰ A key finding of the report was a lack of effective coordination and data-sharing among City agencies, such as DOHMH and the De-

partment of Housing Preservation and Development (HPD), and the need for proactive enforcement. Avenues for such coordination with respect to safe work practices include:

- Data-sharing among DOHMH, HPD, and the Department of Buildings (DOB) to flag larger renovation projects that could disturb lead-based paint in occupied buildings. Although landlords are required by city law to notify DOHMH prior to performing work that will disturb significant amounts of lead paint (in order to give DOHMH the ability to ensure safe work practices), there is little evidence that landlords do so. Requiring applications for DOB work permits to certify pre-notification with DOHMH might help close this loophole. DOB and DOHMH can link their databases to enable spot-checking as well.
- DOB should also mandate that applicants for work permits certify that the relevant personnel have the appropriate, mandated training and credentials under federal and local law to perform work that may involve disturbing lead-based paint or paint of unknown lead content.
- Landlords who have had enforcement actions taken against them should face increased scrutiny by all city agencies for all subsequent lead safety and similar matters. For instance, a landlord who has been found to violate safe work practices in the past should face extensive oversight of all future City-approved construction work in pre-1960 buildings.

INCREASE TRANSPARENCY TO CREATE MORE PUBLIC ACCOUNTABILITY.

Many tenants do not know how to enforce their rights or get information on what, if any, enforcement measures have occurred. The City should create a more transparent and predictable

¹⁰ New York City Comptroller, [New York City Comptroller's Scott Stringer's Investigation into Child Lead Exposure](https://nyc.gov/wp-content/uploads/documents/Lead-Investigation.pdf) (Sept. 2019). Available at: <https://comptroller.nyc.gov/wp-content/uploads/documents/Lead-Investigation.pdf>

enforcement protocol and share it with landlords, tenants, and the general public.

- A flow chart or other process diagram for the steps in DOHMH enforcement would aid inspectors to align their enforcement actions and allow tenants and landlords alike to know what to expect when an inspection yields a violation or repeated violations.
- Make all data on lead enforcement actions taken by City agencies against landlords publicly available through the agencies' websites. With publicly available data on DOHMH common area lead-wipe test results, commissioner's orders, and other measures of enforcement, communities can actively monitor the City's progress with lead safety enforcement.
- The City should consider using available technology creatively to oversee work as well. For example, DOHMH could install real-time monitoring technology to ensure that landlords that had recent violations do not go back to the same unsafe work practices as soon as those violations have been resolved.

For street vendors, 35% of fined cases resulted in the vendor making a payment; this is true for less than 1% of lead-related violations. Over the 15-year study period, street vendors paid over \$5 million in penalties. Over that same period, property owners paid just over \$10,000 for lead-related violations.

Conclusion

THE LACK OF MEANINGFUL ENFORCEMENT

of Local Law 1 of 2004's safe work practices standards endangers families in New York City every day, so it is imperative that we act to ensure landlords face real penalties when they are found to be in violation of these critical health-protective standards. Without meaningful enforcement, including collection of fines, landlords will not be effectively held accountable to prevent exposure to lead-based paint in apartments around New York City.

As DOHMH's record enforcing and collecting penalties for violations of street vending violations shows, it is possible for the agency to assess and collect fines at a far higher rate than it does in the context of lead safe work practices.

In 2018 a coalition of public health advocates, community organizers, and attorneys published the Lead Loopholes report, outlining the lack of meaningful enforcement of the primary prevention mandates in New York City's lead paint poisoning prevention law. One year later, this report finds a similar pattern when it comes to enforcing violations the City has in fact imposed.

Fifteen years after the enactment of Local Law 1, there is no excuse for failing to meaningfully and aggressively enforce the law when landlords endanger tenants' health. We urge all branches of city government to employ their power to improve enforcement of Local Law 1 of 2004 through increased and escalating penalties, additional measures to collect fines, additional coordination and collaboration between city agencies to more effectively enforce existing laws, and more transparent enforcement protocols for safe work practices.

By following these recommendations, the City will be better able to address the ongoing issue of lead poisoning that deeply impacts the safety, health, and wellbeing of families across New York City.

This study analyzes NYC Open Data from the NYC Office of Administrative Trials and Hearings (OATH), obtained from <https://data.cityofnewyork.us/City-Government/OATH-Hearings-Division-Case-Status/jz4z-kudi/data> on September 26, 2019. The OATH Hearings Division Case Status dataset contains information about alleged public safety and quality of life violations that are filed and adjudicated through OATH—the City’s administrative law court—and provides information about the infraction charged, hearing results, fees, and payment amounts relating to the case. The summonses listed in this dataset are issued and filed at the OATH Hearings Division by City enforcement agencies.

A limitation of this study is the availability of public data. The City does not release information about the total number of alleged lead violations it issues or the fines it imposes and collects. The OATH dataset is therefore the best available public data on lead violations and penalties. However, these records only represent the alleged lead violations that are adjudicated through OATH. They do not include any violations or fines issued prior to this adjudication process.

This study focuses on alleged violations to lead-based paint abatement and remediation standards. These OATH hearings meet the following criteria:

- Violation date is between August 2, 2004 (when Local Law 1 took effect) and August 2, 2019
- Charge # 1 Code Section contains “173.14”
 - Overall, this code section relates to safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint
 - It includes the following code subsections
 - 173.14(c): Administrative requirements
 - 173.14(d): Work methods
 - 173.14(e): Occupant protection

The comparison to other violations issued by the Department of Health focuses on alleged violations that met the following criteria:

- Violation date is within the same time frame (between August 2, 2004 and August 2, 2019)
- Charge #1 Code Section starts with “17-3”
 - This query captures code subsections related to street vending
 - 17-307(a): unlicensed mobile food vendor
 - 17-307(b): unpermitted mobile food unit
 - 17-311: failure to display license and/or plate
 - 17-315(a): vendor on sidewalk less than 12ft., or not at curb
 - 17-315(b): cart touching or leaning against building
 - 17-315(c): items not in or under cart or vehicle (except in waste container)
 - 17-315(d): cart against display window or 20 ft. of entrance
 - 17-315(f): violation of parking rules and regulations
 - 17-315(k)/(l): vending at time/place prohibited