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MEMORANDUM

TO: Bristol Historic District Commission

FROM: Andrew M. Teitz, Esq., AICP, Assistant Town Solicitor
Liz Harvey, Legal Intern

DATE: January 2, 2025

SUBJECT: Lead Abatement for Windows in the Historic Districts

I. Issue Presented

Lead abatement and compliance efforts in Rhode Island have created difficulties for historic properties, but especially with lead paint on windows. Many older windows are “double hung,” with either the top and bottom part of the window being able to move, or some with the top part being fixed in place and unable to move. Friction is generated when the top and bottom parts of the window slide against each other, releasing lead particles from paint chips and dust into the air. While window replacement is one solution, it can damage the historic integrity of historic buildings by removing character defining features, especially if the windows are original or very old themselves. The issue presented concerns lead abatement laws in Rhode Island as applied to windows within buildings, and alternatives to the entire replacement of windows that pose as lead hazards.

II. Analysis

A. Current Lead Abatement Laws in Rhode Island

The primary lead abatement laws in Rhode Island include the Lead Poisoning Prevention Act and the Lead Hazard Mitigation Act. R.I. GEN. LAWS §§ 23-24.6-1 – 28; 42-128.1-1 – 14. These laws, enacted in 1991 and 2002, respectively, aim to reduce lead exposure through enforcement procedures and education of the public. Recently, new laws were passed to further ensure compliance with existing lead laws, now requiring a statewide rental registry for landlords, and enacting protections for persons affected by lead hazards within their residences. R.I. GEN. LAWS § 34-18-58. Registration requires proof of conformance with the Lead Hazard Mitigation Act, or proof of exemption status. *Id.* at (b). However, conformance has proven difficult for properties with lead paint on windows, often calling for total replacement of affected windows which can be costly or even restricted in order to maintain historical integrity.¹

Additionally, Rhode Island has a “Renovation, Repair, and Painting Rule” (RRP Rule) that requires those who do any renovation, repair, or paint work on a pre-1978 home to work for a licensed Lead Renovation firm; “any renovation, repair, or painting that disturbs six square feet or more of paint per room on the interior or 20 square feet or more of paint on the exterior of a pre-1978 house” must be done by a licensed lead renovator.² Thus, non-licensed landlords, property managers, and homeowners can only do minimal repairs on their own, which does not encompass window replacement or interim control activities. *Id.*

¹ Katy Pickens, *Lead Safety in Historic Homes: The Wooden Window Dilemma*, Providence Preservation Society (Sept. 3, 2024), <https://ppsri.org/lead-safety-in-historic-homes-the-wooden-window-dilemma/>.

² *Lead Safe Renovation, Repair, and Painting*, State of Rhode Island Department of Health, <https://health.ri.gov/healthrisks/poisoning/lead/about/renovationrepairandpainting/>.

B. Alternatives to Complete Window Replacement in Rhode Island

The Rhode Island Department of Health (RIDOH) has issued guidance on lead safe work practices, specifically outlining “interim controls” for double-hung wooden windows which includes “stripping and resealing window sashes, installing window track liners, and covering window wells to eliminate abrasion of painted surfaces and provide a smooth cleanable surface in the well.”³ Interim controls are meant to temporarily control exposure to lead hazards; however, as long as these controls are consistently monitored and reevaluated, they can be effective indefinitely.⁴

To further elaborate on these methods, stripping and resealing can entail removing the window with lead-based paint, sending it off-site for stripping and sealing, and then reinstalling it once complete. *Id.* at 10. The drawback to this method is that it is not guaranteed to remove all the lead from a painted fixture, and thus the window could still violate conformance requirements even after the strip and reseal. *Id.* Adding track liners can involve shaving down the friction points on the sides of the window and then inserting the liners, typically made with metal or vinyl.⁵ For historic windows that may vary in size, the liners may need to be altered accordingly to fit the dimensions. *Id.* RIDOH has clarified that if the upper portion of a double-hung window is fixed in place and unmovable, altering only half of the window by interim control can be acceptable so long as it effectively rids of the lead hazard; if opting for entire replacement of the affected window, only half need be replaced as well.⁶

³ Rhode Island Department of Health Center for Healthy Homes and Environment, Lead Safe Work Practices 8 (2024).

⁴ Rhode Island Department of Health Center for Healthy Homes and Environment, *supra* note 3, at 2; Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition) Chapters 11 and 12, U.S. Department of Housing and Urban Development, https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines.

⁵ Pickens, *supra* note 1.

⁶ Rhode Island Department of Health Center for Healthy Homes and Environment, *supra* note 3; Katy Pickens, PHDC to Implement Window Standards; Double Hung Windows can have Fixed Upper Sash, RIDOH Says,

C. Alternatives to Complete Window Replacement on the National Level

The United States Department of Housing and Urban Development (HUD) has issued guidelines for controlling lead-based paint hazards, with many similar options for treating windows to those discussed in Rhode Island: paint stabilization, eliminating friction surfaces, and making interior windowsills smooth and cleanable.⁷ The process for creating a smooth and cleanable surface can include sanding down a windowsill and window trough, until paint dust can adequately be vacuumed. *Id.* HUD explains that there are snap-in replaceable aluminum and vinyl window liner tracks that can be installed with caulk. *Id.* Paint stabilization involves a similar process to stripping and resealing windows, as mentioned above for interim controls in Rhode Island.

There is also a national RRP Rule, regulated by the United States Environmental Protection Agency (EPA);⁸ per the RRP Rule under the EPA, only lead-safe certified contractors can perform lead abatement projects that do not classify as “minor repairs or maintenance,” which is a renovation that disrupts six square feet or less of a painted room.⁹ The Rhode Island RRP Rule is more restrictive in that it applies to homeowners performing their own projects, whereas the federal RRP Rule does not – only landlords renting out their properties.¹⁰

Providence Preservation Society (Nov. 18, 2024), <https://ppsri.org/phdc-to-implement-window-standards-double-hung-windows-can-have-fixed-upper-sash-ridoh-says/>.

⁷ U.S. Department of Housing and Urban Development, *supra* note 4.

⁸ Lead Renovation, Repair and Painting Program, United States Environmental Protection Agency, <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program>.

⁹ U.S. Environmental Protection Agency, EPA Lead-Based Paint Program Frequent Questions (October 28, 2023), Question (23002-18381), https://www.epa.gov/system/files/documents/2023-10/full_lead_fqs_october_28_2023.pdf.

¹⁰ Lead Renovation, Repair and Painting Program, *supra* note 8; the RRP Rule also applies to those who operate a childcare center out of their home, and those who flip houses.

III. Conclusion

Rhode Island's law requires certain lead abatement projects to be done by a licensed lead professional, including those that attempt to repair windows affected by lead-based paint. Replacing windows can be found to be altering a character defining feature, especially if the windows are original or very old. The most widely used interim controls acting as an alternative to full replacement of windows, is removing the lead paint from the windows, installing liners to lessen friction between the painted components of the windows, and creating smooth, cleanable surfaces on windows for the lead particles. As stripping and resealing the lead paint is not always guaranteed to entirely remove the lead-based paint and allow a building to be in conformity with lead laws, the option of applying liners appears to be preferred. However, if replacing a double hung window with a fixed upper portion, only the bottom part of the window needs to be replaced.