

Cleveland, OH Code of Ordinances
Part II – Health Code
Chapter 240 – Lead Hazards

The City of Cleveland's lead hazard control ordinance incorporates provisions from the Ohio lead law (HB 248), establishes a lead hazard disclosure requirement based on the Federal requirement, and declares lead hazards a public nuisance. In addition, the ordinance creates a voluntary program for landlords to obtain Certificates of Lead Maintenance and Lead-Free Status, which provide a liability defense in case of a lead poisoning lawsuit.

Certificates.

A lead-based paint free certificate is a certificate issued entitling the property to a legal presumption that it is lead-based paint and lead-based paint hazard-free, whereas a lead maintenance certificate is a certificate issued entitling a property to the legal presumption that it does not contain a lead hazard and is not the source of the lead poisoning of an individual who resides or received care there. Both presumptions are rebuttable in a court of law only on a showing of clear and convincing evidence to the contrary. The owner of a property constructed before 1978, which is used as a residential unit, child day care facility, or school may obtain either certificate for that property.

In order to obtain a lead-based paint free certificate, the owner of the property must comply with the following:

1. A licensed lead inspector shall inspect the respective property and certify that the property is free of lead-based paint;
2. The owner or manager of the property shall submit a certificate application containing a copy of the report and filing fee for each unit seeking certification with the City Division of Licenses and Assessments; and
3. To maintain the lead-based paint free certificate, the disclosure requirements of this Chapter must continue to be met.

In order to obtain a lead maintenance certificate, the owner of the property must comply with the following:

1. The owner or manager of the property shall successfully complete both preventive treatments described in the Revised Code 3742.41 – requirements for lead hazards in historic properties are provided also in the Revised Code;
2. The owner or manager of the property shall file annually an affidavit that the requirement of (1) above has been completed and a filing fee with the City Division of Licenses and Assessments; and
3. To maintain the Lead Maintenance Certificate, the disclosure requirements of this chapter must continue to be met.

Additionally, if the owner or manager of a residential unit uses the unit as a rental dwelling, then a copy of the applicable certificate shall be submitted with the application for a certificate of rental registration. A lead-based paint free certificate is valid until revoked, whereas a lead maintenance certificate is valid for a period of one year from the date that it is issued.

Lead Hazards Are a Nuisance.

Lead Hazards constitute a nuisance, giving the Commissioner power to order the nuisance be immediately controlled if the hazard may cause a serious risk to the health of the occupants of the property. The Commissioner, Director of Building and Housing, or their authorized agents has the authority to order the relocation of the occupants of the property until the property passes a clearance examination if the Commissioner determines the occupant's health may be at risk during the lead hazard control work. Reimbursement for relocation expenses may be made by certifying them to the County Auditor, which becomes a lien assessed against the property.

The statute addresses primary prevention through observation and notice to Housing officials. If the Commissioner of Environment, Director of Building and Housing, or any authorized City officer or employee discovers a lead hazard violation through information from tenants, lead inspection, or observation, then that official may notify the owner in writing of the violation and order its abatement.

Disclosures in Sale or Lease of Target Housing Regarding Lead Hazards.

Before a purchaser or tenant is obligated under any contract to purchase or rental agreement to lease the target housing, the seller or lessor shall:

1. Provide the purchase or tenant with an EMP-approved lead hazard information pamphlet;
2. Disclose to the purchaser in writing in the sales contract, or to the tenant both orally and in writing in the rental agreement, all of the following:
 - a. The presence of any known lead-based paint or lead hazards in the housing;
 - b. Any information concerning the location of the lead-based paint, lead hazards, and the condition of the painted services;
 - c. Whether the property owner has a current Lead Maintenance Certificate or Lead-Based Paint Free Certificate and the length of time of its coverage;
 - d. Provide to the purchased or tenant any records or reports available pertaining to lead-based paint hazards or lead hazards in the target housing, including common areas, and
 - e. Records or reports regarding other residential dwellings in multi-family target housing;
3. Permit the purchaser a 10 days to conduct a lead risk assessment or lead inspection for the presence of lead paint or lead hazards;
4. Include in the contract of sale or rental agreement the Lead Warning Statement; and
5. Include in the contract for sale or rental agreement a provision that all the above guidelines were provided.

If the owner of a residential unit learns of the presence of lead paint prior to the expiration of a lease, the owner shall notify each tenant of the presence of lead paint within 10 days of discovering its presence. Additionally, the owner shall provide each tenant with a Lead Warning Statement and the lead hazard information pamphlet.

The local law is also innovative in that Section 240.6(b)(3)-(5) provides an expanded right of private enforcement with respect to an owner's failure to comply with disclosure requirements for known lead paint hazards. Cleveland mirrors the federal law in that tenants can directly sue for failure to comply with disclosure requirements, and adds the awarding of court costs, attorney fees, and expert witness fees if the tenant or purchaser prevails. In addition, it authorizes a "non-profit environmental health or housing rights organization" to bring action on behalf of the aggrieved tenant or purchaser and to recover its own cost for time and resources expended to investigate and prosecute the legal action.

Lead-Paint Hazard Prevention.

Neither the state nor local law require periodic inspection of properties in the absence of the identification of a child with an elevated blood lead level and thus rely instead on a system of “secondary prevention.” When the Commissioner – hereinafter references the Commissioner of the Division of the Environment of the City of Cleveland unless otherwise stated – becomes aware that an individual under six years of age has lead poisoning, the Commissioner or his agents (i.e., lead inspector or risk assessor) may request permission to enter the residential unit, child day care facility, or school suspected to be the sources of the lead poisoning. A court order may be obtained in instances where permission is denied. Once the source(s) is discovered, an order is issued to have each lead hazard controlled or abated.

The Cleveland law operates in conjunction with a general certificate of occupancy provision, which requires that an owner obtain a certificate of rental registration under Chapter 365. The certificate is to be renewed annually and requires that the City’s Director of Buildings and Housing find the building or structure in compliance with the code, which includes provisions of Chapter 240, and specifically the provision about lead hazards as a nuisance. So, while the Cleveland law does not create a true primary prevention system, it has the potential to carry out primary prevention inspections for lead paint hazards before a child is poisoned.

Additional information, including flyer and required postings, can be found on the city’s website at <http://www.clevelandhealth.org/Environment/LeadSafeLiving/default.html>
[http://www.amlegal.com/nxt/gateway.dll/Ohio/cleveland_oh/cityofclevelandohiocodeofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:cleveland_oh](http://www.amlegal.com/nxt/gateway.dll/Ohio/cleveland_oh/cityofclevelandohiocodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:cleveland_oh)