

Burlington, Vermont, Code of Ordinances
Chapter 18 – Housing
Article III. – Minimum Standards
Section 18-112. – Paint

In February, 2009, the Burlington City Council unanimously approved the Minimum Housing Amendments related to Lead Paint to give the Burlington Code Enforcement Office explicit authority to ensure compliance with existing federal and state laws. The law has enabled Code Enforcement inspectors to check for compliance with the requirements of the Environmental Protection Agency's Renovation, Repair, and Painting Rule and issue orders for compliance. These requirements are part of the Burlington Minimum Housing Code.

Definitions.

Lead-Based Paint – All paint shall be presumed to be lead-based paint (LBP) when present on all dwellings constructed prior to January 1, 1978 unless the paint was found to be not lead-based by a Vermont certified lead testing inspector who has issued a report to the owner of their findings.

- Property owner(s) wishing to be exempt from all LBP compliance activities under this ordinance must submit a copy of the certified inspectors' written report showing the dwelling to be free of LBP to the code enforcement office.

Rental Target Housing – Target housing offered for lease or rental under a lease agreement, *except a rented single room located within a dwelling in which the owner of the dwelling resides* unless a child six years of age or younger resides in or is expected to reside in that dwelling.

Target Housing.

All pre-1978 rental units.

Violation Orders.

An authorized city code official, fire inspector, law enforcement officer, or health officer can make an inspection of the property. If a violation is found, a written order is issued notifying the party responsible for the violation and the measure required to either correct or eliminate it as soon as possible. At the discretion of the agency, the order may require correction of the violation within 60 days. Additionally, it can require the premises to be vacated and secured if found to be a serious danger to the health, welfare, and safety of the occupants or the general public.

Owners of Pre-1978 Rental Housing Units Are Responsible for Complying with the State of Vermont Lead Law – Known as Essential Maintenance Practices (EMP) Law.

The Essential Maintenance Practices (EMP) policy requires that painted windows have window well inserts, that the landlord conduct an annual visual inspection and address any deteriorated paint using lead safe work practices, that common areas be cleaned annually and units be cleaned at tenant

turnover, and that notice be posted in units advising tenants to report deteriorated paint to the property owner. Additionally, the state law requires the owner file an annual certificate indicating compliance with the EMP obligations including the address of the unit, date of completion, names of persons performing the tasks. Finally, the certification of EMP compliance must be sent to the Vermont Department of Health, tenants, and the owner's insurance carrier.

Burlington's law mandates the following additional measures for owners of rental target housing:

1. Post notices in prominent locations stating the importance of occupants reporting deteriorated paint and the information of whom to contact;
2. Distribute the Environmental Protection Agency pamphlet *Protect Your Family from Lead in Your Home* to tenants at time of rental unit occupation and every year thereafter;
3. Perform specialized cleaning of all horizontal interior surfaces, except ceilings, at tenant turnover;
4. Perform an annual specialized cleaning of all horizontal interior surfaces, except ceilings, in the common areas of the rental property accessible to tenants;
5. Annually certify that he or she has conducted a visual inspection and complied with specialized cleaning and LSWP applicable to target housing; and
6. Disclose to tenants or buyers records of all known lead-based paint activities.

Enforcement.

Under Section 18-112 of the Burlington Code of Ordinances, city inspectors, including health officers operating through the city codes inspection process, are able to inspect housing for lead hazards and to assure compliance with EMP requirements paralleling those of the state law, including annual visual inspections and specialized cleaning requirements annually on horizontal surfaces in common areas and in units at turnover for target rental housing. City inspectors are authorized to gain access to rental units by virtue of an existing local requirement for periodic inspections carried out in conjunction with the issuance of Certificates of Compliance.

Burlington has integrated authority to monitor compliance with the Renovation, Repair, and Painting (RRP) rule through a requirement that affected property owners document that they are in compliance with the EPA certification requirements throughout the building permit process.

Exception/Presumption.

All paint present in dwellings constructed prior to January 1, 1978 is presumed to be lead-based paint *unless the paint was found to be not lead-based by a Vermont-certified lead testing inspector* who has issued a report to the property owner of such findings. Property owners wishing to be exempt from all lead-based paint compliance activities must submit a copy of the certified inspector's written report to the Code Enforcement Office.

Renovation/Paint Disturbance.

All activities performed in rental target housing that disturbs more than one square foot of painted interior or exterior surfaces shall be done using lead-safe work practices (LSWP), which take all reasonable precautions against the generation and spreading of lead dust, paint chips and debris. There must be a certification that these practices were used by the person doing the work on a form provided by the code

enforcement office. Property owners must keep the certificates for one year after the completion of the activity.

Interior LSWP include:

1. Limiting access of work area(s) to workers only;
2. Protecting occupant belongings by covering them with 6-mil. plastic sheeting or removing them from the work area(s);
3. Separating work area(s) from clean area(s) by hanging plastic sheeting in doorways and/or window areas;
4. Covering the floor(s) of work area(s) adequately with 6-mil. plastic sheeting to capture all dust, paint chips, and debris;
5. Using vacuums with high-efficiency particulate air (HEPA) filters attached to scrapers;
6. Wetting surfaces with water prior to disturbing the surface(s) – do not dry scrape;
7. Misting dust and debris with water prior to sweeping and cleaning – do not dry sweep;
8. Cleaning shoes and clothing when leaving work area(s);
9. Using personal protective equipment as needed, such as HEPA respirator, gloves, and coveralls.

Exterior LSWP include:

1. Limiting access of work area(s) to workers only;
2. Attaching 6-mil. plastic sheeting to dwelling and extend at least 10 feet or as far as possible to capture all dust, paint chips, and debris (plastic sheeting must be misted with water, rolled up, and discarded nightly);
3. Cover gardens, sand boxes, and play areas with adequate amounts of 6-mil. plastic sheeting;
4. Closing all windows and doors on the side being scraped;
5. Closing all windows and doors on neighboring properties within 10 feet of work area(s);
6. Using vacuums with HEPA filters attached to scrapers;
7. Wetting surfaces with water prior to disturbing the surface(s) – do not dry scrape;
8. Cleaning shoes and clothing when leaving work areas;
9. Using personal protective equipment as needed, such as a HEPA respirator, gloves, and coveralls; and
10. Ground cover surrounding rental target housing that have undergone disturbances of more than one square foot on any exterior painted surface must be free from all visible paint chips, dust, or debris.

Contractors working in a pre-1978 dwelling are responsible for complying with the federal Renovation, Repair, and Painting (RRP) Rule.

Lead Paint Hazard Prevention.

The city of Burlington, Vermont's lead poisoning prevention effort illustrates how a local law can be used to address a significant shortfall in the effectiveness of a state law (Burlington 2009). The state of Vermont passed a lead poisoning prevention law in 1993, substantially amended in 1995, which was intended to reduce lead poisoning but never realized its potential due to implementation challenges (18 V.S.A. §§1751-1767). The state law included several innovative elements applicable to target housing (most pre-1978 rental units), namely, a requirement that owners comply with "Essential Maintenance Practices" (EMP).

Burlington officials, however, were frustrated that the state law for the most part remained unenforced. To address these shortcomings, the city of Burlington adopted its local lead ordinance in 2009 (implemented in 2010). Under the local law, Section 18-112 of the Burlington Code of Ordinances, city inspectors were able to inspect housing for lead hazards and to assure compliance with EMP requirements paralleling those of the state law, including annual visual inspections and specialized cleaning requirements annually on horizontal surfaces in common areas and in units at turnover for “target rental housing.” City inspectors are authorized to gain access to units by virtue of an existing local requirement for periodic inspections to be carried out in conjunction with the issuance of Certificates of Compliance for rental units. Additionally, the local rental housing registry provided the mechanism lacking at the state level to assure compliance with the owner’s obligations under not only the local law, Section 18-112(h), but also the state law certification requirement, 18 VSA § 1759(b), to certify annually that he or she has conducted a visual inspection, and complied with specialized cleaning and lead-safe work practices applicable to target rental housing.

Finally, the Burlington local law also addresses a gap in the protections intended by the federal Environmental Protection Agency (EPA) Renovation, Repair, and Painting (RRP) rule. The Burlington local law, adopted in 2009, was drafted with a view towards the final implementation of the RRP in April, 2010. Because Burlington anticipated that the EPA lacks the resources to monitor compliance with the RRP, it included a provision that requires affected property owners to provide documentation that they are in compliance with the EPA certification requirements throughout the building permit process, thus using their local law to increase the effectiveness of a federal rule that would otherwise be extremely difficult to enforce.

Additional information, including flyer and required postings, can be found on the city’s website at <http://www.burlingtonvt.gov/CEDO/LeadPaint/Lead-Safety-Ordinance/>.