

**Municipal Code of the City of Rochester, New York**  
**Chapter 90 – Property Conservation Code**  
**Article III. Lead-Based Paint Poisoning Prevention**

**Mission Statement and Legislative Findings.**

It is the policy of the City of Rochester to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 non-residential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present in order to prevent human exposure to such hazards.

Rochester's legislative findings note that (1) younger children and fetuses – therefore, pregnant women – are particularly susceptible and vulnerable to lead-based paint hazards. (2) The City finds it essential to protect the public health of its residents from lead-based paint hazards and spotlights children younger than six years of age. (3) The mere presence of lead in a structure does not necessarily lead to human exposure to lead-based paint hazards. (4) The transient nature of the group at greatest risk, children from 0-6 years of age, makes the potential health benefits of lead-based paint poisoning prevention legislation difficult to quantify.

**Definitions.**

Chewable Surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Component means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

**Presumptions.**

All paint on the interior or exterior of any residential building and all paint on the exterior of any non-residential structure on which the original construction was completed prior to January 1, 1978 is presumed to be lead-based.

**Violations.**

Pre-1978 structures shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- 20 square feet on exterior surfaces;
- 2 square feet in any one interior room or space; or
- 10 percent of the total surface area on an interior or exterior type of component with a small surface area (ex: windowsills, baseboards, and trim).

Bare soil shall not be present within the dripline of any residential building on which the original construction was completed prior to January 1, 1978.

**Inspection for Violations.**

All inspections (i.e., application for Certificate of Occupancy, renewal of a Certificate of Occupancy, or based upon the filing of a complaint) shall include a visual assessment for deteriorated paint and bare soil violations. If the unit is located in a high-risk area and a visual assessment identifies no deteriorated paint, wipe samples shall be obtained to determine whether a dust-lead hazard exists. Areas identified as high-risk include, at a minimum, census block groups with housing units identified by the County Health Department in conjunction with elevated blood-lead level cases during the period of the preceding five years. If deteriorated paint is observed in the inspection of a pre-1978 unit, there is no reason to conduct a dust wipe to check for lead because a hazard is presumed. Where the filing of a complaint leads to an inspection, the inspection shall include the unit which is the focus of the complaint and all common areas.

**Remedy for Violations.**

If a visual assessment results in the citation of deteriorated paint, the violation may be removed only by one of the following methods:

1. Certification by a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection not to contain lead-based paint.
2. Certification by a lead-based paint inspector or risk assessor that all cited violations have been abated or interim controls implemented, and clearance has been achieved.
3. Certification by the Rochester Housing Authority or other state or federal supervising agency that a property regulated under an assisted housing program is in compliance with the inspection and clearance requirements of the housing program.
4. Where only exterior deteriorated paint violations, including deteriorated paint violations on an open porch, and/or bare soil violations are cited, clearance may be established through a visual assessment by a City inspector after reduction measures have been implemented.

**Standards for Clearance Examination and Report.**

One remedy for a deteriorated paint violation is a clearance examination in accordance with the following requirements:

1. Certification of clearance can be issued only by either a certified risk assessor or a certified lead-based paint inspector.
2. Required activities.
  - a. It must include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results and preparation of a report. Examinations are performed in dwelling units, common areas, and exterior areas.
  - b. A visual assessment of exterior and interior painted surfaces is performed to determine if deteriorated paint and/or visible amounts of dust, debris, paint chips, or other residue are present. They must be eliminated prior to the continuation of the clearance examination.
  - c. Wipe samples are taken from floors, interior window sills, and window troughs.
3. The clearance examiner prepares an examination report documenting the examination results.

### **Lead-Safe Hazard Reduction and Control.**

If a residential building is not owner occupied and is in the high-risk area, then the owner or the owner's agent is required to complete certified Lead Safe Work Practices training prior to conducting any lead paint reduction activity provided that such training is available to the public for free or at a nominal cost, and except that such training is not required with respect to paint hazards below the *de minimis* levels.

A sign is required when exterior lead-based paint (or presumed lead-based paint) is disturbed:

- Not later than the commencement date of any lead-based paint hazard reduction work and remain in place until completion of the work.
- Posted in a location or locations clearly visible to the adjacent properties.
- The sign shall not be less than 24 inches square with words printed in large boldface capital letters no less than one-half inch in size in both English and Spanish.
- Exception – where it is not possible to post signs in conspicuous locations clearly visible to the adjacent properties, the owner or contractor shall provide the notice in written form, such as a letter or memorandum, to the occupants of adjacent properties.

### **Occupant Protection.**

Occupants are not permitted to enter the worksite during hazard reduction activities, and they shall be temporarily relocated until a clearance examination has been successfully completed. Occupants who relocate to a unit not owned by their landlord are not liable for rent accruing during that time. Relocation is not necessary for the following:

1. Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;
2. Only the exterior of the dwelling unit is treated;
3. Treatment of the interior will be completed within one period of eight daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety or health hazards; or
4. Treatment of the interior will be completed within 15 calendar days, and the worksite is contained so as to prevent the release of leaded dust and debris into other areas.

If interior hazard reduction activities will not be or are not completed within 60 calendar days, occupants have the right to terminate their lease with no further obligation to pay rent.

### **Prohibition of Retaliatory Action.**

It is unlawful for an owner, or any person acting on his or her behalf, to take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or to the City. There shall be a rebuttable presumption that any attempt by the owner to raise rents, curtail services, refuse to renew, or attempt to evict a tenant within six months after any report to the City or the owner or any enforcement action in connection with a suspected lead hazard is a retaliatory action in violation of this section. After six months from the date of the reporting of a suspected lead hazard, the defense of retaliatory eviction shall remain available to the tenant but without the benefit of the presumption.

**Database for Properties.**

Rochester maintains a public database of all residential properties where lead hazards have been identified, reduced and controlled with funds from the United States Department of Housing and Urban Development. Additionally, there is a separate database of all residential properties granted a Certificate of Occupancy. Both databases are available for “walk-in” inspection by the public and a Freedom of Information request is not required to gain access.

**Results of Enforcement.**

The Rochester lead law is widely credited with having made a significant contribution in the reduction of children with elevated blood lead levels. By 2010, the number of children reported in the county had dropped to 297. The Rochester model accepts as its premise the critical need to gain entry to the highest risk housing. This is the rationale for targeting rental housing over owner-occupied, and for establishing a higher standard for inspection within a geographically designated high-risk area. Carrying out this streamlined inspection system, the City of Rochester carried out more than 50,000 lead inspections during its first four years of implementation; city records indicate that nearly every eligible unit was inspected at least once during this period, making it one of the most aggressive primary prevention inspection programs in the country.

Additional information, including flyer and required postings, can be found on the city’s website at <http://www.cityofrochester.gov/article.aspx?id=8589936053>