

# Ordinance No. 990-17

## **AN EMERGENCY ORDINANCE**

Council Member J. Johnson

To repeal Sections 240.01 through 240.09 and 240.99 and Section 365.07 of the Codified Ordinances of the City of Cleveland, 1976, as amended by various ordinances; and to supplement the codified ordinances by enacting new Sections 240.01 through 240.13 and 240.99 relating to lead hazards and lead safe certificates.

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WHEREAS, lead is a heavy-metal toxin that can cause irreversible effects on human health, particularly in young children who ingest the toxin while their brains and bodies are still developing; and

WHEREAS, homes and buildings constructed prior to 1978 are at risk of having lead hazards in the paint and dust; and

WHEREAS, the majority of the housing stock in the City was built prior to 1978; and

WHEREAS, lead hazards are a nuisance pursuant to Section 240.02 of the Codified Ordinances of the City; and

WHEREAS, the uncontrolled lead hazards in the City's housing stock are injuring the City's children; and

WHEREAS, this ordinance constitutes an emergency measure for the immediate preservation of the public peace, property, health, safety, or welfare in that the City must take proactive measures to make homes, child care facilities and schools lead safe to prevent children becoming poisoned; now, therefore,

### **BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:**

**Section 1.** That the following sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 240.01, as amended by Ordinance No. 1233-15, passed November 9, 2015,

Sections 240.02, 240.03, 240.04, 240.05, 240.07 and 240.09, as amended by Ordinance No. 1027-04, passed August 11, 2004,

Sections 240.06, 240.08, and 240.99, as amended by Ordinance No. 736-06, passed August 9, 2006, and

Section 365.07, as amended by Ordinance No. 281-17, passed May 22, 2017  
are repealed.

**Section 2.** That the Codified Ordinances of Cleveland, Ohio, 1976 are supplemented by enacting new Sections 240.01, 240.02, 240.03, 240.04, 240.05, 240.06, 240.07, 240.08, 240.09, 240.10, 240.11, 240.12, 240.13 and 240.99 to read as follows:

#### Section 240.01

#### Definitions

The definitions contained in RC 3742.01, and OAC 3701-30-01 and 3701-32-01 shall be used in this chapter and supplemented as follows:

(a) "City-affiliated residential unit" means a residential unit owned by the City, the Cuyahoga County Land Bank, or any Community Development Corporation, including any privately owned corporation that does housing rehabilitation in connection with a Community Development Corporation.

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(b) "Commissioner" means the Commissioner of the Division of the Environment of the City unless otherwise expressly specified.

(c) "Child care facility" means each area of any of the following in which child care, as defined in RC section 5104.01, is provided to children under six years of age:

(1) A child day-care center, type A family day-care home, or type B family day-care home as defined in RC section 5104.01;

(2) a preschool program or school program as defined in RC section 3301.52.

(d) "Department" means the City Department of Public Health unless otherwise expressly specified.

(e) "Immediate Family" means an individual's spouse, child, parent, stepparent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or the spouse or guardian of any of the individuals described in this definition.

(f) "Lead abatement" means a measure or a set of measures, designed for the single purpose of permanently eliminating lead hazards. "Lead abatement" includes all of the following:

- (1) Removal of lead-based paint and lead- contaminated dust;
- (2) Permanent enclosure or encapsulation of lead-based paint;
- (3) Replacement of surfaces or fixtures painted with lead-based paint;
- (4) Removal or permanent covering of lead- contaminated soil;
- (5) Preparation, cleanup, and disposal activities associated with lead abatement.

"Lead abatement" does not include:

- (1) Preventive treatments performed under RC 3742.41;
- (2) Implementation of interim controls;
- (3) Activities performed by a property owner on a residential unit to which both of the following apply:

- A. It is a freestanding single-family home used as the property owner's private residence;
- B. No child under six (6) years of age who has had lead poisoning resides in the unit.

(4) Renovation, remodeling, landscaping or other activities, when the activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. This definition shall not be interpreted to exempt any person from any requirement under State or federal law regarding lead abatement, including lead hazard control orders or requirements for full abatement of lead-based paint in certain federally-funded projects.

(g) "Lead Free Certificate" means a certificate issued by the Department of Building and Housing that indicates that a residential unit, child care facility, or school

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has been certified as free of lead-based paint and lead-based paint hazards pursuant to this chapter.

(h) "Lead hazard" means the presence of lead-based paint or lead-contaminated dust or lead-contaminated soil or lead-contaminated water pipes at levels described as hazardous in Ohio Administrative Rule 3701-32-19 as that rule exists at the time of passage of this section or as it may be amended.

(i) "Lead safe" means that a residential unit, child care facility or school has either (1) undergone a Lead Risk Assessment pursuant to division (b) (1) of section 240.08 where the lead risk assessor found no lead hazards on the property; (2) undergone the recommended non-abatement or abatement options in response to lead hazards and received a passing clearance exam pursuant to division (b)(2) of section 240.08; or (3) received a passing clearance exam pursuant to division (c)(1) of section 240.08.

(j) "Lead Safe Certificate" means a certificate issued by the Department of Building and Housing that indicates that a residential unit, child care facility, or school has been certified as lead safe pursuant to this chapter.

(k) "Owner-occupied residential unit" means a residential unit occupied by the owner and/or members of the owner's immediate family.

(l) "Rental agreement" has the meaning described in division (c) of section 375.01 of the Codified Ordinances.

(m) "Residential rental unit" means a residential unit including attached structures such as porches or stoops, occupied by any person or persons other than the owner and/or members of the owner's immediate family regardless of whether or not the owner occupies another unit in the structure.

(n) "Residential unit" means a dwelling or any part of a building being used as an individual's private residence, as defined in RC 3742.01.

(o) "School" means a public or nonpublic school in which children under six years of age receive education.

(p) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero (0) bedroom dwelling.

(q) "Tenant" has the meaning described in division (e) of section 375.01 of the Codified Ordinances.

(r) "Zero (0) bedroom dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

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## Section 240.02      Lead Hazards Are A Nuisance

- (a) This Council finds that lead hazards constitute a nuisance.
- (b) The Commissioner may determine that a nuisance is required to be immediately controlled under this section if, in the Commissioner's opinion, failure to immediately control the hazard may cause a serious risk to the health of the occupants of the property. In such a case, the Commissioner may require the owner or manager of the property to immediately control the nuisance or the Commissioner may, by his or her authorized representative, immediately control such nuisance.

## Section 240.03      Prohibitions

- (a) No person shall do any of the following:
  - (1) Violate any provision of RC 3742.02 or the rules adopted under it;
  - (2) Apply or cause to be applied any lead-based paint on or inside a residential unit, child day-care facility, or school, unless the Ohio public health council has determined by rule under RC 3742.50 that no suitable substitute exists;
  - (3) Interfere with an investigation conducted by the Commissioner, any person delegated by the Commissioner, any lead inspector or risk assessor.
- (b) No person shall knowingly authorize or employ an individual to perform lead abatement on a residential unit, child day-care facility, or school unless the individual who will perform the lead abatement holds a valid license issued under RC 3742.05.
- (c) No person shall do any of the following when a residential unit, child day-care facility, or school is involved:
  - (1) Perform a lead inspection without a valid lead inspector license issued under RC 3742.05;
  - (2) Perform a lead risk assessment or provide professional advice regarding lead abatement without a valid lead risk assessor license issued under RC 3742.05;
  - (3) Act as a lead abatement contractor without a valid lead abatement contractor's license issued under RC 3742.05;
  - (4) Act as a lead abatement project designer without a valid lead abatement project designer license issued under RC 3742.05;
  - (5) Perform lead abatement without a valid lead abatement worker license issued under RC 3742.05;
  - (6) Perform a clearance examination without a valid clearance technician license issued under RC 3742.05, unless the person holds a valid lead inspector license or valid lead risk assessor license issued under that section;
  - (7) Perform lead training for the licensing purposes of this chapter without a valid approval from the director of health under RC 3742.08;
  - (8) Perform interim controls without complying with 24 C.F.R. Part 35.
- (d) No person shall manufacture children's toys or children's furniture that has paint containing lead equal to or in excess of one (1.0) mg/cm<sup>2</sup> (milligram per square centimeter), one-half of one percent (0.5%) by weight, or five thousand (5,000) parts per million (ppm) by weight.
- (e) No person shall sell or hold for sale a children's toy or children's furniture that has paint containing lead equal to or in excess of one (1.0) mg/cm<sup>2</sup> (milligram per square centimeter), one-half of one percent (0.5%) by weight, or five thousand (5,000) parts per million (ppm) by weight.
- (f) No person shall perform lead abatement, or any exterior power-assisted and/or manual lead-based paint removal, on any target housing located in the City without first obtaining a permit from the Commissioner of Licenses and Assessments as described in Section 240.05 of the Codified Ordinances.

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(g) No person shall sell or lease target housing in the City of Cleveland unless the owner, lessor, and agent of the target housing meets all applicable requirements of Section 240.06 of the Codified Ordinances regarding disclosures of lead hazards.

(h) No person renovating target housing in the City of Cleveland shall fail to comply with the Pre- Renovation Lead Information Rule in Section 240.07 of the Codified Ordinances.

(i) No owner or manager of a retail or wholesale outlet of paint and paint-removal products shall violate division (b) of Section 240.07 by failing to provide an EPA-approved Lead Hazard Information Pamphlet or Fact Sheet.

(j) All power-assisted methods of lead-based paint removal are hereby prohibited, unless the method is such that all dust and debris is immediately captured within a closed container which prevents lead- contaminated debris from escaping into the environment. No lead-based paint removal shall be conducted whereby the method of collection of dust and debris is captured solely by ground tarpaulins, draped scaffolding and other types of barriers after the dust and debris has been released into the environment. Open flame burning is prohibited under any circumstances. Persons performing interim controls shall comply division (c)(8) of Section 240.03 of these Codified Ordinances.

(k) No power-assisted lead-based paint removal shall be performed, unless:

(1) The area from which the lead-based paint is to be removed is first shielded with tarpaulins or other screening to prevent vapor, water, dust and debris from escaping into the environment; and

(2) Plastic disposable cloths are first spread at least ten (10) feet from the foundation below the surface upon which the lead-based paint removal is being performed and on sides adjacent to said surface. The drop cloths shall be attached, when possible, to the foundation of the residential structure in order to collect any debris and residue; and

(3) All vents, windows and other areas through which air may enter the residential structure upon which the lead-based paint is being removed, shall be closed to prevent infiltration of any dust or debris.

(l) No manual exterior lead-based paint removal shall be performed unless plastic disposable cloths are first spread at least ten (10) feet from the foundation below the surface upon which the lead-based paint removal is being performed and on sides adjacent to said surface. The drop cloths shall be attached, when possible, to the foundation of the residential structure in order to collect any debris and residue.

(m) No interior lead-based paint removal shall be performed without first spreading plastic disposable drop cloths on the floor in an area sufficiently large to collect all debris and residue.

(n) Following the completion of each day's lead- based paint removal:

(1) All drop cloths shall be carefully wet wiped, rolled up and disposed of; and

(2) All paint or paint dust shall be removed from the premises, adjacent property and public rights of way, and whenever possible, through the use of wet methods.

### Section 240.04      Secondary Prevention

(a) When the Commissioner becomes aware that an individual under six (6) years of age has lead poisoning, the Commissioner is authorized to conduct an investigation or lead risk assessment in accordance with the requirements of OAC Chapter 3701.

(b) In conducting the investigation, the Commissioner may request permission to enter, or for a lead inspector or risk assessor to enter, the residential unit, child day-care facility, or school that the Commissioner suspects to be the sources of the lead poisoning. If the Commissioner or delegated lead inspector or risk assessor is unable to obtain permission to enter the property, either may apply for an order of court to enter the property.

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(c) As part of the investigation, the Commissioner may review the records and reports, if any, maintained by a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, or clearance technician.

(d) When the Commissioner determines, as a result of an investigation and/or risk assessment conducted under division (a) of this section, that a residential unit, child day-care facility, or school are contributing to a child's lead poisoning, the Commissioner is authorized to issue an order, in accordance with OAC Chapter 3701, to have each lead hazard controlled.

(e) No person shall fail to comply with an order issued by the Commissioner under division (d).

### Section 240.05      Lead Abatement and Lead-Paint Removal Permit Required; Application; Fees; Permit Suspension or Revocation

(a) The Commissioner of Environment is authorized to establish a program for the loaning of equipment, at no cost, for the removal of lead hazards in the City of Cleveland and is authorized to enter into contracts, as approved by the Director of Law, for the purpose of loaning the equipment.

(b) No person shall perform any lead hazard abatement or any exterior power-assisted and/or manual lead-based paint removal on target housing located in the City without first obtaining a permit from the Commissioner of Assessments and Licenses. For purposes of section, 'target housing' includes all secondary or appurtenant structures that were constructed prior to 1978 and are on the parcel upon which the target housing is located. A permit is not required under this section if all of the following apply: (1) the person uses the target housing as their personal residence; (2) the person personally performs, or performs with the assistance of only members of his or her family or household, only manual exterior lead-based paint removal on the structure on the property; (3) no child under six (6) years of age who has lead poisoning resides in the structure.

(c) The commissioners and inspectors of the Division of Environment and Department of Building and Housing are authorized to issue an order to immediately stop working to any person performing work that requires a permit that has not obtained a permit or to any person performing work in violation of any prohibition in RC Chapter 3742 or this chapter of the Codified Ordinances.

(d) A person shall immediately stop performing lead hazard abatement or reduction activities when ordered to do so under subsection (c). A person shall not resume such activities except in accordance with all terms and conditions of a valid permit for paint removal and until their practices conform to all applicable standards and methods prescribed in RC Chapter 3742.

(e) *Permit Application; Fees.*

(1) Every person who is required to obtain a permit under this section shall make application to the Commissioner of Assessments and Licenses upon forms to be prescribed by the Commissioner of Environment. The forms shall include:

A. The name and address of each applicant, and if the applicant is a partnership, the principle address of the partnership, and the name and address of each partner, and if the applicant is a corporation, the principle address of the corporation, the state of incorporation, the corporate federal identification number and the name and address of the corporation's statutory agent;

B. The address of the residential unit where the lead-hazard will be removed;

C. A description of the method by which the lead-hazard will be removed;

D. Any other information required by the Commissioner.

E. An applicant may file a single permit application for more than one (1) residential unit if the application contains all of the information required by division (e)(1) of this section with respect to each separate residential unit.

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F. The permit fee is fifteen dollars (\$15.00) for each separate residential structure from which lead-contaminated paint is to be removed.

G. Upon receipt of a completed application and permit fee, the Commissioner of Assessments and Licenses shall issue the permit and a copy of the application and permit shall be provided to the Commissioner of the Environment.

H. A permit, issued under this section, shall expire six (6) months from the date that it is issued. An applicant may apply for an extension that may be granted.

(2) The Commissioner of Licenses and Assessments shall notify the Director of Building and Housing of any permits issued under this section.

(f) *Permit Suspension or Revocation.*

(1) The Commissioner of Licenses and Assessments shall suspend or revoke any permit issued under this chapter, upon the recommendation and order of the Commissioner, for violation or failure to comply with the provisions of this chapter, or the Ohio Revised Code.

(2) Any person may appeal the denial, suspension or revocation of a permit for the removal of lead-based paint to the Board of Zoning Appeals, established under Charter Section 76-6, provided that written appeal is filed with the Board Secretary within ten (10) days of the date the decision being appealed was made.

(3) If a person appeals in accordance with subsection (2), the Board shall conduct a hearing and render a decision in accordance with City ordinances and regulations described in this chapter and those governing its conduct and procedure.

(g) For work requiring a permit under this chapter, each permittee shall provide seven (7) days advance written notice to all occupants of residential structures on which lead-based paint is to be removed, and to all occupants of residential structures which are within thirty (30) feet of the residential structure on which the lead-based paint is to be removed. The notice shall be as prescribed by the Commissioner and shall include, at a minimum, the address at which the lead-based paint will be removed, the date of commencement of the lead-based paint removal, the anticipated length of the removal, and the method by which the lead-based paint will be removed. The notice shall include a copy of the Lead-Based Paint Hazards Health and Safety Fact Sheet as prescribed by the Commissioner.

(h) All contractors, on the signing of a contract for the removal of lead-based paint from a residential structure shall provide, with the contract, a Lead-Based Paint Hazards Health and Safety Fact Sheet.

(i) Owners of occupied residential structures and/or contractors planning any construction, repair, rehabilitation, renovation, or maintenance work that involves the disturbance of lead-based paint in any occupied residential structure shall, seven (7) days prior to the work's initiation, distribute the Lead-Based Paint Hazards Health and Safety Fact Sheet to all affected occupants.

(j) The notice required under this section does not relieve any person from compliance with any other notice requirements under State or federal law, including when notice is required in a hazard control order.

## Section 240.06      Disclosures In Sale or Lease of Target Housing Regarding Lead Hazards

(a) *Disclosure in Purchase or Lease of Target Housing.*

(1) To ensure the application of their requirements to the sale or lease of target housing in the City limits, the rules and regulations that are promulgated by the Secretary and the Administrator of the Environmental Protection Agency under the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, and their successor regulations, are adopted and incorporated into this code as these rules and regulations exist at the time of passage of this chapter or as they may be amended. 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 perform the activities and provide the disclosures described in this section.

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A. Provide the purchaser or tenant with an EPA-approved lead hazard information pamphlet;

B. Disclose to the purchaser in writing in the sales contract, or tenant, both orally and in writing in the rental agreement, all of the following: (i) the presence of any known lead-based paint, or any known lead hazards, in the housing; (ii) any additional information available concerning the location of the lead-based paint and/or lead hazards, and the condition of the painted services; (iii) whether the property owner has a current Lead Maintenance Certificate or Lead-Based Paint Free Certificate and the length of time of its coverage; (iv) provide to the purchaser or tenant any records or reports (including notices or letters of violation) available pertaining to lead-based paint hazards or lead hazards in the target housing, including regarding common areas; and (v) records or reports regarding other residential dwellings in multi-family target housing, provided that the information is part of an evaluation or reduction of lead-based paint and/or lead hazards in the target housing;

C. Permit the purchaser a ten (10) day period (unless the parties mutually agree in writing upon a different period of time or to waive this requirement) to conduct a lead risk assessment or lead inspection for the presence of lead paint or lead hazards;

D. Include in the contract for sale or rental agreement for lease the Lead Warning Statement prescribed in 40 C.F.R. 745.113;

E. Include in the contract for sale or rental agreement for lease acknowledgments that the pamphlet, disclosures, ten (10) day period (if required) and warning required were provided.

(2) *Discovery of Lead Hazard Prior to the Expiration of a Lease.* 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 ten (10) days of discovering its presence. In addition, the owner shall provide each tenant with a Lead Warning Statement and the lead hazard information pamphlet, as prescribed by 42 U.S.C. 4852d.

(3) *Compliance Assurance.* The rules and regulations requiring the agent, on behalf of the seller or lessor, to assure compliance with the requirements issued under the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, and their successor regulations, are adopted and incorporated into this code as these rules and regulations exist at the time of passage of this chapter or as they may be amended, and apply to an agent whenever a seller or lessor has entered into a contract with the agent for the purpose of selling or leasing a unit of target housing in the City limit. An agent is defined as any party who enters into a contract with a seller or lessor, for the purpose of selling or leasing pre-1978 housing.

(b) *Penalties for Violations.*

(1) *Criminal Penalty.* Any person who knowingly fails to comply with a provision of this section shall be subject to the penalties provided in Section 240.99 of the Codified Ordinances.

(2) The Director of Public Health or Commissioner is authorized to take lawful action as may be necessary to enforce this section or to enjoin any violation of it.

(3) *Civil Liability.* As provided in the Federal Residential Hazard Reduction Act at 42 U.S.C. 4852d(b), any person who violates any provision of this section will be jointly and severally liable to the purchaser or lessee in an amount equal to three (3) times the amount of damages incurred by the individual.

(4) In any action brought for damages under this section, the appropriate court may award court costs to the party commencing the action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) A non-profit environmental health or housing rights organization is authorized to bring an action under division (b)(3) of this section on behalf of an aggrieved individual or individual(s) for violations of this section. Such organization may recover its costs under the remedies provided in divisions (b)(3) and (b)(4) of this section if the organization demonstrates that it has exerted organizational resources, including staff time, to investigate the alleged non-compliance with this section.



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(c) Validity of contracts for purchase and sale and liens. Nothing in this section may affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor may anything in this section create a defect in title.

## Section 240.07      Pre-Renovation Lead Information Rule; Paint Outlet Information Rule

(a) To ensure the application of the requirement of the federal Pre-Renovation Lead Information Rule to the renovation of pre-1978 housing in the City limits, the rules and regulations promulgated under that rule and found at 40 C.F.R. Part 745, *Lead; Requirements for Hazard Education Before Renovation of Target Housing*, are adopted and incorporated into this Health Code as they exist at the time of passage of this chapter or as they may be amended.

(b) All retail and wholesale outlets of paint and paint removal products shall distribute an EPA- approved lead hazard information pamphlet or Lead- Based Paint Hazards Health and Safety Fact Sheet approved by the City of Cleveland Department of Public Health to each purchaser of said products.

## Section 240.08      Lead Safe Certificate

(a) *Presumption of Lead-based Paint.* For the purposes of this chapter, all paint on the interior or exterior of any residential building, child care facility, or school on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based. This presumption may be rebutted and recorded by doing the following:

(1) Obtain a certification from a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR 745.227(b) not to contain lead-based paint.

(2) Apply for the Lead Safe Certificate pursuant to division (d) of this section, except:

A. Present the certification obtained that the property is lead-based paint free to Building and Housing;

B. Request the Lead Free Certificate.

(3) Upon application for the Lead Free Certification, the Director of Building and Housing shall issue a Lead Free Certificate, containing all of the information required in division (e) of this section, except indicating the following:

A. The certification of lead free; and

B. The date of expiration. The date of expiration shall be twenty years from the date of certification of lead-based paint.

(b) *Initial Certificate Requirements.* To obtain the initial Lead Safe Certificate for any residential unit, child care facility, or school, the owner or manager shall do the following:

(1) Have a lead risk assessor certified pursuant to OAC 3701-32-07 conduct a lead risk assessment as described in OAC 3701-32-07(G), except that

A. The lead risk assessor does not need to complete a questionnaire as required by OAC 3701-32-07(G)(1);

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- B. The lead risk assessor may presume that deteriorated paint is a lead hazard, in place of the testing requirements of OAC 3701-32-07(G)(4);
- C. The lead risk assessor may presume that bare soil is a lead hazard, in place of the testing requirements of OAC 3701-32-07(G)(8);
- D. If the lead risk assessor identifies a lead hazard in section OAC 3701-32-07(G)(10)(n) of the report, the report must prominently state on the first page that the residential unit, child care facility, or school is "not lead safe." If the lead risk assessor does not identify any lead hazards in section OAC 3701-32-07(G)(10)(n) of the report, the report must prominently state on the first page that the residential unit, child care facility, or school is "lead safe."

(2) If the lead risk assessor's report identifies lead hazards, have a properly certified individual perform the abatement or non-abatement options for each identified lead hazard in the lead risk assessor's report, and obtain a passing clearance exam as outlined in OAC 3701-32-08 through OAC 3701-32-13.

(3) Apply for the Lead Safe Certificate pursuant to division (d) of this section.

(c) *Later Certificate Requirements.* To obtain a Lead Safe Certificate after the initial Lead Safe Certificate, the owner shall:

(1) Have a lead clearance technician, lead inspector or lead risk assessor perform a lead clearance exam pursuant to OAC 3701-32-12.

(2) If the residential unit, child care facility, or school fails the lead clearance exam, the owner must obtain a Lead Safe Certificate by following the steps of division (b) of this section as though it were the initial Lead Safe Certificate.

(d) *Application for the Lead Safe Certificate.* The owner or manager of the residential unit, child care facility, or school shall file an application for a Lead Safe Certificate with the Department of Building and Housing. The application for a Lead Safe Certificate shall contain the following information:

(1) The street address or other identifying characteristics of the building or other structure;

(2) The name, address, and telephone number of the owner or owners of the premises. In the case of a partnership, the names, addresses and telephone numbers of all general partners. In the case of a corporation, the names, addresses and telephone numbers of the current statutory agent and all corporate officers of that corporation;

(3) A copy of the lead risk assessment report or the clearance examination demonstrating that the residential unit, child care facility, or school is lead safe.

(e) *Lead Safe Certificate Issuance.* Upon registration of the application for the Lead Safe Certificate, the Director of Building and Housing shall issue a Lead Safe Certificate containing the following information:

(1) The street address or other identifying characteristics of the building or other structure;

(2) The name, address, and telephone number of the owner or owners of the premises. In the case of a partnership, the names, addresses and telephone numbers of all general partners. In the case of a corporation, the names, addresses and telephone numbers of the current statutory agent and all corporate officers of that corporation;

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(3) The certification of lead safe status.

(4) The date of certification of lead safe status. The date of certification of lead safe status shall be the date on which the lead risk assessment report or the clearance examination was conducted.

(5) The date of expiration of the certification of lead safe status. The date of expiration of the lead safe status shall be two years from the date of the certification of lead safe status.

Copies of all applications and Lead Safe Certificates shall be kept on file by the Director of Building and Housing as a public record, except those portions that are prohibited from being released by state or federal law.

(f) *Effectiveness Period.*

(1) A Lead Safe Certificate shall be valid for two years from the date of issuance except as provided for in division (f)(2) of this section.

(2) To maintain the Lead Safe Certificate, a seller, lessor, or agent of a residential unit, child care facility, or school that is being sold or leased, shall continue to meet the disclosure requirements of section 240.06 and, as part of that section's disclosure requirements in divisions (a)(1), (b)(2), (b)(3) and (b)(5) of section 240.06, disclose whether a certificate covers the residential unit, child care facility, or school. Failure to maintain compliance will result in the revocation of the Lead Safe Certificate by the Director of Building and Housing.

(g) *Compliance Monitoring.* All residential rental properties, child care facilities and schools may be subject to inspection for the purpose of determining compliance with the provisions of this Code and all other applicable laws, ordinances, rules and regulations. Inspections may be conducted on a random basis or based on a reasonable suspicion that the lead safe certification was not completed in compliance with the provision of this Code.

(h) *Legal Presumption.* The Lead Safe Certificate entitles the owner, manager, or agent of the residential unit, child care facility, or school to a legal presumption that the residential unit, child care facility, or school is not the source of the lead poisoning of an individual who resides in the unit or receives child-care or education at the facility or school. The owner of the residential unit, child care facility, or school shall comply with the provisions of this section applicable to obtaining a Lead Safe Certificate to be entitled to that presumption. The legal presumption established under this section applies to any enforcement action under this Code and is rebuttable in a court of law only on a showing of clear and convincing evidence to the contrary.

(i) *Transfer of Certificate.* When a person obtains both equitable title and legal possession of a residential unit, child care facility, or school covered by a Lead Safe Certificate, any certificate issued to the previous owner is no longer in effect unless the following requirements are met:

(1) The new owner submits a signed and dated written notice of the change in ownership of the residential unit, child care facility, or school to the Department of Building and Housing within sixty (60) days after the date on which the new owner obtains both equitable title and legal possession of the residential unit, child care facility, or school covered by the certificate. The owner's name and mailing address shall be provided in the notice;

(2) The new owner complies with the conditions for maintaining the certificate under this chapter.

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(j) *Conflict of Interest.* A Lead Safe Certificate is not valid unless the lead risk assessor, lead risk investigator or clearance technician certifying that the residential unit, child care facility, or school that is certified meets the following criteria:

(1) The assessor or technician is not the owner or manager or an immediate family member, agent or employee of the owner or manager;

(2) The assessor or technician is not part of a company or associated with a company that is directly or beneficially owned, controlled or managed by the owner or manager, or by an immediate family member, agent or employee of the owner or manager;

(3) The assessor or technician is not a person hired by or under contract with the owner to manage or maintain the owner's real property as directed by the owner;

(4) The assessor or technician is not a person who has been authorized by the owner to manage or maintain the owner's real property on the owner's behalf;

(5) The assessor or technician is not a person who has a financial interest in the laboratory results of the sampling or testing or in the determination of whether the residential unit, child care facility, or school meets the applicable standards.

## Section 240.09

## Lead Safe Registry

The Department of Building and Housing shall create an electronic Lead Safe Registry, which shall provide information regarding the residential units, child care facilities, and schools that have complied with the provisions of this Code and have obtained a Lead Safe Certificate as well as those residential units, child care facilities, and schools that have not. This information shall be made available to the public.

## Section 240.10

## Mandatory Certificates and Fine Schedule

(a) *Certificate Obligations.* The obligations of owners or managers to obtain Lead Safe Certificates are as follows:

(1) *Residential Rental Units.* The owner or manager of any residential rental unit with any portion built prior to 1978 in the City shall obtain a Lead Safe Certificate.

(2) *Child Care Facilities.* The owner or manager of any child care facility with any portion built prior to 1978 in the City shall obtain a Lead Safe Certificate.

(3) *Schools.* Any school with any portion built prior to 1978 in the City shall obtain a Lead Safe Certificate.

(4) *Owner-Occupied Residential Units.* The owner of any owner-occupied residential unit built prior to 1978 may obtain a Lead Safe Certificate.

(5) *City-Affiliated Residential Unit.* The owner of any city-affiliated residential unit built prior to 1978 shall obtain a Lead Safe Certificate.

(b) *Deadlines for Compliance with the Lead Safe Certificate.* All structures built prior to 1978 that are in use as a residential rental unit, child care facility or school as of September 30, 2017 shall obtain a Lead Safe Certificate by September 30, 2018. The owner of any city-affiliated residential unit shall obtain a Lead Safe Certificate prior to selling the residential unit to a person for residential use for any sale taking place after September 30, 2018.

(c) *Fines for Failure to Obtain a Lead Safe Certificate.*

(1) Owners of residential rental units, child care facilities, schools and owner-occupied residential units in violation of division (a) (1)–(5) of this section shall be subject to a fifty dollar (\$50.00) per day administrative fine per residential rental unit,

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child care facility or school with a maximum penalty of ten thousand dollars (\$10,000) per year per residential rental unit, child care facility or school. Fines shall be assessed according to the following schedule:

- A. The owner of any residential rental unit, child care facility or school built in 1950 or earlier that is in use as a residential rental unit, child care facility or school as of September 30, 2017 shall be fined starting October 1, 2018 if the owner or manager fails to obtain a Lead Safe Certificate by September 30, 2018.
- B. The owner of any residential rental unit, child care facility or school built between 1951 and January 1, 1978 that is in use as a residential rental unit, child care facility or school as of September 30, 2018 shall be fined starting October 1, 2019 if the owner or manager fails to obtain a Lead Safe Certificate by September 30, 2019.
- C. Subject to the fine schedule in division (c)(1)(A)–(B) of this section, the owner of any residential rental unit, child care facility or school built prior to 1978 that begins to be used as a residential rental unit, child care facility or school after September 30, 2017 shall be fined starting ninety (90) days after the residential rental unit, child care facility or school begins to be used as a residential rental unit, child care facility or school.

(2) The Director of Building and Housing may waive the fine for any owner or manager of any residential rental unit, child care facility or school who demonstrates that the residential rental unit, child care facility or school is on the wait list for a lead risk assessment. Written notice of an expected examination date from a certified lead risk assessor who operates in Cuyahoga County will be sufficient evidence of being on a wait list. The Director of Building and Housing may otherwise determine the acceptable evidence of being on a wait list. Upon receipt of evidence of placement on a wait list for a lead risk assessment, the Director of Building and Housing may grant an extension based on the estimated date by which the lead risk assessment will be conducted.

(d) The City is enacting and enforcing the provisions of this chapter only to promote the public health, safety and welfare and for obligations imposed upon it by the State of Ohio under delegation by the Ohio Department of Health. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that the breach proximately caused injury. In addition, nothing in this chapter may be interpreted to limit the City's statutory immunity afforded by RC chapter 2744.

(e) It shall be a violation of this chapter to retaliate against a potential purchaser or lessee for requesting that the owner of a residential unit, child care facility, or school obtain a Lead Safe Certificate.

### Section 240.11      Lead Advisory Board and Evaluation

(a) *Creation of a Lead Advisory Board.* The City shall create a Lead Advisory Board to monitor the implementation of this chapter. The Lead Advisory Board shall receive reports on a quarterly basis regarding the implementation of this chapter and lead inspections which are a part of section 365.04 including the number of properties that submitted Lead Safe Certificates, the number of lead inspections done under section 365.04, the number of lead hazard citations given by the Department of Building and Housing, compliance actions taken against owners of residential rental units that fail to comply with provisions of this chapter and chapter 367 in regard to

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lead hazards and the number of people displaced based on lead hazard control orders pursuant to RC Chapter 3742. The Lead Advisory Board shall also research and report to the Mayor regarding other potential lead hazards in the city, including lead dust contamination in vacant lots or public parks and lead hazards in water pipes. The Mayor shall appoint the members of the Board, half of whom must work at organizations or public entities which advocate for public health, civil rights, racial justice or youth achievement and half of whom must be residents of the City.

(b) *Evaluation of the Lead Safe Cleveland Program.* The City shall hire an independent, academic based organization to evaluate the Lead Safe Cleveland program at the end of one year, three years and five years.

(c) *Public Education.* The City shall partner with local organizations to educate the public around the hazards of lead poisoning and raise awareness of the opportunity for homeowners to obtain a Lead Safe Certificate. The City shall document the education efforts of all relevant departments and produce a report at the end of one year, three years, and five years.

## Section 240.12      Lead Assessment & Remediation Fund

There is hereby established a special revenue fund entitled Lead Assessment and Remediation Fund to support property owners seeking financial assistance for the lead assessment and remediation process. In this fund shall be placed monies from gifts, grants and other funding from any government, non-profit or private entity appropriated for the purpose of lead assessment and remediation under the provisions of this chapter. The funds shall be granted to homeowners to cover the full cost of lead assessment and remediation, or to landlords and owners of day care centers or schools to cover a portion of the cost of lead assessment and remediation. The Director of Community Development shall administer the fund under rules and regulations written by that Director.

## Section 240.13      Enforcement

(a) Whenever the Commissioner of Environment or Director of Building and Housing or any authorized City officer or employee ascertains either upon information or by observation or lead inspection, that any provision of this chapter is being or has been violated, that official may, in writing, notify the owner, manager, or person in charge that the violation shall be corrected.

(b) In addition to the penalty for a violation of this chapter, whenever the Commissioner of Environment or Director of Building and Housing or any authorized City officer or employee ascertains either upon information or by observation or lead inspection, that the provisions of this chapter are being or have been violated, and the violation creates a nuisance, which may endanger the health and/or safety of persons, that official may, in writing, notify the owner or person in charge, that the nuisance shall be immediately abated. They may also apply any and all remedies found in chapter 203 to prevent, terminate or abate the nuisance.

(c) In addition to any penalty for a violation of this chapter, the Commissioner of Environment or Director of Building and Housing or any authorized officer or employee they delegate may control such nuisance. The costs and expense of controlling a nuisance by the Commissioner, or their authorized representative, under this chapter, may be recovered as provided in RC section 715.261, including certifying the costs and expenses to the County Auditor, to be assessed against the property and made a lien upon it and collected as other taxes.

## Ordinance No. 990-17

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(d) The authority described in division (c) to control such nuisance, includes the authority to order the owner or manager to relocate the occupants of a residential unit, child care facility, or school, until the property passes a clearance examination, if the Commissioner of Environment determines that the health of the occupants may be at risk during the lead hazard control work. The Commissioner of Environment may relocate the occupants until the residential unit, child care facility, or school passes a clearance examination. The costs and expense of the relocation may be recovered by certifying them to the County Auditor, to be assessed against the property and made a lien upon it and collected as other taxes.

(e) In the event of an actual or threatened violation of this chapter or an emergency situation, the Director of Law, in addition to other remedies provided by law, may institute a proper suit in equity or at law to prevent or terminate the violation or remedy the situation.

(f) In the event of any actual or threatened violations of this chapter, the Director of Law, in addition to other remedies provided by law, may institute proper suit in equity or by law to prevent or terminate such violation or to remedy such situation.

(g) In addition to all other penalties and remedies provided by law, any person damaged by a nuisance caused by a violation of this chapter may institute a proper action in equity or by law to prevent or terminate such violation or remedy such situation.

(h) The City is enacting and enforcing the provisions of this chapter only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

### Section 240.99      Penalties

(a) Whoever violates division (f) of Section 240.03 is guilty of a minor misdemeanor.

(b) Whoever violates any provision of Chapter 240 for which no other penalty is provided or rule or regulation or order under this chapter is guilty of a misdemeanor of the first degree. Except for a violation of division (f) of Section 240.03, each day during which noncompliance or a violation continues shall constitute a separate offense.

(c) As provided by RC 2901.23 and 2929.31, organizations convicted of an offense are guilty of a misdemeanor of the first degree.

**Section 3.** That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

JJ:rns  
8-16-17

# Ord. No. 990-17

## REPORT after Second Reading

Council Member J. Johnson

### **AN EMERGENCY ORDINANCE**

To repeal Sections 240.01 through 240.09 and 240.99 and Section 365.07 of the Codified Ordinances of the City of Cleveland, 1976, as amended by various ordinances; and to supplement the codified ordinances by enacting new Sections 240.01 through 240.13 and 240.99 relating to lead hazards and lead safe certificates.

**READ FIRST TIME on AUGUST 16, 2017**  
and referred to DIRECTORS of Public Health,  
Building and Housing, Finance, Law;  
COMMITTEES on Health and Human Services,  
Development Planning and Sustainability, Finance

REPORTS

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CITY CLERK

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READ SECOND TIME

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READ THIRD TIME

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PRESIDENT

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CITY CLERK

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APPROVED

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MAYOR

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Published in the City Record \_\_\_\_\_

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
DEVELOPMENT, PLANNING AND  
SUSTAINABILITY

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