

Cleveland Ordinance Establishes New Lead Safety Rules and Incentives for Property Owners

The Cleveland City Council passed a new lead-based paint ordinance on August 11 that, among other provisions, makes lead paint hazards in residences, schools, and day care facilities a “nuisance” subject to city code enforcement; establishes city lead hazard disclosure requirements and penalties; creates a property certificate program as an incentive for property owners to eliminate lead hazards; and allows the city to regulate exterior paint removal through their permitting process for most pre-1978 properties.

The law makes lead paint hazards (as defined in state regulations) in residences, schools, and day care facilities a “nuisance” under city code, which empowers the city environment commissioner to require the property owner to immediately control the hazards. If the owner fails to act, the commissioner can send a contractor to abate the hazard and assess the costs to the owner by placing a lien on the property.

The ordinance also incorporates the federal lead hazard disclosure law into city code. It gives individuals harmed by the property owner the ability to recover triple damages, and it authorizes nonprofit groups to pursue damages on behalf of individuals. The ordinance also gives the Cleveland Department of Public Health authority to pursue criminal penalties (up to \$5,000 per violation) against property owners who fail to distribute the EPA lead hazard information pamphlet, disclose the known presence and location of any lead-based paint or hazard, or fulfill other duties under the federal lead hazard disclosure law.

In addition, the ordinance includes a voluntary certificate incentive program for property owners. With proof of a lead inspection, owners of property built before 1978 can obtain a Lead-Free Certificate, granting the owner the legal presumption that the property is free from lead-based paint and lead hazards. For property constructed before 1950 that meets the Essential Maintenance Practices requirements defined in state law, owners can obtain a Lead-Safe Maintenance Certificate which states that the property does not contain a lead hazard but is not certified as lead-free. To obtain either certificate, property owners must meet stringent inspection requirements, and they must abide by all disclosure provisions in order to retain their certificates. Lead-Free Certificates are valid unless they are revoked by the city; Lead-Safe Maintenance Certificates must be renewed annually. Both types of certificates transfer with property ownership, but the new owner must notify the city, pay a small fee, and comply with all the conditions for maintaining the certificate.

The law also requires city permits for residential interior or exterior lead hazard abatement projects and for exterior lead paint removal in pre-1978 housing, except for owner-occupied properties under certain conditions, housing exclusively for seniors or persons with disabilities, and zero-bedroom units. Both the city environment department and the city code enforcement agency are given authority to issue stop work orders if a permit has not been obtained or if work is not being done in compliance with state lead safety standards and methods. For the full text of the Cleveland ordinance, see www.ehw.org/Lead/documents/finalleadordinance.pdf.

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