

FILE OF THE CITY CLERK

ADMINISTRATIVE ORDINANCE NO.

ADMINISTRATION BILL NO. 10 - 2010

INTRODUCED – JUNE 22, 2010

ADOPTED BY COUNCIL –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA REWRITING CHAPTER 182 OF THE CODE OF THE CITY OF LANCASTER – LEAD POISONING, TO ESTABLISH DEFINITIONS, PROHIBIT USE AND DISTRIBUTION OF SOURCES OF LEAD HAZARDS, PROVIDE PROCEDURES FOR DETERMINATIONS OF LEAD SOURCE HEALTH HAZARDS, PROVIDE FOR NOTIFICATION OF VIOLATIONS AND TESTING PROCEDURES AND STANDARDS, PROVIDE PROCEDURES AND REQUIREMENTS FOR MONITORING THE ABATEMENT OF LEAD HAZARDS, PROVIDING EXEMPTIONS FROM THE PROVISIONS OF THE ORDINANCE, PROVIDING FOR THE PROTECTION OF OCCUPANTS OF RESIDENCES CONTAINING LEAD HAZARDS, PROVIDING FOR FINES AND REMEDIES FOR VIOLATION OF THE ORDINANCE, PROVIDING FOR INSPECTION AND ACCESS TO PROPERTIES AND SALES OF PROPERTIES; PROVIDING FOR THE REPEAL OF INCONSISTENT ORDINANCES; PROVIDING FOR THE SEVERABILITY OF THE ORDINANCE; AND PROVIDING THAT THE ORDINANCE SHALL TAKE EFFECT AS PROVIDED BY PENNSYLVANIA LAW.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED AND ENACTED by the City Council of the City of Lancaster, Lancaster County, Pennsylvania, as follows:

SECTION 1. The Code of the City of Lancaster, Chapter 182 – Lead Poisoning be and hereby is rewritten as follows:

“CHAPTER 182. Lead Poisoning

182-1. Purpose.

The purpose of this Chapter is to protect and promote public health through the identification and elimination of lead source hazards.

182-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

ABATE OR ABATEMENT

Any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the City. The removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead paint replacement of lead painted surfaces, or fixtures and removal, or covering of lead contaminated soil and all prep clean-up, disposal, and post abatement clearance testing activities associated with such measures.

APPROVED OR APPROVAL

Satisfactory compliance as determined by an authorized Health Officer, Housing Inspector, Code Official or other approved or authorized representative or agent of the City of Lancaster.

BLL (blood lead level)

CITY OF LANCASTER OR CITY

The City of Lancaster Pennsylvania, Board of Health, Health Officer, Bureau of Code Compliance and Inspections or a successor bureau or agency or any authorized representative or agent of the City of Lancaster.

CLEARANCE EXAMINATION

An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and no lead source health hazards as defined exist in the dwelling unit or worksite.

DWELLING

A building or structure, or a dwelling unit composed of a room or group of rooms within a structure, occupied or designed or intended to be occupied as a place for human habitation or use of any part thereof including an accessory building, structure, yard or fence belonging thereto or usually enjoyed therewith and any institutional or nonresidential structure, or a room or group of rooms within an institutional or nonresidential facility, including any building, structure, yard or fence belonging thereto or usually enjoyed therewith.

EBLL (elevated blood lead level)

A blood lead level (BLL) confirmed by venous sample to be equal to or greater than the lead level defined as elevated by the United States Centers for Disease Control.

ENCAPSULATION

Any covering or coating that acts as a barrier between lead-based paint and the environment, the durability of which relies on adhesion and the integrity of the existing bonds between multiple layers of paint and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "PERMANENT").

ENCLOSURE

Rigid durable construction materials that are mechanically fastened to the substrate to act as a barrier between the lead-based paint and the environment. Enclosure may be used as a method of

abatement if it is designed and performed so as to be permanent (see definition of “PERMANENT”).

EXPOSED SURFACE

All interior surfaces of a dwelling and those exterior surfaces of a dwelling which are readily accessible to children under six years of age, such as stairs, floors, decks, porches, railings, windows, doors and siding. Any yard or other area in the vicinity of a dwelling including, without limitation any soil, yard or other area which may be subject to contamination from flaking or peeling lead based coatings or any other source of lead is also considered an exposed surface.

INTERIM CONTROLS

A set of measures designed to reduce temporarily exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to: repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

LEAD-BASED PAINT/COATINGS

Paint, varnish, glaze or other applied liquid surface coating that contains at least 1 milligram per centimeter square (mg/square cm) of lead. Also measured as greater than 0.5 percent lead by weight or has 5,000 parts per million (ppm) lead by dry weight.

LEAD SOURCE HEALTH HAZARD

An item or condition where exposure to that item or condition could have the potential to create a case of lead poisoning, such as exposure to lead-based paint.

OWNER

Any person, firm, corporation, guardian, nonprofit organization, partnership, government, conservator, receiver, trustee, executor or other judicial officer who, alone or jointly or severally with others, owns, holds or controls the whole or any part of the freehold or leasehold title to any property containing a dwelling, with or without occupying actual possession thereof; and shall include, in addition to the holder of legal title, any vendee in possession thereof, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

PERMANENT

Permanent means an expected design life of at least twenty (20) years.

RECOGNIZED METHOD OF ANALYSIS

Any recognized method of lead detection and analysis recognized by the Department of Housing and Urban Development and the Environmental Protection Agency which results in measurement of lead in milligrams in a square centimeter of a particular area, including, without limitation, an inspection with a radioisotope x-ray fluorescent analyzer (otherwise referred to as an XRF analyzer) and/or through lead-paint dust-wipes analyzed by an accredited laboratory using the standards set forth by HUD and EPA. The standards recognize three areas for sampling: floors, windowsills, and window-wells or window troughs.

REDUCTION/REMEDIATION

The term "reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

REMOVAL

The stripping of paint from contaminated surfaces by approved method, or replacement and disposal of contaminated items.

RISK ASSESSMENT

An on-sight environmental inspection conducted by a Certified and Licensed Risk Assessor for the purpose of locating and identifying lead poison hazards that could affect humans, especially children. The term "risk assessment" means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in the residential dwellings, including:

- (A) information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (B) visual inspection;
- (C) limited wipe sampling or other environmental sampling techniques including XRF Analyzer;
- (D) other activity as may be appropriate; and
- (E) provision of a report explaining the results of the investigation and options for reducing lead-based paint hazards.

SURFACE

The outermost layer or superficial area (excluding paint, plaster or putty) of the interior or exterior of a dwelling, including but not limited to the outermost layer or superficial area of walls, ceilings, floors, stairs, windows, windowsills, window frames, window sashes, doors, door frames, baseboards and woodwork.

TENANT

The individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

WORKSITE - AN INTERIOR OR EXTERIOR AREA

Where lead based paint hazard reduction activity takes place. There may be more than one work site in a dwelling unit or at a residential property.

182-3: Prohibited use and distribution of sources of lead hazards.

- A. No person shall use or apply or cause to be used or applied lead-based paint to the interior or exterior surfaces of any dwelling, dwelling unit, rooming house, rooming unit or facility. Such interior surfaces include, but are not limited to, floors, windowsills, window frames, doors, door frames, walls, ceilings, stair rails and spindles or other appurtenances.

182-4: Determination of lead source health hazard.

- A. Any source of lead, including, without limitation, lead-based paint, shall be considered a lead source health hazard to children under six years of age, pregnant women or to other persons who have demonstrated an elevated blood lead level as defined by the Center For Disease Control, if:
 - (1) It exists in or about a dwelling in which the affected person commonly resides or visits;
 - (2) It is determined to be on any flaking, peeling, non-intact deteriorated surface or on any exposed surface or in any soil or dust found in or about the dwelling or in any rugs, carpet or other surface coverings in or about the dwelling; and
 - (3) It contains a quantity of lead in excess of 1.0 milligrams per square centimeter of surface when measured by a recognized method of analysis.

182-5: Notification of violation.

- A. Upon receipt of notification by a licensed Medical Doctor (physician) or a Childhood Lead Poisoning Prevention Nurse (CLPP) that a child under six years of age or other affected individual has an elevated blood lead level, the City has the authority to order the owner of any dwelling in which the affected individual resides or visits to submit within 10 days, a written risk assessment report stating whether there exists a lead source health hazard under this ordinance. This testing and environmental investigation may be at the expense of the property owner and be in accordance with the procedures and standards listed in section 182-6.
- B. If the owner fails to provide such risk assessment report, the City can perform or cause the performance of the Risk Assessment, at the expense of the owner, to determine whether there exists a lead source health hazard.

182-6: Testing procedures and standards.

- A. A Risk Assessment for lead hazards shall be performed by a public or private agency, entity or firm approved by the City, certified by the EPA and licensed by the Commonwealth of Pennsylvania in the field of Lead Risk Assessor.
- B. If there is found a presence of flaking, peeling, chipping or loose paint, plaster, or structural material in or around any building used for housing, or regularly or for other sustained activities by a person determined to have an elevated blood lead level, the surface may be tested for the presence of a lead source health hazard.
- C. The physical determination of the lead content of surface material in a dwelling or of the lead content of any exposed surface shall be made by nondestructive measurements using a recognized method of analysis including XRF analyzer. All instruments used for in-place determinations of lead content shall be operated by a certified operator with proof of the same being submitted to the City.

- D. The Risk Assessor listing the area inspected shall issue a written and signed document indicating the locations of the lead hazard and the conditions of the leaded surfaces. A risk assessment is based only on conditions observed and recorded at the time of the inspection.
- E. Any exposed surface which has a lead based coating which exceeds 1.0 milligrams per square centimeter of surface when tested by XRF analyzer or .5 percent by weight shall be considered a violation of this Ordinance.

182-7: Abatement of lead hazard.

- A. All abatement performed pursuant to this section shall follow the norms set forth in the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” issued by the U.S. Department of Housing and Urban Development, June 1995, based on Title 10 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, and shall follow the following procedures:
 - (1) When it is determined that there exists a lead source health hazard, the City Code Compliance and Inspection Office shall issue a Notice of Violation that orders the property owner and/or management company to abate the lead source hazards.
 - (2) The owner and/or management company must secure the services of a Pennsylvania Certified Lead Abatement Contractor. The contractor selected must also be registered with the Pennsylvania Attorney General’s Office as a registered home improvement contractor. The owner shall bear the cost of the contractor and abatement.
 - (3) The owner and/or management company must submit a copy of the written contract, scope of work and schedule to the City for review and approval within fifteen (15) days of the Notice of Violation, and prior to initiating such abatement. Said scope of work shall specify in detail the means, methods, materials and dates by which correction will be achieved. Failure to provide a copy of a valid contract, scope of work and schedule to the City within fifteen (15) days of the Notice of Violation is a violation of the ordinance.
 - (4) Promptly upon receipt of the contract, scope of work and schedule, the City Code Compliance and Inspection Office shall approve or disapprove such scope of work and schedule. Notice of any disapproval shall be accompanied by specific reasons therefore. Upon receipt of a disapproval notice, the owner shall, within four (4) days, re-submit the scope of work and schedule with such revisions as are necessary to remove the objections.
 - (5) Upon disapproval of a second scope of work and schedule by the Code Compliance and Inspection Office, the said owner shall be issued a written notice indicating a schedule and method of abatement which will be required to bring the dwelling, or pertinent area, into compliance.
 - a) The said owner shall complete the abatement of the lead source health hazard within thirty (30) days after receiving notification that the plans and schedule have been approved.
 - b) Once the owner has completed the remediation efforts, a clearance examination and report must be submitted to the City within the thirty (30) day schedule.
 - 1. Failure to obtain and pass a clearance examination within thirty (30) days of approval of the contract is a violation of this ordinance and is

subject to a \$500.00 minimum and \$1,000 maximum fine. Each day that a violation continues is considered to be a separate offense.

- C. Approved methods of lead hazard reduction/abatement by approved lead abatement contractor.
 - (1) Paint Removal.
 - (2) Enclosure.
 - (3) Encapsulation.
 - (4) Replacement.

- D. Disapproved methods of abatement.
 - (1) The methods used for the removal of lead-based paint shall not present a hazard to health from fumes, dust or vapors by inhalation or absorption through the skin and mucous membranes and shall be in accordance with all applicable laws, ordinances, regulations, safety standards and practices of City, state and federal agencies.
 - (2) Dry sanding, dry scraping, heat guns capable of producing temperatures in excess of 1100 degrees Fahrenheit, the use of an open flame torch and chemical strippers containing methylene chloride are prohibited as part of any abatement techniques.
 - (3) Uncontained power washing or water blasting is prohibited as part of any abatement technique.

182-8: Exemptions.

- A. The City may, on a case-by-case basis, approve an alternative procedure for abatement of a lead paint violation, provided that the Certified Lead Abatement Contractor submits a written description of an alternative procedure to the City and demonstrates that compliance with City procedures are not practical or feasible in the individual case and that the proposed alternative procedure provides the equivalent control and removal.

182-9: Protection of Occupants.

- A. No owner, landlord, agent or person found to be in violation of this part may materially alter the terms of tenancy, refuse to renew the lease of, evict, or cause to be evicted from any apartment or building, occupants or occupants whose children under six years of age have demonstrated evidence of elevated blood lead levels, or otherwise interfere with the occupants' use of the property, for the purpose of avoiding corrective maintenance which may have been ordered by the City or a court of law.
- B. In the event the dwelling or dwelling unit or premises in which a lead source health hazard is found is vacated by the occupant voluntarily, who occupied it at the time of the issuance of a corrective notice, such dwelling, dwelling unit or premises shall not be let or occupied by any other person until corrective measures have been taken to bring it into compliance using a State Certified and Registered Lead Abatement Contractor as approved by the City.
- C. Temporary Relocation:
 - (1) When a Certified Lead Abatement Contractor and a Certified, Licensed Risk Assessor approved by the City determines that pregnant women, children under 6 years old, or other affected persons are present and cannot safely remain in the dwelling while the abatement or remediation efforts are being undertaken, the

property owner shall be responsible for the following:

- a) When tenants noted herein are required to leave the dwelling for more than 12 hours while treatments are performed, the property owner must pay for reasonable expenses for overnight housing and meals for the displaced family for the duration of the remediation process. Payment must be made by the property owner immediately to a new landlord for the furnished dwelling unit or directly to other entities who provide the family with services to accommodate the displaced family, to include the following temporary relocation costs;
 - b) Rent or cost per day of the temporary dwelling or hotel unit;
 - c) The cost of moving, hauling or storing furniture or other personal belongings if necessary; and
 - d) Costs for special HEPA-vacuumping of all upholstered furniture; reasonable meal expenses if the temporary housing does not have food storage/refrigeration and cooking facilities.
 - e) Temporary relocation accommodations, if rental dwellings built before 1978 are utilized, shall be known lead safe properties. The owner is responsible for providing the tenant and City with a valid copy of a certificate or letter from an authorized Assessor indicating that the unit they are to occupy on a temporary basis is lead safe.
 1. The lead safe certificate or certification letter shall not be dated more than two years prior to the temporary relocation.
- (2) The property owner shall be cited for failure to provide temporary relocation when required, and shall be subject to a minimum fine of \$300.00. Each day that a violation continues is considered to be a separate offense.
 - (3) Temporary relocation is not to last for more than thirty (30) days unless agreed to by both the landlord and the tenant.
 - (4) If furnishings and personal belongings were relocated to another address as part of the remediation efforts, it shall be the landlord or property owner's responsibility to pay for moving them back into the remediated unit, unless agreed to by both the landlord and the tenant.
 - (5) The landlord or property owner shall be responsible for relocation expenses as noted above, including a refund of any security deposit to the tenant, plus any fine amounts which accumulate through legal action taken by the City for failure to correct an unsafe property condition.

182-10: Remedy and collection.

- A. The imposition of a penalty herein prescribed shall not preclude the City from instituting appropriate action by injunction or any other legal remedy to prevent or correct any violation of this chapter, and collect such costs by lien or otherwise as may be authorized by law. The City retains the right to enforce these remedies irrespective of any other ordinance or code enforcement efforts.
- B. Any bill or any repairs or corrections to the property pursuant to this chapter shall be paid by the property owner in accordance with Chapter 36, Municipal Claims. Upon failure of the property owner to pay the amounts due the City in accordance with Chapter 36, the City shall be entitled to collect all amounts and pursue any or all of the remedies identified in

Chapter 36, Municipal Claims including attorney fees.

182-11: Inspection and access.

- A. The City, through its agents or employees, is authorized to make inspections upon display of proper identification to determine compliance with this chapter.
- B. Every occupant of a dwelling shall grant to the owner thereof or his agent or employee or any person with whom the City has contracted free access to it at all reasonable times for the purpose of testing or inspection to effect compliance with this chapter and with any notice or order issued under this chapter.

182-12: Sale of Property

- A. If a lead violation is known to exist at a dwelling, then upon the sale of said property, the owner shall notify or disclose to the potential buyer/purchaser of the unsafe existing lead condition.

182-13: Liability of City.

- A. The issuance of a statement by the City to an owner and/or occupant that a violation notice has been abated does not subject the City to any claims for liability if the issuance of the statement was made in good faith.

182-14: Violations and penalties.

- A. In addition to any other sanction or remedial procedure, any owner or occupant or other person who violates any provision of this chapter, upon conviction thereof, shall be fined not less than \$300 and not more than \$1,000, plus costs or be confined in jail not exceeding 30 days, or both, unless otherwise stipulated within this ordinance. Each day's continuance of a violation shall constitute a separate offense.
- B. The imposition of a penalty herein prescribed shall not preclude the City from instituting appropriate action by injunction or any other legal or equitable remedy to prevent or correct any violation of this part including, but not limited to, the right to make corrections, utilizing qualified personnel, or to have corrections made under agreement with a professional contractor for any dwelling not in compliance with this part whose owner cannot be located or who does not comply with any notice or order to make corrections. The City shall bill the owner and may place a lien against the property for any expense incurred and unpaid. The City retains the right to enforce these remedies irrespective of any other local ordinances."

SECTION 2. All ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed and rescinded.

SECTION 3. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Ordinance; it being the intent of the City of Lancaster that the remainder of the Ordinance shall be and shall remain in full force and effect.

SECTION 4. This Ordinance shall become effective as provided by the laws of the Commonwealth of Pennsylvania.

DULY ORDAINED AND ENACTED this _____ day of _____, 2010, by the Council of the City of Lancaster, Lancaster County, Pennsylvania, in lawful session duly assembled.

ATTEST:

CITY OF LANCASTER

Janet Spleen, City Clerk

By: _____
J. Richard Gray, Mayor