

FILE OF THE CITY CLERK

ADMINISTRATION ORDINANCE NO. __-2017

ADMINISTRATION BILL NO. 21 -2017

INTRODUCED - OCTOBER 10, 2017

ADOPTED BY COUNCIL -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, LANCASTER COUNTY, PENNSYLVANIA AMENDING 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 THE PROTECTION OF CHILDREN IN HOME-BASED CHILD CARE FACILITIES, 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 Prevention and Lead Hazard Control be and hereby is amended as follows:

1. **Section 182-2 Definitions** is amended by adding the following words, terms and phrases, and when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

CERTIFIED LEAD SAFE ~~CONTRACTOR~~ **RENOVATOR**

COMPONENT

A building element which uses products that are manufactured as independent units capable of being joined with other elements.

INVESTMENT PROPERTY

A dwelling with one or more dwelling units that are being leased to tenants.

LEAD CONTAMINATED DUST

Surface dust that contains a mass per area concentration of lead equal to or exceeding 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, or 400 micrograms per square foot on window wells based on a wipe sample, or such other lesser level of lead used in EPA Regulations to define a “dust-lead hazard” under 40 C.F.R. §745.65.

LEAD CONTAMINATED SOIL

Soil that contains lead in excess of 400 ppm or such other lesser level of lead either: (a) used to define a “soil-lead hazard” in a play area under 40 C.F.R. §745.65 or (b) determined by the Lancaster City Board of Health by regulation to be dangerous.

LEAD (PAINT) SAFE

A building or dwelling identified through testing by a Lead-Based Paint Risk Assessor as having lead-based paint surfaces that are intact and free from deterioration. As noted in the Clearance Examination by the Lead-Based Paint-Risk Assessor, ongoing lead safe maintenance is necessary to maintain the property as lead paint safe.

LEAD SAFE CERTIFICATION

A form provided by the City of Lancaster certifying that a visual inspection and dust wipe samples have been taken from a Dwelling or Dwelling Unit and states that it does not have visible deteriorated paint and that interior dust wipe samples were collected in compliance with EPA regulations, were tested, and were found to not contain lead contaminated dust in excess of EPA dust lead standards.

LICENSED LEAD ABATEMENT CONTRACTOR COMPANY

TARGETED HOUSING

Any housing constructed before 1978, except (1) housing for the elderly or persons with disabilities or any unit defined as an Efficiency Unit in the Zoning Ordinance; (2) dwelling units developed by or for an education institution for the exclusive residential use and occupancy by that institution’s students; (3) buildings containing dwelling units all of which are leased only to students enrolled in a college or university degree program; (4) dwelling units owned or subsidized by the Lancaster City Housing Authority or its subsidiaries; (5) dwelling units in which children aged six and under do not reside during the lease term.

The above exemption of any dwelling unit in (1), (2) and (3) for pre-1978 housing for the elderly or persons with disabilities, or educational institution housing does not apply to any dwelling unit where a child under age 6 resides in, or is expected to reside in, such dwelling unit.

Dwellings and dwelling units constructed after 1978 are exempt from the provisions of this Ordinance.

2. Section 182-6: Risk assessment and clearance examination required is amended as follows:

Section 182-6, Paragraph A (1) is amended to read as follows:

- (1) A child under six years of age, pregnant woman, or other person who has demonstrated evidence of an elevated blood lead level greater than the current Center for Disease Control blood lead level of concern, currently defined as 5 micrograms per deciliter of whole blood;

Section 182-6, Paragraph A (5) is deleted in its entirety.

Section 182-6, Paragraph E, is amended to read as follows:

A Lead Safe Certification on the form to be provided by the City shall be submitted to the City based on an inspection at turnover of the Dwelling or Dwelling Unit to a new Tenant. The Lead Safe Certification must be based on a Clearance Examination completed at turnover of the Dwelling or Dwelling Unit, or a Clearance Examination completed no more than 24 months prior to the date a new lease is entered into. A Lead Free Certification must be based on a Risk Assessment performed at any time prior to the date a lease is entered into.

3. Section 182-7: Notification of violation for children with an elevated blood lead level is amended as follows:

Section 182-7 Paragraph F is amended to read as follows:

- F. In areas where the deteriorated paint is less than 10% of the total Component or less than 20 square feet on exterior surfaces, and less than 2 square feet in any one interior room clearance testing is not required, however, lead-safe work practices must followed when repairing the poor condition of the paint in these areas. The City Health Officer's square-square foot calculation shall be the sole factor in determining whether the exception to abatement is authorized pursuant to this section.

4. Section 182-8: Notification of Violation for Condemned Residential Properties is amended to read as follows:

- A. If a Dwelling or Dwelling built prior to 1978 is a Condemned Property by the City, the Owner and/or authorized agent of the Dwelling or Dwelling Unit must possess a one-day EPA Renovation, Repair Painting (RRP) Certification prior to obtaining a demolition or building permit from the City of Lancaster. Said Certification must be presented to the City when applying for a demolition or building permit.
- B. Once construction is completed, the Owner and/or authorized agent is required to submit a Lead Safe Certification as required by this Ordinance, and completed in accordance with EPA Regulations, to the City Health Officer.
- C. The Owner shall bear the cost of obtaining the Lead Safe Certification.
- D. If the Clearance Examination indicates the Dwelling or Dwelling Unit failed, the Owner must incur the cost of subsequent Clearance Examinations until a Lead Safe

Certification is secured. The Owner may elect to have City-qualified Lead-Based Paint Risk Assessor conduct the Clearance Examination at the Owner's expense.

(1) Exception: Condemned Dwellings for utility shut-offs; clean and sanitize activity related to City Property Maintenance Code violations; or for appliance repairs or replacement where no interior alterations are required are exempt from the provisions of this Section 182-8.

E. A copy of the Lead Safe Certification must be provided to the City prior to the City issuing a Certificate of Habitability and/or Certificate of Occupancy for the Condemned Dwelling or Dwelling Unit.

5. A new Section 182-9 Lead Disclosure Obligation and Rental Protections. is to be inserted and read as follows:

- A. No Owner shall enter into a lease agreement with a Tenant, other than a renewal lease, to rent any Targeted Housing Dwelling or Dwelling Unit, unless (1) he/she provides the Tenant with a valid Lead Safe Certification prepared by a Lead-Based Paint Risk Assessor stating that the property is either lead free or lead safe; and (2) the Tenant acknowledges receipt of the certification by signing a copy.
- B. A certification that a property is Lead Safe under this Section shall state that the Lead-Based Paint Risk Assessor determined that the Dwelling or Dwelling Unit was free of any deteriorated paint, and that interior dust samples were collected in compliance with EPA regulations, including 40 C.F.R. § 745.227 and any amendments or successor regulations, were tested and that the same were found not to contain Lead Contaminated Dust as defined in this Ordinance. Additional statements or test results are not required. Any corrective action taken to qualify the property for such certification shall be performed in compliance with applicable laws, including EPA regulations.
- C. Upon entering into such a lease agreement, the Owner shall (1) provide a copy of the signed Lead Safe certification to the City Health Officer, City Code Compliance and Inspection Office, or other authorized City personnel; and (2) provide to the Tenant, in addition to any written notifications required by applicable laws, a written notification advising the Tenant to perform a visual inspection of all painted surfaces periodically during the term of the lease, and advising that the Tenant may inform the Owner of any cracked, flaking, chipping, peeling, or otherwise deteriorated paint surfaces. Upon receipt of any such Tenant notification the Owner shall promptly inspect and correct any defective conditions as required by Section PM-305.3 of the 2006 International Property Maintenance Code and in compliance with other applicable laws, including EPA regulations.
- D. With respect to a City inspection for lead safety at any Dwelling or Dwelling Unit rented by an Owner for which an Owner has not provided the Tenant the certification required in this section, the Owner shall be liable to the City for the costs of such inspection, including time, materials, lab costs and material handling costs.

6. Former Section 182-9 through Section 182-18 are renumbered accordingly as

Section 182-10 through Section 182-19.

7. Newly Numbered Section 182-10 Notification for Child Daycare Facilities, Child-Occupied Facilities, and Day Care Centers is amended as follows:

Section 182-10 Paragraph B is amended to read as follows:

- B. When it is determined that there exists a Lead Source Health Hazard through the Risk Assessment, the Owner/Tenant/Day Care Operator must select a Licensed Lead Abatement Company that is registered with the Pennsylvania Department of Labor and Industry as a registered Lead Abatement Company. The Owner shall bear the cost of the company and abatement work, and shall submit a copy of the Risk Assessment, Lead Abatement Company's information including insurance, and subsequent Lead Safe Certification prior to the City issuing a Certificate of Compliance or Certificate of Occupancy.

9. Newly Numbered Section 182-13 Protection of Occupants, Paragraph C is amended by adding the following:

- (6) **Tenant Remedies** - for any Tenant occupied Dwelling or Dwelling Unit built prior to 1978 that has a child, age 6 and under living there as his/her primary residence, and who has an elevated blood lead level exceeding the current Center for Disease Control blood lead level of concern, currently defined as 5 micrograms per deciliter of whole blood or higher as determined by recent medical testing, a Tenant:
- (a) Shall be entitled to abate rent payment(s) until such time that the Dwelling or Dwelling Unit has been certified as Lead Safe as determined by this Ordinance. Once a Dwelling or Dwelling Unit has been certified as Lead Safe, the Tenant will be responsible for paying the balance of the rent for the month in which the property is found to be Lead Safe, and all future rent. If the Owner is otherwise in compliance with this Ordinance as determined by the City of Lancaster, and there is a delay in attaining the Lead-Safe certification caused by Licensed Lead Abatement Company availability, the Tenant shall be responsible for resuming all other rent payments after the first full month that rent is due.
- (b) Shall be entitled to terminate the lease by giving notice to the Owner or its designated Responsible Agent within 30 days of finding out a child's elevated blood level, and the Tenant shall be entitled to receive their security deposit refunded at the time they vacate the property. The Tenant must vacate the property no later than one month following notification of the child's elevated blood level test.
- (c) Tenants are required to cooperate with the Owner, all City Departments, and all other contractors associated with the Owner's actions to obtain the Lead Safe Certification. An Owner may seek to collect any rent that is abated by the Tenant based on the Tenant non-cooperation. Non-Cooperation shall include failure to be present for inspections and repairs when notified, and without good cause and failure to permit City inspectors and Health officials into a unit for inspections.

Nothing in this section shall preclude the Tenant from exercising any other rights they may

have under law.

(7) Retaliatory Eviction -The Owner of an affected property covered by this Ordinance may not illegally evict or take any other retaliatory action against a Tenant as a result of the Tenant providing information to the Owner, or the Owner's Responsible Agent, or the City in accordance with this Ordinance; for instance, complaining about hazardous conditions or chipping, peeling, or flaking paint in a Targeted Property. Prohibited retaliatory actions include:

- a. Arbitrary refusal to renew a lease; termination of tenancy; arbitrary rent increase, or decrease in service to which a Tenant is entitled; or any type of constructive eviction.

A tenant subjected to a Retaliatory Eviction or other prohibited retaliatory action by a landlord is permitted relief and is entitled to reasonable attorney's fees and costs, as allowed under Pennsylvania law. This section does not affect the Owner's or the Tenant's rights arising from a material breach of a lease.

8. Newly Numbered Section 182-16 Sale of Property is amended to read as follows:

- 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, provide a copy of the Risk Assessment and provide a copy of the Sales Disclosure Statement indicating that lead hazards do exist in the Dwelling. A copy of the Sales Disclosure Statement must also be provided to the City Health Officer.
- B. When a Dwelling is found to have Lead Source Health Hazards, and remediation was begun by the Owner, but had not been completed by the Owner prior to the sale of a Dwelling, the Owner of record must provide the new Owner with the Risk Assessment and provide a copy of the Sales Disclosure Statement to the City Health Officer.
- C. If the Dwelling is an Investment Property, and a child with an Elevated Blood Lead Level has been identified in a Dwelling Unit in the Investment Property prior to the sale, the new Owner will be required to complete the remediation and submit to the City Health Officer a Clearance Examination and a Lead Safe Certification by a Lead-Based Paint Risk Assessor that the Dwelling Unit is Lead (Paint) Safe or Lead (Paint) Free.

9. Newly Numbered Section 182-19: Violations and Penalties is amended as follows:

Section 182-19 is amended by adding the following Paragraph B:

- B. When a Dwelling, or a Dwelling Unit within a Dwelling, has been cited two or more times for the same continuing non-compliance by the City of Lancaster of Sections 182-9 and Section 182-10, the Dwelling, or Dwelling Unit within the Dwelling, may be condemned by the City of Lancaster then requiring compliance with Section 182-8.

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 November, 2017, by the Council of the City of Lancaster, Lancaster County, Pennsylvania, in lawful session duly assembled.

ATTEST:

CITY OF LANCASTER

Bernard W. Harris Jr., City Clerk

By: _____
J. Richard Gray, Mayor