

## Model Housing Code Provisions Related to Lead Hazards

**The “Model Code” is a tool provided by the Indiana State Department of Health (ISDH), Lead Poisoning Prevention Program (ICLPPP), to assist Local Health Department, City and County officials in developing local legal authorities to address lead hazards.**

### Introduction

The vast majority of childhood lead poisoning is due to the presence of lead hazards in the child’s home. Lead hazards in the home are most often the result of deteriorating lead-based paint, which was banned by the federal government in 1978 but which remains in thousands of older homes throughout Indiana. Deteriorating paint and abrasion of lead-based paint in high friction areas such as windows and doors leads to lead chips and, more importantly, lead dust, which is easily ingested by small children who spend much of their time on the floor and engage in the hand to mouth activity that is normal for babies and toddlers. Substandard housing conditions contribute substantially to the creation of lead hazards. Paint can deteriorate simply because of its age, because of high friction activity (for example, opening and shutting windows with painted frames), and because of damage to the structure caused by water damage or chewing by rodents or other vermin.

Other, less prevalent, causes of lead poisoning include lead in drinking water, generally the result of lead or lead solder in water pipes; lead in painted or coated furniture or furnishings (for example, window blinds or infant cribs) or consumer articles such as glazed pottery; lead is also used in some hobbies. Some imported food, cosmetics and medicinal products have also been found to contain lead.

The United States Centers for Disease Control and Prevention have established a goal of eliminating childhood lead poisoning by 2010. The agency has also established “primary prevention” as the preferred approach to addressing lead poisoning. Primary prevention is an approach that focuses on identifying and removing the lead hazards *before* a child is identified with a high blood lead level. Primary prevention is the preferred approach because the physical damage caused to a child by lead poisoning is permanent and can be devastating. The Indiana State Department of Health and local health departments throughout Indiana also have stated that primary prevention should be the primary strategy.

In order to identify and eliminate lead hazards in housing, local health and housing departments need tools, resources, and the ability to be proactive. One of the most basic tools is a clear and specific health and/or housing code that gives property owners clear direction on what conditions must be prevented and gives local agencies clear authority to enforce those requirements. Although Indiana law gives local health departments the authority to inspect housing, order repairs, and declare housing unfit for habitation (see IC 16-41-20-1 *et seq.*), those authorities are very general. The more specific statutory or regulatory authority is, the more effective a tool it will be.

The purpose of this document is to present a menu of options for a local health or housing department<sup>1</sup> that wishes to strengthen its legal authority to address lead hazards, and particularly to use primary prevention to keep the children in their community safe. While the main focus of many local codes is housing, most of the suggestions contained in this document could also be applied to daycare centers and schools, to the extent they are covered by local ordinances or should a local government wish to add them.

The model language included here is drawn from a variety of jurisdictions and other sources and includes a range of provisions—from more to less aggressive. A local health or housing department interested in developing or strengthening its authority can choose among these provisions, or use them as a starting point to develop their own requirements.<sup>2</sup>

This document provides model language for:

- 1) Definitions
- 2) General provisions
- 3) Basic requirements for housing conditions (some of these address lead paint directly, but others address some of the other conditions, such as water damage, that can cause paint to deteriorate, thus creating lead hazards.)
- 4) Provisions specific to rental housing
- 5) Administration and Enforcement

These examples can be modified as desired to fit your particular regulatory program and needs.

## Definitions

***Accessory structure*** shall mean an uninhabited building or structure secondary to the main structure on a premises, including but not limited to a garage, shed, fence or barn.  
Reference: Based on MCHD, Sec. 4-102

***Deteriorated paint*** shall mean paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.  
Reference: EPA Rules 40 CFR § 745.63

## ALTERNATIVE

***Deteriorated paint*** shall mean any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing.

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<sup>1</sup> We refer to both health and housing departments in this document because in any given city or county, one or the other agency may have primary responsibility for assuring safe and healthy housing.

<sup>2</sup> Agencies may also consult Lead-Based Paint: The Law in Indiana (2006) for additional background on lead poisoning and more detailed explanation of the federal and state laws and regulations that apply. That comprehensive manual is available from the Indiana State Department of Health Childhood Lead Poisoning Prevention Program or Improving Kids' Environment, Inc. ([www.ikecoalition.org](http://www.ikecoalition.org)).

Reference: City of Rochester Ordinance, Chapter 90, Article III, § 90-52.

**Lead-containing paint** shall mean

- (a) paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint film or
- (b) any applied paint film that contains 1.0 mg/cm<sup>2</sup> or more of lead as measured by *in situ* analyzer device.

Reference: EPA Rules

**Lead dust hazard** shall mean surface dust in a residential or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 µg/ft<sup>2</sup> on floors or 250 µg/ft<sup>2</sup> on interior window sills based on wipe samples.

Reference: EPA Rules 40 CFR § 745.65

ALTERNATIVE

**Lead dust hazard** shall mean surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the USEPA pursuant to Section 403 of the Toxic Substances Control Act.

Reference: City of Rochester Ordinance, Chapter 90, Article III, § 90-52.

**Lead hazard** shall mean a lead dust hazard, lead paint hazard, or lead soil hazard, as those terms are defined in this regulation.

**Lead paint hazard** shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, or impact surfaces that would result in adverse health effects.

Reference: New York City Childhood Lead Poisoning Prevention Act of 2003, Section 27-2056.2

**Lead safe work practices** shall mean occupant protection; worksite preparation; demolition, renovation or construction techniques; paint removal and treatment techniques; and specialized cleaning techniques that do not create a lead dust or lead soil hazard and will protect the building occupants and workers, as provided in 24 CFR §35.1350.

(1) The following methods are not lead safe work practices and shall not be used to remove paint that is, or may be, lead-based paint:

- (a) Open flame burning or torching
- (b) Machine sanding or grinding without high efficiency particulate air local exhaust control
- (c) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control
- (d) A heat gun that:
  - a. Operates above 1000 degrees Fahrenheit or
  - b. Chars the paint
- (e) Dry scraping, except
  - a. In conjunction with a heat gun or
  - b. Within one foot of an electrical outlet
- (f) Dry sanding, except within one foot of an electrical outlet

- (g) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200, as in effect July 1, 2002.
- (2) Visible paint chips or painted debris that contains lead-based paint shall not remain on the soil, pavement or other exterior horizontal surface for more than 48 hours after the surface activities are complete.
- (3) Occupants and their belongings shall be protected, and the worksite prepared, in accordance with 24 U.S.C. Sec. 35.1345.
- (4) After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

Reference: IC 13-17-14-12; 24 USC § 35.1350

***Lead soil hazard*** shall mean bare soil on residential property that contains lead equal to or exceeding levels promulgated by the USEPA pursuant to Section 403 of the Toxic Substances Control Act.

Reference: City of Rochester Ordinance, Chapter 90, Article III, § 90-52.

#### ALTERNATIVE

***Lead soil hazard*** shall mean bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million ( $\mu\text{g/g}$ ) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

Reference: EPA rules 40 CFR §745.65

***Trained workers*** shall mean workers who have taken the training and passed the examination necessary to be licensed as a lead-based paint inspector, risk assessor, project designer, abatement worker, supervisor, contractor, or clearance examiner as provided IC 13-17-14-1 et seq. and rules promulgated at 326 IAC 23.

## General Provisions

Some codes are written to apply to construction of dwellings only. We urge you to make sure that your general applicability section says that the provisions of the code apply to the *maintenance, use and occupancy of all residential buildings and structures* and also applies to the *alteration, repair, equipment, use, occupancy and maintenance of all residential buildings and structures*.

### Example

This chapter applies uniformly to the maintenance, use, and occupancy of all residential buildings and structures. In addition, this chapter applies uniformly to the alteration, repair, equipment, use, occupancy and maintenance of all residential buildings and structures irrespective of when or under what code or codes the building or structure was originally constructed or rehabilitated.

Reference: MCHD, Sec. 10-103.

## Provisions Related to Conditions in Housing

### A. Overall Obligation of Owners

It is the duty of every owner of a dwelling, residential building, child care facility or school to maintain the dwelling, residential building, child care facility or school in such a manner so as to prevent the existence of a lead hazard.

Reference: Municipal Code of Chicago, Chapter 7-4-030, adopted December 2006.

Discussion: If this is being added to a Housing Code, the references to childcare facilities and schools may not be appropriate. The City of Chicago's recent code revisions addressed not only lead hazards in housing, but in consumer items, as well as requiring screening of children before admissions to licensed child care facilities, warning labels on products offered for sale that contain lead, and other provisions.

### B. Provisions related explicitly to lead hazards in paint, soil, or plumbing

#### **1. New paint.**

No owner or occupant shall apply a lead-containing paint to any interior or exterior surface in or on any dwelling, rooming house, fence or accessory building or structure. No owner or occupant shall install any furniture or furnishing that contains lead-based paint.

Reference: MCHD Sec. 10-309

Discussion: The USEPA and Consumer Product Safety Commission banned the use of lead-based paint in residences beginning in 1978, so lead-containing paint in current residential uses is relatively rare. This provision would make absolutely clear that lead-containing paint shall not be used in or on a residential structure.

#### **2. Plumbing.**

All plumbing or pipes or solder used thereon identified as being constructed of lead or containing lead compounds shall be considered hazardous and shall be replaced with pipes and solder that are not constructed of lead or contain lead compounds.

Reference: MCHD Sec. 10-405 (draft 8-06)

#### **3. Basic provision on housing components**

Every foundation, roof, floor, exterior and interior wall, window, ceiling, stair and porch, and their appurtenances, shall be in sound condition, free from any lead-dust or lead-soil hazards or deteriorated paint and dampness. In all structures built before 1960,<sup>3</sup> the owner shall eliminate all peeling, flaking or chipped paint and repaint those surfaces. The owner shall correct all cracked and loose plaster, decayed wood and other defective surface conditions. All lead hazards, whether

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<sup>3</sup> Although lead-based paint was not banned in residential use until 1978, its use had been declining since about 1950. According to USEPA's analysis, approximately 87% of homes built before 1940; 69% of homes built between 1940 and 1959; and 24% of homes built between 1960 and 1978 have lead-based paint. Some communities choose 1978 as their target year, which is the most aggressive. Others have established 1960, on the theory that this approach will address the vast majority of contaminated dwellings.

on an interior or exterior component, shall be addressed using lead-safe work practices. After paint applied before 1960 is disturbed, the area must be analyzed by a person licensed to perform a lead clearance examination who is independent of those doing the work to confirm that lead-dust hazards are not present.

Reference: MCHD 10-703 (draft 8-06)

Discussion: Lead containing paint was banned in 1978, however it had been used less and less after World War II. The most aggressive approach would apply to all residences built before 1978. Many jurisdictions have used 1960 as the cutoff date, as a reasonable threshold which will capture the majority of houses with potential lead hazards.

#### **4. Basic provision on interior surfaces**

The owner shall maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed, or covered. The owner shall encapsulate or remove any deteriorated lead-based paint using approved lead-safe working practices and correct cracked or loose plaster, decayed wood and other defective surface conditions.

Reference: International Property Maintenance Code § 305.3

Discussion: This language applies to all housing, not just housing built before 1978 or 1960. Maintaining paint in good condition is appropriate in all cases, and also serves to protect the integrity of the building structures.

#### **5. Basic provision on lead hazards in yard areas**

The owner shall ensure that bare soil is covered with grass, gravel, mulch or similar materials in all yard play areas [or in all yard areas of dwelling where an at-risk occupant, i.e. a child under 6 or a pregnant woman, resides], unless a lead inspection or lead risk assessment has determined that there are no lead soil hazards present. Reference: IKE<sup>4</sup>

#### **6. Basic provisions on accessory structures and fences**

Accessory structures shall be structurally sound, maintained in good repair, and be free of insects, rats, peeling or otherwise deteriorated paint, and hazardous materials. The exterior of such structures shall be made weather-resistant through the use of decay-resistant materials or the use of nonlead-containing paint or other preservative material.

All fences shall be maintained in sound condition, in good repair, with no peeling or otherwise deteriorating paint and shall not create a harborage for rodents.

Reference: MCHD Secs.10-108 – 10-109 , IKE, NCHH

Discussion: We recommend that the language about vectors be included. Damage caused by vectors can damage paint and create lead hazards or can leave the structures vulnerable to water damage, which can lead to the creation of lead hazards.

#### **7. Basic provision on doing work that disturbs paint in pre-1960 housing**

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<sup>4</sup> Where possible, this document references existing regulations or regulations under development. In some cases, we suggest language developed by IKE or the National Center for Healthy Housing (NCHH).

All alterations, renovations or other work that disturbs paint in any dwelling constructed before 1960 must be done using lead safe work practices as defined in this ordinance and comply with the provisions of IC 13-17-14-12.

Reference: IKE

C. Provisions related to preventing moisture in housing (this can help with lead hazards because dampness leads to deteriorating paint. It also helps reduce mold, which is a major health hazard in housing.)

1. **Bathroom exhaust** [can be added to existing language on bathrooms]

All bathrooms shall be equipped with an exhaust fan that is exhausted outside the dwelling and not into the attic, crawlspace, or other interior space.

Reference: NCHH

2. **Clothes dryer exhaust** [can be added to existing language on laundry facilities]

Clothes dryer exhaust shall be exhausted outside the dwelling.

Reference: NCHH

3. **Prevention of water damage**

Every foundation, roof, exterior wall, skylight and window shall be reasonably weather- and water-tight, and capable of preventing dampness. These building components must be kept in sound condition and good repair.

All exterior wood surfaces, other than decay resistant wood, shall be protected from the elements and decay by paint or other protective covering or treatment. Wood damaged by decay, insects, or mold must be replaced. Lead-containing paint may not be applied.

Stormwater must be properly drained from the roof of a dwelling by either: gutters, leaders and down-spouts that are maintained in good working condition, or other provisions for controlled water disposal of roof drainage to an approved drainage systems or to the ground surface at least five feet from foundation walls. Flashing on the roof must be maintained to prevent water from getting into the interior of the building.

No property may have standing water in the gutter or other areas which causes a public health hazard.

Reference: MCHD Secs. 10-704 – 10-707 , NCHH

## Additional Provisions Specific to Rental Housing

There are a number of comprehensive and proactive local programs in existence around the country that provide for primary prevention through requirements on rental property. This document draws from several of them, and cites are provided at the end for further reference.

***Registration and Annual Certification for Landlords.*** The owner of any rental unit shall register with the local Health/Housing Department prior to entering into any leases on a form provided by the Department. For any rental dwelling built before 1978, the application for registration shall include a determination by a licensed lead inspector or risk assessor that the dwelling is free of lead hazards. By January 1 of each subsequent year, the owner shall submit a certificate to the Department stating that the rental property is in compliance with all applicable local health or housing codes or ordinances and that the owner has complied with all provisions of state and federal law that apply to lead-based paint.

Discussion: there are many ways to set up a registration or certification program. It could be called a "Certificate of Occupancy," "License," "Registration," or any other title that makes sense. It can be renewable annually or at some less frequent time or not expire at all. One advantage to such a program that goes beyond the issue of lead poisoning is that a certification or licensing requirement can require the identification and contact information of the landlord or a representative (sometimes the only information the tenant has about their landlord is a post office box).

The State of Maryland has enacted a truly proactive and comprehensive lead in housing program that requires registration of property, certification that the property has no lead hazards or has remediated them, with annual renewal and regular and spot inspections. More information about this program is available at [www.mde.state.me.us](http://www.mde.state.me.us).

### ***Revocation of Registration if Lead Hazards are Found***

The Department may/shall revoke the rental registration of any rental property which has been determined by the Department or its authorized representative to contain lead hazards and which the property owner has failed to abate or remediate within the time ordered by the Department.

### ***Lead Awareness for Landlords***

Within one year of the effective date of this ordinance or prior to offering a dwelling for rent, the owner of any rental dwelling constructed before 1960 shall attend a lead awareness seminar and provide proof of training to the local health/housing department. The health/housing department will make available information about appropriate lead awareness sessions.

Discussion: Many property owners are simply not aware of issues related to lead-based paint and their obligations under state and federal law. A local program to educate landlords is one way to further primary prevention. This approach would require a local agency to assure the availability of training sessions and track landlords' attendance.

### ***Notification to Tenant of any Order or Action Related to Lead-Based Paint***

The owner of a rental dwelling shall provide a copy of any order, notice, inspection report, or other document regarding the presence of lead-based paint in the dwelling or common area(s) to all tenants in the dwelling or who have access to the common area(s)

within 7 days of receipt and shall provide copies of all such documentation to a prospective tenant prior to the signing of the lease.

#### ALTERNATIVE

The owner of a dwelling unit, residential building, child care facility, or school who has received a notice of a lead hazard shall post notices in common areas of the building specifying the identified lead hazards. The posted notices, drafted by the department and sent to the property owner with the notification, shall indicate the following:

- (1) that unit(s) in or areas of the building have been found to have lead hazards;
- (2) that the other units or areas of the building may have lead hazards;
- (3) that the department recommends that children 6 years of age or younger receive a blood lead screening; and
- (4) where to seek further information and request an inspection of additional units in the building from the department.

Once the owner has abated [or remediated] the hazards to the satisfaction of the department and received a Notice of Compliance from the department, the owner may remove the notices posted pursuant to this section.

Reference: Municipal Code of Chicago, Chapter 7-4-030, adopted December 2006.

Discussion: It is important that tenants and prospective tenants be informed about actions related to lead-based paint on the property. Federal law requires documentation be provided at time of signing of the lease (including renewal), but not mid-lease even if a significant event occurs. This language would ensure that tenants are notified promptly.

#### ***Proactive Requirement for Lead Risk Assessments***

The owner of a rented dwelling unit constructed prior to 1960 must, within one year of the effective date of this ordinance, have a lead risk assessment conducted on each rented dwelling unit and common area in a multi-unit building. The owner must provide the results of the assessment to the Health/Housing Department and all current tenants within 14 days of receipt. Annually thereafter and upon unit turnover, the owner must conduct a visual inspection of the dwelling units and common areas for deteriorated paint.

Discussion: One of the most direct and comprehensive ways to identify property with lead hazards. The deadline could be staggered (e.g. housing built before 1940 assessed within one year; housing built before 1950 within two years; housing built before 1960 within 3 years) to reduce the immediate burden on property owners and local agencies. The provision could be made even more proactive by adding the following:

#### ***Requirement to Remediate Lead Hazards Found in Risk Assessment***

The owner must abate or remediate all lead hazards identified in the risk assessment within 90 days, using lead-safe work practices. For any lead hazards that are remediated, rather than abated, the landlord shall inspect annually to assess the continued effectiveness of the remediation steps.

Discussion: "Abatement" means total removal of all lead-based paint and lead containing components. "Remediation," which can also be referred to as "interim measures," means measures that don't require total removal of the paint but are designed to eliminate the lead hazard for at least 20 years.

### Administration and Enforcement

A proactive inspection and enforcement program is a critical component of a successful primary prevention program. Although local health departments have general authority to enter and inspect property to assure the public health and safety, following are examples of provisions that can clarify the authority of the local health/housing department.

***Duty to Inspect and Require Remediation of Lead Hazards.***

ALTERNATIVE 1: The Local Health or Housing Department or its authorized agent shall inspect any *dwelling in which a child with an elevated blood lead level resides* and shall order remediation of any lead hazards identified.

ALTERNATIVE 2: The Local Health or Housing Department or its authorized agent shall inspect any dwelling *in which a child six years old or younger or a pregnant woman resides and which was built before 1960 or the department has reason to believe may have lead hazards* and shall order remediation of any lead hazards identified.

ALTERNATIVE 3: An authorized representative of the Department charged with enforcement of this ordinance, upon presentation of the appropriate credentials to the owner, occupant or his representative, shall inspect child care facilities, schools, dwellings and residential buildings at reasonable times, for the purposes of ascertaining that all surfaces accessible to children are intact and in good repair, and for purposes of ascertaining the existence of lead-bearing substances. Such representative may remove samples or objects necessary for laboratory analysis. If a person entitled to withhold consent to an inspection refuses to allow inspection, a representative of the department may apply for a warrant to permit entry. [Chicago]

Discussion: Alternatives 1 and 2 require either a poisoned child or a person at risk be living at the unit as a condition for inspection. Alternative 3 is the broadest, not only allowing inspection of any structure, but also applying to buildings other than dwellings where young children spend time. An agency should consider whether to use “may” or “shall” in a provision such as this. Making the requirement mandatory could be a resource issue for the local agency, however it gives the agency much more clear authority to carry out these activities and could be a defense against a landlord who claims he or she is being singled out.

***Communication between Housing and Health Departments***

Upon receipt of information from the local Health Department of a child with an elevated blood lead level or reasonable belief of the presence of lead hazards in a home built before 1960 or in which a child six years old or under or a pregnant woman resides, the local Housing Department shall inspect the property, order remediation of any lead hazards found, and communicate the results of its inspection to the local Health Department.

Discussion: In many jurisdictions, the Health Department gets involved when a child has been identified with an elevated blood lead level but has no responsibility or authority with respect to the housing itself. Communication between Health and Housing departments is essential under these circumstances.

***Requirements If Lead Hazards are Found***

Upon determination by the department that lead hazards are present in a dwelling or residential building, the department shall give notice within [XX] days to the owner and occupants of the property of the existence and location of the lead hazard(s). The department shall also:

- (1) provide the owner and occupants with suitable recommendations for elimination of the problem areas;
- (2) order that the lead hazards be abated or remediated using lead-safe work practices within [XX] days.

Reference: adapted from Municipal Code of Chicago, Chapter 7-4-030, adopted December 2006

Discussion: The time allowed for the risk assessment can be shorter or longer depending on the severity of the lead poisoning. For example, if the blood lead level is 45 µg/dL or higher, which is considered an emergency level requiring chelation of the child, the rule could require the risk assessment be done within 48 hours. If the level is <20 µg/dL, several weeks may be a reasonable amount of time.

### ***Use of Lead Safe Work Practices in Remediation***

Any remediation or abatement of lead hazards done in response to an order from the local health department shall be done using lead safe work practices and trained workers. No person may conduct lead abatement and/or lead remediation in a manner that increases exposure of any person to lead hazards.

Discussion: the use of improper work practices can create or significantly exacerbate lead hazards. State law prohibits the use of dangerous work practices. It will reinforce this requirement to make it explicit in local requirements as well.

### ***Requirement for Clearance after Remediation***

After completion of remediation, the owner shall have a clearance exam, including dust wipe samples, performed by a trained and licensed person that certifies the elimination of the lead hazards and provide the results of the clearance exam to the local Health/Housing Department.

Discussion: there is no way to be sure that a dwelling is lead safe without a clearance exam performed by a licensed Clearance Examiner. This is a relatively simple and inexpensive procedure, but should be done by someone independent of the contractor who did the work itself.

### ***Requirement for Ongoing Monitoring and Maintenance***

After completion of remediation and clearance, the owner must develop and implement an ongoing monitoring program, including a visual inspection annually and upon turnover of the dwelling (if rental property) by a person trained in lead hazard control, and an ongoing maintenance program to ensure that lead hazards do not recur.

### ***Violation of state law constitutes violation of local code***

Any of violation of IC 13-17-14 [state law on lead based paint activities, including requirement for work practices], shall constitute a violation of this code.

### ***Enforcement***

The Department may take appropriate action to enforce any of the provisions of this chapter/ordinance when a violation of any of the provisions comes to its attention.

### ***Remedies***

The Department may seek relief with respect to any violation of this [chapter/ordinance] by filing an appropriate action in a court of competent jurisdiction or administrative tribunal seeking equitable relief and/or the penalties authorized by this [chapter/ordinance].

Discussion: This section will need to be tailored to the specific jurisdiction. If your local government has a Board of Administrative Hearings or other pre-court level of administrative review, that may be the tribunal you go to for assistance in enforcing an order. It is important that the Department be able to seek both equitable relief (i.e. an order to address the lead hazards) and penalties.

### ***Penalties***

Violation of any section of this [chapter/ordinance] and any failure to comply with any order authorized pursuant thereto shall be subject to a penalty of not less than \$XX nor more than \$XX for each offense. Each day that such violation or noncompliance exists shall be considered a separate offense.

Discussion: The ability to assess a penalty or fine is critical to an effective program. Issues to think about are whether the penalties are civil or criminal, the range of penalty allowed, and whether imprisonment should be an option (imprisonment is a criminal penalty). The Chicago ordinance allows fines of \$50.00 - \$500.00 per day and imprisonment not to exceed 6 months.

### ***Emergency measures***

When the Department finds that an emergency condition exists requiring immediate action to protect the health of any person, the Department may issue an emergency order reciting the existence of the emergency condition and requiring that necessary actions be taken to meet the emergency. An emergency order shall be effective immediately, and any person to whom an emergency order is directed shall comply therewith within the period of time specified in the order. Any such person shall receive a reasonably prompt notice of their right to a prompt hearing conducted by [whatever the appropriate tribunal is]. Pending the hearing, the department may take whatever steps are necessary to execute the emergency order when necessary to protect the health of any person. The entire cost of abatement and relocation actions taken or caused to be taken by the Department shall be recoverable from each of the person responsible for correcting the violations or giving rise to the emergency conditions by bringing an action in a court of competent jurisdiction or pursuant to other applicable law.

Discussion: This is very broad language and could apply to many situations. It could be made more specific to situations of lead poisoning that constitute emergencies, if desired.

### ***Prohibition of Retaliatory Eviction***

No action for eviction, not limited to increase of rent, decrease of services and refusal to renew a lease, shall be threatened or brought against an occupant of a building or other structure because such occupant has in good faith reported to the Department or taken other action to seek correction of a possible code violation or other condition related to the habitability of the dwelling.

Discussion: Tenants are often justifiably afraid to report unsafe housing conditions for fear that they will be evicted. Indiana law does not prohibit retaliatory eviction, but local code could provide this protection to occupants. The language could include provisions making it clear that if the landlord has another, legitimate basis for bringing an eviction action (such as the tenant's failure to pay rent or other violation of the terms of the lease). [Some states allow tenants to withhold rent if housing conditions are not in compliance with Housing Codes. Indiana does not provide this right to tenants.]

## References and Examples

Following are just a few examples of state or municipal statutes and codes that address lead poisoning prevention, as well as links to other reference information available from the National Center for Healthy Housing, the Alliance for Healthy Homes, and Improving Kids' Environment.

San Diego Municipal Code, Chapter 5, Article 4, Division 10: Lead Hazard Prevention and Control Ordinance.

<http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter05/Ch05Art04Division10>

City of New York Local Law 1 of 2004,

<http://www.nmic.org/nycce/p/laws/Intro-101A.htm>

Municipal Code of Chicago, Chapter 7-4 Lead-Bearing Substances

([www.amlegal.com/nxt/gateway.dll/Illinois/chicago\\_il/title7healthandsafety/](http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/title7healthandsafety/))

Municipal Code of the City of Rochester, New York. Chapter 90, Property Conservation Code, Article III.

(<http://www.ci.rochester.ny.us/main/docs/council/leadordinancefinal.pdf>)

Maryland Department of the Environment, Reduction of Lead Risk in Housing Law: Environment Article Title 6 Subtitle 8,

[http://www.centerforhealthyhousing.org/html/maryland\\_lead\\_law.htm](http://www.centerforhealthyhousing.org/html/maryland_lead_law.htm)

State of Ohio, Revised Code, Chapter 3742, <http://www.legislature.state.oh.us/laws.cfm>.

National Center for Healthy Housing,

<http://www.centerforhealthyhousing.org/html/regs.htm>

Alliance for Healthy Homes: Lessons Learned from Lead Poisoning Prevention,

[http://www.afhh.org/aa/aa\\_leadlessons.htm](http://www.afhh.org/aa/aa_leadlessons.htm)

Lead-based Paint: the Law in Indiana (2006), Improving Kids' Environment.

<http://www.ikecoalition.org/Lead/index.htm>

## 10 STEPS TO AN EFFECTIVE ENFORCEMENT PROGRAM

### Step 1

Make sure you know what agencies or offices in your community are involved in health and housing issues. These could include the Health Department, Housing or Building Department, Environmental Department, and others. Convene a meeting of representatives of those groups to discuss the agencies' responsibilities, awareness of lead poisoning, and how you can work together to maximize your efforts.

### Step 2

Educate your local elected and appointed officials about the situation of lead poisoning in your community. Make a friend in the Law Department. Present these people with data

about local lead poisoning rates, the numbers of children at risk, the number of homes built before 1978 in your community (and the percent that are not well-maintained), and the devastating effects of lead poisoning on young children.

### Step 3

Review your local ordinances. Do the ordinances require property owners (especially of rental property):

- To inspect their property for lead hazards?
- To remediate hazards once they are identified (by them or by the local agency)?
- To monitor conditions on an ongoing basis for deterioration that can create hazards?
- To notify tenants about any information they have or get about lead hazards?
- To pay a penalty if they fail to comply with an order from the Health/Housing Department?

Do the ordinances give the health or housing or building authority clear authority and responsibility to inspect dwellings for lead hazards and order remediation?

If not, contact your new friend in the Law Department (it may be the city or county counsel) to start the process of amending the authorities. Share the document Model Health or Housing Code Provisions to Address Childhood Lead-Based Paint (ISDH, 2006) with him or her.

If you do not have local authority, you can use the general authorities of the Indiana State Health Code (IC 16-41-20) to protect the public health and require repairs to housing.

### Step 4

Educate your local judges (superior court, circuit, small claims, juvenile court) about lead poisoning in your community. Make sure they have a copy of Lead-Based Paint: The Law in Indiana (2006), available from the Indiana State Department of Health or Improving Kids' Environment.

Push for creation of a housing division of the local court, or dedication of one day a week to housing and lead enforcement issues. Jurisdictions with dedicated housing or environmental courts are generally more effective in enforcing housing code violations, including those related to lead paint. Even if the local court dedicates one day a week to housing issues, that will help them develop expertise in this area and provide more protection to tenants.

Remember that friend you made in the Law Department? Ask that one of the city/county/agency attorneys become the designated lawyer for lead cases so he/she will develop expertise in the legal issues and get to know personnel in the Health and Housing Departments.

### Step 5

Train your housing/lead inspectors and keep their training updated, both so that they conduct inspections and take samples properly to create a good legal record for enforcement and so that they know to be looking for lead hazards whenever they are visiting a home, even if they are there on an unrelated complaint. Have (and follow) proper QA/QC procedures for Risk Assessment and sampling.

### Step 6

In addition to responding to complaints, regularly schedule some of your inspectors' time for proactive inspections. Be systematic, to avoid claims that you are "picking on" a particular landlord, but focus on higher risk (i.e. older, poorly maintained) properties.

### Step 7

Always cite property owners for peeling, chipping and deteriorated paint. The most effective step code enforcers can take in primary prevention is to consistently cite chipping and peeling paint violations, even if the reason for the inspection is something more dramatic. It is not an eyesore, it is a potentially serious health hazard.

### Step 8

Develop policies and procedures in accordance with EPA, HUD and CDC lead poisoning prevention procedures, train your staff on them, and follow them! Borrow or steal from other states and municipalities—they won't mind!

### Step 9

Document EVERYTHING! An enforcement proceeding will go much more smoothly if you have copies of all documentation—inspection reports, letters to property owners, sample results, a chronology of events, etc, and the documents include dates, signatures, names, addresses, etc.

### Step 10

Develop fact sheets and training materials for landlords (or other property managers) that clearly lay out their responsibilities under local, state and federal law with respect to lead-based paint. Again—there are plenty of examples to use as a starting place.

# Additional Strategies for an Effective Lead-Safe Housing Program

In addition to the steps outlined above, there are a number of strategies local health and housing departments can use to create a strong primary prevention program.

## **Educate, Educate, Educate**

Here are the people that should be educated about lead poisoning and lead-safe housing issues, including lead-safe work practices: EVERYONE, but especially

- tenants,
- landlords,
- local elected officials,
- local judges and city/county legal department,
- health and housing department staff,
- local doctors and nurses,
- day care and school administrators, nurses and teachers,
- local property management companies, realtors, housing inspectors and apartment owner associations
- local contractors
- the media

Hold a compliance conference for local landlords and property owners to explain the requirements of federal, state and local law

## **Form a local lead-safe coalition**

Bring together representatives from local government, local housing authorities, the health care community, the landlords' association and anyone else you think can help educate the community about lead poisoning and undertake projects that will reduce the risk in your community.

## **Focus intensive enforcement on high-risk units and neighborhoods and on recalcitrant uncooperative landlords**

Exterior surveys in likely neighborhoods (looking for deteriorated paint, water damage and other signs of decay) can lead to more intensive inspection programs.

## **Always document and send documentation to landlords**

Federal law requires landlords to provide prospective tenants with copies of any orders, inspection reports or other documentation relating to the presence of lead-based paint prior to lease signing and upon renewal, including common areas. Make sure landlords get copies of your inspection reports and other notices and remind them of their obligation. Consider publishing (on your agency's website or in the local media) the names of landlords and addresses of property with documented lead hazards.

## **Don't forget common areas!**

Hallways, laundry rooms, common recreation or play areas can be lead hazard zones.

## **Train Code inspectors and others who visit homes to look for lead hazards and on how to take dust wipes**

It is not hard to take dust wipe samples, they don't cost much, and they are great evidence. Make sure your code inspectors and anyone who does home visits are all trained and routinely take dust wipe samples in high risk housing.

**Insist on the use of lead-safe work practices**

Issue a few stop work orders if you find contractors disturbing lead-based paint without using lead-safe work practices or providing the residents with the Lead-Safe information required by federal law. The word will spread!

**Establish a "lead-safe property" registry**

If landlords present documentation that their property is lead-free, as determined by a licensed lead risk assessor, add that property to a registry that is publicly available. Consider recognizing landlords who are proactive about addressing lead hazards in their properties. Conversely, consider publishing names of property owners and addresses of properties with lead hazards and/or outstanding remediation orders.

**Establish a fund to help property owners pay for lead remediation activities**

Many property owners do not have enough money to undertake window replacement or other relatively costly repairs. Consider establishing a fund (which could be funded through fees, fines, grants or other sources of funds) to be used to help pay for repairs. Establish eligibility and other requirements to make sure the funds are going to appropriate projects.