

Ordinance No. 747-2019

Council Members: Griffin, Kelley, McCormack, Cleveland, Polensek, Hairston, Bishop, Zone and Mayor Jackson

An emergency ordinance to repeal various sections of Chapters 365 and 240 of the Codified Ordinances of Cleveland Ohio, 1976 as amended by various ordinances and to supplement the Codified Ordinances by enacting new Sections 365.01 through 365.10, 240.01, 240.08, and 240.09, and by amending Sections 240.03, 240.05, 240.06, 240.07, 367.12, 367.99, 371.01, 375.08, and 3107.06, as amended by various ordinances, related to rental registration, certain residential rental units required to be certified lead-safe, lead hazards and lead poisoning prevention.

WHEREAS, this Council finds that lead poisoning is a serious threat to the health of children and, although lead-based paint was banned in the United States in 1978, lead-based paint is still the number one source of lead exposure in the country; and

WHEREAS, the majority of residential structures in the City were originally constructed prior to January 1, 1978, and are, therefore, more likely to have lead-based paint hazards; and

WHEREAS, children living in residential rental units built before 1978 are disproportionately at risk for unsafe levels of lead exposure from lead-based paint hazards; and

WHEREAS, exposure to lead is most dangerous to children under 6 years of age due to their still developing neurological systems; and

WHEREAS, in Cleveland, dangerous levels of lead in a child's blood is mostly due to exposure to lead through deteriorating paint conditions and from soil; and

WHEREAS, this Council finds that, although there is no safe level of lead in the human body, current federal guidelines consider 5 or more micrograms per deciliter of lead in a child's blood to be dangerous and raises concerns of lead poisoning; and

WHEREAS, in 2018, more than 1,230 Cleveland children under 6 years of age that were tested were shown to have 5 or more micrograms per deciliter of lead in their blood; and

WHEREAS, further, this Council finds that lead can accumulate in the brain, kidneys, blood and bones and can cause learning disabilities, language delays, hearing problems and behavioral problems; and

WHEREAS, one goal of Cleveland's Healthy Homes Initiative is to reduce and prevent lead poisoning; and

WHEREAS, this Council believes that requiring all residential rental units constructed before January 1, 1978, to have lead-safe certification will help to decrease the incidences of lead poisoning in the City's children; and

WHEREAS, on May 1, 2019, the Policy Committee of the Lead Safe Cleveland Coalition submitted 33 policy recommendations to this Council for consideration, which policy recommendations have been duly considered and are placed in File No. 747-2019-A; and

WHEREAS, this Council recognizes that these policy recommendations aim to enhance and improve lead safe efforts of the City and the Coalition through implementation of a lead safe certification program, and further suggest improvements to lead screening and testing, treatment, intervention, education and outreach; and

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health, or safety in that definitive actions must continue to address this serious public health threat to children in this City; 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:

Sections 365.01, 365.02, 365.03, 365.04, 365.05, 365.06, and 365.07 as amended by Ordinance No.281-17, passed May 22, 2017;

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

Section 240.08, as amended by Ordinance No. 736-06, passed August 9, 2006;
and

Section 240.09, as amended by Ordinance No. 1027-04, passed August 11, 2004.

are repealed.

Section 2. That the Codified Ordinances are supplemented by enacting new Sections 365.01, 365.02, 365.03, 365.04, 365.05, 365.06, 365.07, 365.08, 365.09, 365.10, 240.01, 240.08, and 240.09, to read as follows:

Chapter 365 – Rental Registration and Lead-Safe Certification

Section 365.01 Definitions

For purposes of this chapter:

(a) “Clearance examination” means an examination, performed by a clearance technician, lead inspector, or lead risk assessor, to determine whether lead hazards in a residential unit have been sufficiently controlled. A clearance examination includes a visual assessment, collection and analysis of environmental samples.

(b) “Clearance technician” means a person, other than a licensed lead inspector or lead risk assessor, who is licensed under RC Chapter 3742 to perform a clearance examination.

(c) “Lead-safe certification” means that the owner of a residential rental unit built before January 1, 1978, has provided to the Director a clearance examination report or lead risk assessment that indicates that lead hazards are not identified in the unit. A lead-safe certification is valid for two (2) years from the date of the certification.

(d) “Director” means the Director of Building and Housing.

(e) “Lead-based paint” means any paint or other similar surface-coating substance containing lead at or in excess of the level that is hazardous to human health as set forth in Rule 3701-32-19 of the Ohio Administrative Code (OAC) as it may be hereafter amended.

(f) “Lead hazard” means material that is likely to cause lead exposure and endanger an individual’s health as set forth in OAC Rule 3701-32-19. Lead hazard includes lead-based paint, lead-contaminated dust, lead-contaminated soil and lead-contaminated water pipes.

(g) “Lead inspector” means any individual licensed under RC Chapter 3742 who conducts a lead inspection, provides professional advice regarding a lead inspection, or prepares a report explaining the results of a lead inspection.

(h) “Lead risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit including information gathering from the unit, current owner’s knowledge regarding the age and painting history of the unit, and occupancy by children under six (6) years of age, visual inspection, limited wipe sampling or other environmental sampling techniques, and any other activity as may be appropriate.

(i) “Lead risk assessor” means a person licensed under RC Chapter 3742 who is responsible for developing a written inspection, risk assessment and analysis plan; conducting inspections for lead hazards in a residential unit; interpreting results of inspections or risk assessments; identifying hazard control strategies to reduce or eliminate lead exposures; and completing a risk assessment report.

(j) “Owner” means the person, partnership or corporation that holds title to the residential rental unit.

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

(l) "Residential rental unit" means any part of a building being used, designed or intended to be used as an individual's private residence, including a unit occupied by one (1) or more persons regardless of whether the occupant pays rent or provides anything else of value to the titled owner in consideration for occupying the structure. A residential rental unit does not include a unit occupied by the titled owner.

Section 365.02 Residential Rental Unit Registration Required; Application for and Issuance of Certificate of Rental Registration; Revocation

(a) *Rental Unit Registration Required.* An owner of a residential rental unit or units located in the City shall register each unit with the Department of Building and Housing in a rental registry which is established by the Director.

(b) *Application Information.* Application for a certificate of rental registration required by this Housing Code shall be made annually, on or before March 1st on forms supplied by the Director. Information to be supplied on an application shall include, but is not limited to, the following:

(1) The name, address, telephone number and email address of the owner or owners of the premises. If a partnership, the names, addresses, telephone numbers and email addresses of all general partners. If a corporation, the names, addresses, telephone numbers and email addresses of the current statutory agent and all corporate officers of the corporation. The address for corporations and partnerships shall be the principal place of business and the address for persons shall be the home address;

(2) The name, address, telephone number and email address of the managing agent of the premises, if any. If a partnership, the names, addresses, telephone numbers and email addresses of the current statutory agent and all corporate officers of the corporation. The address for corporations and partnerships shall be the principal place of business and the address for persons shall be the home address;

(3) If the owner of a rental unit resides or is located outside of Cuyahoga County, the name, current address, telephone number, and email address of an agent designated by the owner, who is a natural person and who resides within Cuyahoga County, and who is authorized by the owner to receive service of a Notice of Violation on the owner's behalf. An agent designated under this section shall be of sound mind and at least eighteen (18) years of age. It is the owner's obligation to notify the Director in writing, of any change in the name, address, telephone number, and/or email address of any agent designated.

(c) *Issuance of Certificate of Rental Registration.* Upon registration, the Director shall issue a certificate of rental registration which shall indicate:

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

(2) The name, address, telephone number and email address of the owner or owners of the premises. In the case of a partnership, the names of all general partners;

(3) If the record owner is a corporation, the names, addresses, telephone numbers and email addresses of the current statutory agent and all corporate officers of that corporation;

(4) The name, address, telephone number and email address of the managing agent of the premises, if any;

(5) The name, address (including the dwelling unit, apartment or room number), telephone number and email address of the superintendent, custodian, or other individual employed by the owner or managing agent to provide regular maintenance services, if any;

(6) The name, address, telephone number and email address of an individual representative of the owner or managing agent who may be reached or contacted at any time in the event of an emergency affecting the premises of any rental unit in that structure, including such emergencies as the failure of a utility system or service, and who has the authority to make emergency decisions concerning the building including its repairs or expenditures;

(7) The use and occupancy authorized and the use district, ward, and census tract in which the structure is located; and

(8) The lead-safe certification status, if applicable.

(d) *Revocation of Certificate of Rental Registration.* The Director may revoke a certificate of rental registration if the applicant makes any false statement in connection with the registration, or if the structure that was covered by it is no longer in compliance with the requirements of this Code, or if the owner, agent, or person in charge of a structure refuses to comply with any provision of this Code required for the use, maintenance and/or occupancy of a structure, including this chapter and Chapters 240, 367, 369 and 371. If the Director revokes a certificate of rental registration, the owner may appeal the Director's action to the Board of Zoning Appeals, in writing within ten (10) days from the date of the Director's action. The Board may sustain, disapprove or modify the Director's action, and the Board's decision shall be final.

(e) *Notice of Change in Owner's Information.* An owner of a residential rental unit shall give notification of a change in the name, address, telephone number, and/or email address of a corporation, partnership or person listed on a certificate of rental registration under division (c)(2) through (c)(6) of this section to the Director within seven (7) days after the change occurs. If the owner fails to give written notification as required in this section, the Director may revoke the certificate of rental registration until the owner provides in writing the changed name, address, telephone number, and/or email address.

In addition to revocation of the certificate of rental registration, whoever violates this division (e) shall be fined not more than two hundred dollars (\$200.00). Each three (3) month period during which the violation continues is a separate offense.

Section 365.03 Rental Registration Fee

(a) An application for a certificate of rental registration shall be accompanied by a nonrefundable rental registration fee of seventy dollars (\$70.00) for each residential rental unit.

(b) No fee shall be charged for a unit occupied by the owner or for a unit for which the owner does not receive rent or anything else of value. The Director shall establish guidelines for fee exemptions.

(c) No fees shall be collected from any one (1) owner for all units owned by that owner within the City in excess of thirty thousand dollars (\$30,000.00) per calendar year.

(d) A certificate may be renewed prior to expiration upon application and payment of the fee described above. A certificate that has expired may be renewed upon payment of the above registration fee plus a late fee of one hundred dollars (\$100.00).

Section 365.04 Lead-Safe Certification Required for Residential Rental Units Built Before January 1, 1978

(a) *Presumption and Policy.* Any residential rental unit originally constructed prior to January 1, 1978, is presumed to have lead-based paint. It is the policy of the City to help prevent the poisoning of children by requiring that the presence of deteriorated lead-based paint on the interior and exterior of residential rental structures built before January 1, 1978 be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to these hazards. Therefore, it is the further policy of the City to require all residential rental units in the City constructed prior to January 1, 1978, to have lead-safe certification no later than March 1, 2023.

(b) *Lead-Safe Certification.* Beginning March 1, 2021, all residential rental units constructed before January 1, 1978 shall have lead-safe certification from the Director according to a quarterly schedule established by the Director, but in no case later than March 1, 2023.

A lead-safe certification is valid for two (2) years from the date of issuance. No earlier than thirty (30) days prior to expiration, an owner shall re-apply for a lead-safe certification by providing the necessary documentation as set forth in this section.

(1) To obtain a lead-safe certification, an owner of a residential rental unit constructed prior to January 1, 1978, shall provide to the Director a copy of a clearance examination report or lead risk assessment, completed pursuant to applicable Ohio laws and rules, within ninety (90) days prior to the date of submission evidencing that lead hazards were not identified in the unit.

(2) For a structure constructed prior to January 1, 1978, that contains five (5) or more residential rental units to obtain a lead-safe certification, an owner shall provide to the Director a copy of a report, completed pursuant to applicable law within ninety (90) days prior to the date of submission, that lead hazards were not identified in the minimum number of units tested relative to the total number of units in the structure, according to Federal HUD Guidelines, 2012 edition, as may be amended from time to time.

(c) *Exemption.* To be exempt from the lead-safe certification requirement set forth in this section, the owner of a residential rental unit originally constructed prior to January 1, 1978, shall submit a copy of a comprehensive lead risk assessment and paint inspection report, issued by a lead risk assessor verifying that the unit has been abated of lead hazards in accordance with 40 CFR 745.227 and applicable state law. The report shall have been completed within twenty (20) years prior to the date of submission to the Director.

(d) An owner of a residential rental unit is not required to obtain a lead-safe certification so long as the unit is unoccupied and the owner does not receive rent or anything else of value for the unit. The owner shall file an affidavit, in the form prescribed by the Director, that the unit is unoccupied and that the owner does not receive rent or anything else of value for the unit, which affidavit shall be filed annually so long as the unit remains unoccupied and the owner does not receive rent or anything else of value for the unit.

(e) *Affirmative Defense.* It is an affirmative defense to a charge for a violation of this section that the rental unit is unoccupied and the owner of the rental unit does not receive rent or anything else of value for the unit.

(f) *Conflict of Interest.* Any clearance technician, lead risk assessor or lead inspector who performs a clearance examination or lead risk assessment for purposes of this section shall not be:

- (1) the owner or an immediate family member, agent or employee of the owner;
- (2) part of a company or associated with a company that is directly or beneficially owned, controlled or managed by the owner, or by an immediate family member, agent or employee of the owner;
- (3) a person hired by or under contract with the owner to manage or maintain the owner's residential rental unit or units as directed by the owner;
- (4) a person who has been authorized by the owner to manage or maintain the owner's residential rental unit or units on the owner's behalf; or

(5) a person who has a financial interest in the laboratory results of dust sampling or testing, or in the determination of whether lead hazards are identified in the owner's residential rental unit or units.

For purposes of this division "immediate family member" means a spouse residing in the owner's household and any dependent child.

Section 365.05 Internal Review

The Director, through a designated Lead-Safe Auditor, shall monitor the City lead-safe certification process to ensure efficiency and effectiveness. The Lead-Safe Auditor shall perform such other tasks as required by the Director, including maintaining a list of certified inspectors and contractors and coordinating regular monitoring and reporting with the Lead-Safe Advisory Board and other appropriate entities.

Section 365.06 Impact of Lead-Safe Certification Requirement; Review

Within one (1) year after implementation and yearly thereafter, the City shall review the impacts of the lead-safe certification requirement to determine if tenants have been unduly displaced and to identify any other negative unintended consequences that may have occurred due to implementation of the lead-safe certification requirement. If negative impacts are occurring or have occurred, the City will re-evaluate the program and work toward eliminating any negative impacts.

Section 365.07 Lead-Safe Advisory Board; Responsibilities

(a) There is hereby established a Lead-Safe Advisory Board to consist of seven (7) members: six (6) members appointed by the Mayor with approval of Council and one (1) member appointed by Council who shall be a member of Council. Of the members, at least two (2) shall be representatives from the Lead Safe Cleveland Coalition or similar organization, at least one (1) shall be a current owner of residential rental property located in the City, one (1) shall be the Lead-Safe Auditor, and one (1) shall be a current member of the Cleveland Area Board of Realtors or similar organization of realtors. Of the original appointments, three (3) shall be appointed for terms of two (2) years and four (4) shall be appointed for terms of three (3) years. Thereafter, the terms shall be four (4) years. None of the members shall be current employees of the City. The Lead-Safe Advisory Board shall meet as often as a majority of its members deems necessary, but at least quarterly in each calendar year. The Board shall establish its own rules and regulations.

(b) The responsibilities of the Lead-Safe Advisory Board shall be as follows: to provide recommendations for improvements to the City's lead-safe policies and procedures; to report, on a quarterly basis, progress and status of the City's Lead-Safe Certification requirement and other lead poisoning prevention related efforts to the Council, the Directors of Building and Housing, Public Health and Community Development, and the Lead Safe Cleveland Coalition or similar organization; to cause an appropriate outside entity or entities to produce impact analyses of the Lead Safe

Certification program; to review such impact analyses and report same to the Council, the Directors of Building and Housing, Public Health and Community Development, and the Lead Safe Cleveland Coalition or similar organization.

Section 365.08 Records Kept by Department

Copies of all applications, certificates of rental registration and documents submitted for lead-safe certification are a public record and shall be kept on file by the Director as required by applicable law.

Section 365.09 Inspections; Right of Entry

(a) All residential rental units shall be subject to inspection for the purpose of determining compliance with the provisions of this Housing Code, Chapter 240, and all other applicable laws, ordinances, rules and regulations. Inspections shall be conducted in accordance with the residential rental unit inspection schedule established by the Director, or as may be necessary in the Director's discretion pursuant to specific complaint received under this Code.

(b) The Director and the Director's duly authorized agents or inspectors may enter at reasonable times any residential rental unit registered under this Chapter in accordance with the right of entry defined in Chapter 367.

Section 365.10. Severability

If any section, subsection, sentence, clause, phrase, or other portion of this chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions of this chapter.

Section 240.01 Definitions

As used in this chapter:

(a) "Clearance examination" means an examination, performed by a clearance technician, lead inspector, or lead risk assessor, to determine whether lead hazards in a residential unit, child day-care facility, or school have been sufficiently controlled. A clearance examination includes a visual assessment, collection and analysis of environmental samples.

(b) "Clearance technician" means a person, other than a licensed lead inspector or lead risk assessor, who is licensed under RC Chapter 3742 to perform a clearance examination.

(c) "Commissioner" means the Commissioner of the Division of the Environment of the Department of Public Health unless otherwise specified.

(d) “Department” means the Department of Public Health unless otherwise specified.

(e) “Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs.

(f) “Landlord” has the same meaning as in division (b) of Section 375.01.

(g) “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 any of the following:

(1) Residential rental unit lead-safe maintenance practices performed pursuant to RC 3742.41 and 3742.42;

(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 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. Abatement does not include operations and maintenance activities or other measures and activities designed to temporarily, but not permanently, reduce 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.

(h) “Lead-based paint” means any paint or other similar surface-coating substance containing lead at or in excess of the level that is hazardous to human health as set forth in Rule 3701-32-19 of the Ohio Administrative Code (OAC) as it may be hereafter amended.

(i) “Lead hazard” means material that is likely to cause lead exposure and endanger an individual’s health as set forth in OAC Rule 3701-32-19. Lead hazard includes lead-based paint, lead-contaminated dust, lead-contaminated soil and lead-contaminated water pipes.

(j) “Lead hazard control” means measures taken to reduce or eliminate a lead hazard, which includes, but is not limited to, lead abatement, interim controls, or both, as appropriate.

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

(l) “Rental agreement” has the same meaning described in division (c) of Section 375.01 of the Codified Ordinances.

(m) “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six (6) years or under resides or is expected to reside in such housing) or any zero (0) bedroom dwelling.

(n) “Tenant” has the meaning described in division (e) of Section 375.01 of the Codified Ordinances.

(o) “Zero (0) bedroom dwelling” means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings.

Section 240.08 Notice Requirements

(a) For any lead abatement, interim controls, lead-safe maintenance practices or lead-safe renovation work in a residential unit, child day-care facility or school, the owner shall provide seven (7) days advance written notice to all occupants of residential structures, or all parents, students, teachers, and staff of child day-care facilities or schools from 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, child day-care facility or school from 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 time to complete the removal, and the

method by which the lead-based paint will be removed. The notice shall include a copy of an EPA-approved lead hazard information pamphlet.

(b) 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 by a hazard control order.

Section 240.09 Enforcement

(a) Whenever the Commissioner or Director of Building and Housing (Director) or a designee determines upon information, or by observation or inspection, that any provision of this chapter is being or has been violated, the official may issue a notice of violation to the owner, manager, or person in charge to correct the violation. If the violation constitutes a nuisance that, in the determination of the Commissioner, Director or designee, may endanger the health or safety of any person, the notice of violation shall order the immediate abatement of the nuisance.

(b) In addition to any penalty for a violation of this chapter, the Commissioner or Director or a designee may use any and all remedies in this Health Code, including Chapter 203, to prevent, terminate or abate the nuisance, or to otherwise take action to control the nuisance, the costs and expense of which may be recovered as provided in RC 715.261, including certifying the costs and expense to the County Auditor, to be placed on the property as a lien to be collected as other taxes and returned to the City.

(c) In addition to any penalty for a violation of this chapter, the Commissioner or Director of Building and Housing or a designee may control such nuisance. The costs and expense of controlling a nuisance by the Commissioner or designee under this chapter, may be recovered as provided in RC 715.261, including certifying the costs and expense to the County Auditor, to be placed on the property as a lien to be collected as other taxes and returned to the City.

(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, day-care facility, or school, until the property passes a clearance examination, if the Commissioner determines that the health of the occupants may be at risk during the lead hazard control work. The Commissioner may relocate the occupants until the residential unit, child day-care facility, or school passes a clearance examination. The costs and expense of the relocation may be recovered by certifying those costs to the County Auditor, to be placed on the property as a lien to be collected as other taxes and returned to the City.

(e) In the event of an actual or threatened violation of this chapter, or in 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, terminate or otherwise remedy the violation.

(f) 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 at law to prevent, terminate or otherwise remedy the violation.

(g) The City has enacted and enforces the provisions of this chapter only to promote the public health, safety and general welfare, and for obligations imposed on it by the State of Ohio under delegation by the Ohio Department of Health. The City does not assume, nor does it impose on its officers and employees, an obligation the breach of which causes it to be liable in money damages to any person who claims that such breach proximately caused injury. In addition, nothing in this chapter may be interpreted to limit the City's statutory immunity under RC Chapter 2744.

Section 3. That the Codified Ordinances of the City of Cleveland, Ohio, 1976 are supplemented by amending Sections 240.03, 240.05, 240.07, 371.01 and 375.08, as amended by Ordinance No. 1027-04, passed August 11, 2004, Section 240.06 as amended by Ordinance No. 736-06, passed August 9, 2006, Section 367.12, as amended by Ordinance No. 1864-01, passed October 20, 2003, Section 367.99 as amended by Ordinance No. 281-17, passed May 22, 2017, and Section 3107.06, as amended by Ordinance No. 377-03, passed May 19, 2003, to read, respectively, as follows:

Section 240.03 Prohibitions

(a) No person shall do any of the following:

(1) Violate any provision of RC Chapter 3742, as may be applicable, or the rules adopted pursuant to 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 director of health has determined by rule under RC 3742.45 that no suitable substitute exists;

(3) Interfere with an investigation conducted in accordance with this chapter or RC 3742.35 or by the Commissioner or the Commissioner's designee, 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 RC Chapter 3742 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.

(9) Perform lead-safe maintenance practices without complying with RC 3742.41 and 3742.42.

(d) No person shall manufacture, sell or hold for sale toys and other articles intended for use by children as defined in 16 CFR 1303.2, or furniture as defined in 16 CFR 1303.2, that bears paint containing lead in excess of 0.009 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint film.

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

(f) No person renovating target housing in the City shall fail to comply with Section 240.07.

(g) 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.

(h) All power-assisted methods of lead-based paint removal are hereby prohibited, unless the standards and methods set forth in Chapters 3701-30 or 3701-32 OAC as applicable, are followed. Open flame burning is prohibited under any circumstances.

Section 240.05 Lead Abatement and Lead Hazard Control

(a) The Commissioner is authorized to establish a program for loaning equipment, at no cost, for the removal or control of lead hazards in the City and is authorized to enter

into contracts, as approved by the Director of Law, for the purpose of loaning the equipment.

(b) The commissioners and inspectors of the Division of Environment and Department of Building and Housing are authorized to issue a stop work or cease and desist order RC Chapter 3742 or this chapter.

(d) No person shall fail to immediately stop lead abatement or control activities when ordered to do so under division (c) of this section. No person shall resume lead abatement or control activities except in to conformance with all applicable standards and methods prescribed in RC Chapter 3742.

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

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

(1) A seller or lessor of target housing must disclose information concerning lead upon the transfer of any target housing pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, and shall adhere to all rules and regulations promulgated under the Act, as may be amended from time to time. Before a purchaser or tenant is obligated under a contract to purchase target housing or a rental agreement to lease the target housing, the seller or lessor shall perform the activities and provide the disclosures described in this section. :

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 to the tenant, in writing in the rental agreement: (i) the presence of any known lead-based paint, or any known lead-based paint hazards, in the housing; (ii) any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces; and (iii) whether the property or unit is under a lead hazard control order;

C. Disclose to the tenant a copy of the most recent clearance examination or lead risk assessment and, if applicable, the lead-safe certification;

D. Provide to the purchaser or tenant any records or reports (including notices or letters of violation) available pertaining to lead-based paint or lead-based paint hazards in the target housing, including regarding common areas, and 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-based paint hazards in the target housing;

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

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

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

(2) *Discovery of Lead Hazards or Presumed Lead Hazards.* If the owner of a residential unit learns of the presence of lead-based paint and/or lead-based paint hazards, the owner shall notify each tenant of the presence of lead-based paint and/or lead-based paint hazards within ten (10) days of discovering its presence. In addition, the owner shall notify prospective tenants of presumed lead-based paint and 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.* Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the agent, on behalf of the seller or lessor, shall ensure compliance with the requirements of this section and 40 CFR 745 Subpart F. An agent is defined as means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. The term “agent” does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser.

(b) *Penalties for Violations.*

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

(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.* 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 one (1) month’s rent or one (1) month’s mortgage payment.

(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.

(c) *Validity of contracts 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 Residential Property Renovation; Paint Outlet Information Rule

(a) All renovations, repair and painting performed for compensation in target housing shall be performed in compliance with 40 C.F.R. Part 745, Subpart E, Residential Property Renovation, as may be amended from time to time. Any person performing renovations, repair and painting shall provide to occupants of the residential property a renovation-specific pamphlet as required under 40 CFR 745.81.

(b) All retail and wholesale outlets of paint and paint removal products shall distribute an EPA- approved lead hazard information pamphlet to each purchaser of paint and paint removal products.

Section 367.12 Statement of Authorized Use of Dwelling Building or Structure and Notice of Violation; Fee

(a) No person, agent, firm or corporation shall sell, by land contract or otherwise, any interest in any dwelling building or structure, as defined in Section 363.04 of five (5) or more units, without furnishing the buyer, prior to the sale, (i) a current certificate of occupancy or a statement from the Department of Building and Housing describing the authorized use of the dwelling under the ordinances of the City, and describing its current lead status, (ii) a copy of any outstanding notice or order from the City, including any notice of violation or outstanding notice of the City's intention to demolish or effectively board, and (iii) when an escrow has been established, depositing in escrow prior to delivery of possession or transfer of title a statement from the buyer acknowledging the receipt of these documents. However, a statement signed by both the seller and the buyer stating that the property being transferred does not contain a dwelling building or structure may be deposited in escrow instead of the documents regarding use required above.

(b) An application to provide the statement required by this section shall be accompanied by a fee of forty dollars (\$40.00).

(c) No person, agent, firm or corporation shall enter into a contract for the sale of a one (1), two (2), three (3) or four (4) unit dwelling building or structure, as defined in Section 363.04, without furnishing to the purchaser a Certificate of Disclosure addressing the condition of the property, including its current lead status, which Certificate shall be in a form prescribed by the Director of Building and Housing. No

real estate agent, escrow agent or seller shall sell or transfer a one (1), two (2), three (3) or four (4) unit dwelling building or structure without furnishing to the purchaser information required by the Certificate of Disclosure described above. If the purchaser does not receive any portion of the Certificate of Disclosure to be completed by the City prior to sale, the purchaser may rescind the purchase contract for the sale of the property prior to the sale of the property.

(d) A request for a Certificate of Disclosure shall be accompanied by a nonrefundable fee of sixty dollars (\$60.00).

Section 367.99 Penalty

(a) Whoever violates any provision of this Housing Code for which no other penalty is provided or any rule or regulation promulgated thereunder or fails to comply with this housing code or with any order issued shall be guilty of a misdemeanor of the first degree. Each day of a continuing violation shall be deemed a separate offense.

Whoever causes or permits the continuation of any violation of this Housing Code or any rule or regulation promulgated hereunder or fails to comply with this Housing Code or with any written notice or written order issued hereunder, subsequent to conviction therefor shall be liable for further prosecution, conviction and punishment upon the same order or notice without the necessity of issuing a new order or notice, until full compliance has been had on such order or notice upon which the original conviction was made.

(b) Whoever violates Section 367.11 shall be guilty of a misdemeanor of the third degree.

(c) Whoever violates Section 367.12 or 367.13 shall be guilty of a misdemeanor of the first degree.

(d) Whoever violates Section 371.01 shall be guilty of a misdemeanor of the first degree. Each day of a continuing violation shall be deemed a separate offense.

(e) Whoever violates Sections 365.02, 365.04, 369.13, 369.14, 369.15, 369.16, 369.17, 369.18, 369.19, 371.05, 371.07, 371.10 or 371.13, or Section 369.08, as a first offense shall be guilty of a minor misdemeanor. In addition to any other method of enforcement provided for in this chapter, the above listed minor misdemeanors may be enforced by the issuance of a citation in compliance with Rule 4.1 of the Ohio Rules of Criminal Procedure.

Whoever violates Sections 392.02, 392.021, 392.03, 392.04, or 392.05 is subject to the penalty established in Section 392.99 of these Codified Ordinances. In addition to any other means of enforcement provided for in these Codified Ordinances by statute, Sections 392.02, 392.03, 392.04, 392.05 or 392.06 may be enforced by the issuance of a citation in compliance with Rule 4.1 of the Rules of Criminal Procedure, provided that the offense is a minor misdemeanor.

(f) Whoever violates Section 369.08 as a second offense of that section shall be guilty of a misdemeanor of the fourth degree. Whoever violates Section 369.08 as a third or subsequent offense of that section shall be guilty of a misdemeanor of the first degree.

(g) A court of competent jurisdiction may require whoever is convicted of or pleads guilty to a violation of this Housing Code to pay to the Department of Building and Housing fees for inspections of violations that have not been remedied, which fees are described in Sections 367.08 and 3105.26, and the expenses or costs incurred under the provisions for demolition or boarding contained in the Housing Code.

Section 371.01 Restrictions on Leasing for Residential Occupancy

An owner, operator or agent shall not rent, lease or offer for rental or lease for residential occupancy any dwelling units, dwelling structures or any part of a dwelling unit or dwelling structure that does not comply with the standards for residential occupancy in Chapter 240 of the Health Code, including the requirements in Section 240.06 regarding disclosures in the lease of target housing regarding lead hazards, Section 240.07 regarding residential property renovation, and Section 240.08 regarding notice requirements and Chapters 365, 369, and 371 of the Housing Code.

Section 375.08 Retaliation of Landlord Prohibited; Relief

(a) Subject to division (d) of this section, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, bringing or threatening to bring an action for possession of the tenant's premises, terminating or threatening to terminate the tenant's rental agreement, or refusing to renew the tenant's rental agreement or to continue the tenant's tenancy because:

(1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;

(1) The tenant has complained to the landlord of any violation of RC 5321.04;

(3) The tenant has joined with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement;

(4) The tenant has complained to an appropriate governmental agency of a violation of Chapter 240 that is applicable to the premises or the tenant (or an organization on the tenant's behalf) has taken action under division (b)(3) of Section 240.06.

(b) If a landlord acts in violation of division (a) of this section, the tenant may:

(1) Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises;

- (2) Recover possession of the premises; or
- (3) Terminate the rental agreement.

In addition, the tenant may recover from the landlord, at the tenant's option, either any actual damages, together with reasonable attorneys' fees, or damages of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), together with reasonable attorneys' fees.

(c) Nothing in division (a) of this section shall prohibit a landlord from increasing the rent to reflect the cost of improvements installed by the landlord in or about the premises or to reflect an increase in other costs of operation of the premises.

(d) Notwithstanding divisions (a) and (b) of this section, a landlord may bring an action under RC Chapter 1923 for possession of the premises if:

(1) The tenant is in default in the payment of rent;

(2) The violation of the applicable building, housing, health, or safety code that the tenant complained of was primarily caused by any act or lack of reasonable care by the tenant or by any other person in the tenant's household, or by anyone on the premises with the consent of the tenant;

(3) Compliance with the applicable building, housing, health, or safety code would require alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit. This division does not apply where a landlord is required to reduce and control lead hazards on residential rental property pursuant to Chapters 240, 365 or 371.

(e) The maintenance of an action by the landlord under division (d) of this section does not prevent the tenant from recovering damages for any violation by the landlord of the rental agreement or of RC 5321.04.

Section 3107.06 Applications

(a) The applications for a Certificate of Registration, Limited Certificate of Registration or a Certificate of Qualification shall be in the form prescribed by the Director, may require documentation determined by the Director to be sufficient to show that the applicant meets the requirements for issuance of the relevant Certificate, and shall be available in the office of the Director.

(b) Every application shall state the name of the person, firm or corporation applying for registration, limited registration or certification and the name and address of the place of business or places of business of the applicant. If the applicant is a firm, co-partnership, corporation, association or any combination, the application shall contain the names and addresses of all members or officers, together with a certified

copy of the corporation minutes or other certified evidence that the application has been duly authorized. Every application shall inquire whether the contractor is a certified renovator or dust sampling technician accredited by the EPA under 40 CFR 745.225.

(c) Applications for Certificates of Registration, Limited Certificates of Registration or Certificates of Qualification shall be sworn to by the applicant before a notary public.

Section 4. That Sections 240.03, 240.05, 240.07, 371.01 and 375.08, as amended by Ordinance No. 1027-04, passed August 11, 2004, Section 240.06 as amended by Ordinance No. 736-06, passed August 9, 2006, Section 367.12, as amended by Ordinance No. 1864-01, passed October 20, 2003, Section 367.99 as amended by Ordinance No. 281-17, passed May 22, 2017, and Section 3107.06, as amended by Ordinance No.377-03, passed May 19, 2003, are repealed.

Section 5. Any projects and programs funded by the City that serve children from birth to six (6) years of age, and/or pregnant women, shall provide lead screening questionnaires, offer referrals for lead testing and provide lead poisoning prevention educational materials.

Section 6. There shall be established a Lead Screening and Testing Commission which shall consist of nine (9) members who represent, including but not limited to, health care institutions and health care providers, entities providing Medicaid services, city and county health departments, public and private school systems, entities providing early childhood education and services, and the Lead Safe Cleveland Coalition or similar organization. The Lead Screening and Testing Commission shall adopt its own rules and order of business and shall meet as often as a majority of its members deems necessary, but at least every six (6) months.

The responsibilities of the Lead Screening and Testing Commission shall include: establishing best practices for efficient and effective coordination of screening and testing services for families that are at-risk or that have been exposed to lead hazards; partnering with the Healthy Homes Advisory Council or other similar entity to implement screening and testing recommendations; and coordinating and sharing lead screening and testing data among appropriate entities.

Section 7. There shall be established a Lead Safe Housing Action Board for the purpose of supporting families who must relocate as a result of a lead hazard control order, lead safe maintenance or lead poisoning. The Lead Safe Housing Action Board shall consist of representatives from non-profit entities funded by the City that provide housing in the City. The Lead Safe Housing Action Board shall adopt its own rules and order of business and shall meet as often as a majority of its members deems necessary, but at least every six (6) months. Responsibilities of the Lead Safe Housing Action Board shall include: maintaining a list of housing units available for families forced to relocate and providing help with problems that arise as a result of forced relocation.

Section 8. That on or about March 1, 2021, the Director of Building and Housing will appear before the Council to provide a status on managing and operating the lead-safe

certification requirement, including, but not limited to, staffing levels, technology upgrades and lead-safe certification schedule.

Section 9. 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.

Passed July 24, 2019.

Effective July 26, 2019.