

# **ALLIANCE FOR HEALTHY HOMES**

*Protecting Children from Lead and Other Environmental Health Hazards*



## **Adopting Effective Standards for Lead-Safe Housing A Framework for State and Local Policy Making**



## **ACKNOWLEDGEMENTS**

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## INTRODUCTION

No jurisdiction with an older housing stock can effectively protect children from lead poisoning without laws and ordinances that make clear what rental property owners need to do to prevent and control lead-based paint and dust hazards. To be effective such standards must: 1) clearly define landlords' responsibilities, 2) offer adequate protection for children's health, and 3) be practical, workable, and sensitive to the economic realities of affordable housing.

Many cities and states currently lack such clear, workable, and protective standards for lead-safe housing. Some jurisdictions' laws and regulations establish ambiguous requirements or ignore lead hazards altogether. Other jurisdictions have standards that either are too weak to protect children's health or are impractical for property owners to meet.

This guide is intended to assist legislators, state and local health officials, and advocates for children's health develop laws and ordinances that establish effective and enlightened lead-safe housing standards. Because the extent of risk varies widely from property to property, applying uniform requirements to all pre-1978 housing either imposes unnecessary requirements and costs on lower-risk units or fails to offer sufficient protection to occupants of higher-risk units. To provide maximum public health protection for the resources invested, this framework sets lead-safe housing standards in three tiers:

- ◆ Tier I includes a set of low-cost, prevention-based standards designed for all properties built before 1978 that contain, or may contain, lead-based paint.
- ◆ Tier II offers alternative approaches, criteria, and action triggers that jurisdictions can use to tailor requirements to ensure lead safety in higher-risk properties.
- ◆ Tier III addresses extremely high risk and dangerous circumstances, such as the identification of a lead-poisoned child or significant non-compliance by landlords.

Enacting specific standards for lead-safe housing benefits private property owners as well as children and communities. Codifying lead safety standards in laws and ordinances reinforces the importance of good property maintenance and clarifies what steps landlords need to take in order to prevent and control hazards. Lead-safe housing laws and ordinances provide objective standards against which landlords can demonstrate compliance. Adherence can qualify for property and casualty insurance, reduce legal liability, and maintain property condition and value. Primary prevention of lead poisoning provides community-wide benefits through savings in health care and special education costs, improved school performance, and reductions in anti-social behavior and juvenile delinquency.

This decision guide relates to lead-safety standards that define rental property owners' duties. The Alliance is developing a companion guide that will address the supporting enforcement authorities and programmatic strategies that state and local agencies can use to increase compliance, expand the supply of lead-safe housing, and protect children from lead poisoning.



## SUMMARY

### TIER I – Baseline Standards for All Pre-1978 Rental Properties

*This tier consists of low-cost, prevention-based measures that jurisdictions should require of owners of all pre-1978 properties except those found to be lead-free by a lead-based paint inspection.*

- Maintain properties in good physical condition and in compliance with code
- Perform visual inspection for deteriorated paint and water damage upon vacancy and annually thereafter
- Promptly and safely repair deteriorated paint and its causes
- Follow lead-safe work practices (and avoid unsafe work practices) when repairing deteriorated paint or disturbing painted surfaces
- Urge tenants to report peeling paint and clearly explain how to do so

### TIER II – Safeguards for Owners of High-Risk Rental Properties

*To supplement the baseline standards for high-risk properties, jurisdictions need to establish criteria for designating properties that are presumptively higher risk, as well as additional safeguards that should be required in some circumstances. Alternatives for consideration are provided below. Multiple criteria and/or hazard control measures can be combined to best meet local needs.*

#### Criteria/circumstances for classifying rental properties as higher risk and requiring additional action:

- A government agency identifies peeling paint or other code violations in the unit
- A government agency identifies lead hazards in any unit in a multi-family property
- The property was built prior to 1940/1950/1960
- The property is located in a high-risk area (as defined by a legislative body or executive agency)
- A family with a child under six resides in the unit
- A triggering event occurs, such as property sale, re-rental, or remodeling

#### Alternatives for additional measures required of owners of higher-risk properties:

- Pass visual inspection and clearance dust tests after any activity that disturbs or repairs more than a *de minimis* area of a painted surface (*more than 2 square feet in any one interior room or space*)
- Pass visual inspection and clearance dust tests at vacancy
- Make all floor surfaces smooth and cleanable
- Ensure that doors and windows do not bind
- Perform lead-safe window treatments, such as vinyl/aluminum cladding of window troughs
- Cover bare soil with mulch, gravel, sod, or dense plantings
- Hire a certified contractor to perform a risk assessment or lead inspection
- Hire a certified abatement contractor to control identified lead hazards
- Develop a lead safety plan for ongoing maintenance
- Notify all residents in a building found to contain lead hazards

### TIER III – Response to Extreme Situations

*Jurisdictions should impose special requirements on property owners in situations where housing units pose extremely high risks, such as the identification of an EBL child, or the discovery of significant non-compliance with or circumvention of basic lead safety requirements.*

- Respond promptly to all public health agency directives
- Provide public health agency access to other units in a multi-family building for environmental investigation
- Relocate the occupants if identified hazards are not promptly controlled or if a lead hazard control project requires evacuation
- Submit lead hazard control plans to the public health agency for approval
- Safely control identified lead hazards using a qualified contractor and pass visual inspection and clearance dust tests



## TIER I

### Baseline Standards for All Pre-1978 Rental Properties

*This tier consists of low-cost, prevention-based measures that jurisdictions should require of owners of all pre-1978 residential rental properties, except those found to be lead-free by a lead-based paint inspection. Many of the elements included in this tier are already incorporated into some jurisdictions' codes.*

- ❑ **Maintain properties in good physical condition and in compliance with code** Well-maintained properties with intact paint rarely poison a child. Water damage from leaks and moisture causes most paint failure. By maintaining property as required by code, such as keeping the roof in good repair and promptly correcting leaks and other moisture problems, property owners can prevent paint deterioration that can create lead hazards.
- ❑ **Perform visual inspection for deteriorated paint and water damage upon vacancy and annually thereafter** Unit turnover presents an excellent opportunity for lead hazards to be assessed and controlled since the safety and convenience of occupants are not of concern in a vacant unit. Property owners should be required to perform a visual inspection for signs of water damage, moisture problems, and deteriorated paint at unit turnover and then annually thereafter. Alternatively, jurisdictions can require owners to have their units inspected by the local housing code enforcement agency prior to renting to new tenants.
- ❑ **Promptly and safely repair deteriorated paint and its causes** Owners should be required to promptly and safely correct the surface problems on painted surfaces and the underlying causes of paint deterioration.
- ❑ **Follow-lead safe work practices (and avoid unsafe work practices) when repairing deteriorated paint and disturbing painted surfaces** Research makes clear that traditional paint repair and paint removal work practices can generate significant lead dust hazards. Lead safe work practices (LSWP) include appropriate worksite preparation, occupant protection, safe paint removal methods, and specialized cleaning. Unsafe practices include dry sanding or scraping, open flame burning, operating a heat gun above 1100° F, uncontrolled power washing, and machine sanding without a HEPA filter. To protect occupants and others from exposure to lead hazards, jurisdictions should prohibit the use of unsafe practices for any lead hazard control work, remodeling, renovation, rehabilitation and paint repair. Jurisdictions should require property owners, their employees, and contractors to use LSWP for any work that repairs or disturbs a painted surface.
- ❑ **Urge tenants to report peeling paint and explain how to do so** Property owners cannot address hazards unless they know they exist. Federal law requires property owners to provide tenants with information on lead hazards; jurisdictions should require property owners to also encourage tenants to report deteriorated paint (and other problems), and provide them with information on how to do so. Notices with these instructions can be included in the lease, or delivered, mailed or posted in the building.

## TIER II

### Additional Safeguards for Owners of Higher-Risk Rental Properties

*To supplement the baseline standards for high-risk properties, jurisdictions need to establish criteria for designating properties that are presumptively higher risk, as well as additional safeguards that should be required in some circumstances. Alternatives for consideration are provided below. Multiple criteria and/or hazard control measures can be combined to best meet local needs.*

#### Criteria/circumstances for classifying properties as higher risk and requiring additional action

- A government agency identifies peeling paint or other code violations in the unit**  
Failure to meet basic property maintenance requirements should be seen as a warning that normal upkeep practices are inadequate and more deterioration may be present. By the time an agency documents poor conditions, the problems are likely serious enough to warrant more protective action. A property with even one documented lead hazard is likely to contain others.
- A government agency identifies lead hazards in any unit in a multi-family property**  
There is a significant likelihood that similar hazards are present in other units in the building, due to the common construction, painting, and maintenance history.
- The property was built prior to 1940/1950/1960** Because older properties' painted surfaces typically contain more lead, housing age can be used as a factor for setting priorities.
- The property is located in a high-risk area** Local governments can define a geographical area as high risk based on housing age and condition, household income level, code violations, or elevated blood lead cases.
- A family with a child under six resides in the unit** Children are at higher risk for lead exposure and more vulnerable to its effects. This approach requires vigilance regarding landlord discrimination against families with children.
- A triggering event occurs, such as property sale, re-rental, or remodeling** Jurisdictions can use these housing "events" to trigger a requirement for property owners to perform visual inspections, clearance dust tests, and other safeguards.

#### Alternatives for additional measures required of owners of higher-risk properties

- Pass visual inspection and independent clearance dust tests after any activity that disturbs or repairs more than a *de minimis* area of a painted surface** (*more than 2 square feet in any one interior room or space*): The small specks of lead in household dust are imperceptible to the eye; a clearance lead dust test is the only way to be certain that lead-contaminated dust does not remain behind to poison a child. An independent clearance dust test ensures the veracity of the result.
- Pass visual inspection and independent clearance dust tests at vacancy** Vacancy gives property owners the opportunity to identify any hazards created during the last occupancy and correct them while the unit is unoccupied. To ensure no lead dust hazards remain, property owners can be required to pass independent clearance dust tests at vacancy.

- ❑ **Make all floor surfaces smooth and cleanable** In order to prevent the accumulation of lead dust, property owners can be required to refinish or cover rough, pitted, or porous uncarpeted floors and stairs with smooth products such as vinyl or linoleum.
- ❑ **Ensure that doors and windows do not bind** Property owners can be required to maintain friction and impact surfaces in good operating condition and good repair. Examples of friction surfaces include those parts of a window or door that rub when it is opened and closed. Similarly, property owners should be required to cover impact surfaces with impact-resistant materials or safely replace them. The most common impact surfaces are doors and doorjamb, door trim, doorstops, baseboards, and stair treads, risers, and railings.
- ❑ **Perform lead-safe window treatments** Property owners can be required to repair all deteriorated painted surfaces of windows, including the exterior casing and sills, wells (troughs), sashes, and sash tracks. Common window treatments include covering windowsills and troughs with metal coil stock or vinyl flashing and installing jamb liners. Window replacement offers an alternative to extensive window treatments and also provides potential energy savings.
- ❑ **Cover bare soil with mulch, gravel, sod, or dense plantings** Flaking exterior lead-based paint, previous deposits of leaded gasoline, and exterior paint removal can contaminate soil near the home. Children can be exposed to harmful levels of lead when they get their hands or toys dirty and place them in their mouths during normal play activity. Lead-contaminated soil and dust can also be tracked into homes on shoes or by pets. To protect against this, property owners can be required to cover bare soil with grass, sod, other live ground covers, wood chips, gravel, stones, artificial turf, or similar covering. Property owners can also be required to provide each unit with a doormat to reduce tracking lead-laden soil inside.
- ❑ **Hire a certified contractor to perform a risk assessment or lead inspection and perform hazard control as prescribed by the evaluation report** Owners can be required to hire a certified contractor to ascertain the property's potential lead hazards and control them accordingly.
- ❑ **Hire a certified lead abatement contractor** If lead hazards are extensive, property owners can be required to hire a certified lead abatement contractor to control the hazards.
- ❑ **Develop a lead safety plan for ongoing maintenance** Owners of higher-risk properties can be required to develop a lead safety plan and schedule that documents annual inspections, results, repairs, clearance test results, and notices to tenants.
- ❑ **Notify all residents in a building found to contain lead hazards** The presence of lead hazards in one unit of a multi-family building is a strong indication that its other units also contain hazards. By notifying all tenants when hazards are identified, residents can take steps to protect their children from lead poisoning, and can have their children screened for high lead levels. State and local disclosure laws can require property owners to notify all building residents when lead hazards are identified in any unit, providing an additional safeguard beyond federal law.

## TIER III

### Response to Extreme Situations

*Jurisdictions should impose special requirements on property owners in situations where housing units pose extremely high risks, such as the identification of an EBL child, or the discovery of significant non-compliance with or circumvention of basic lead safety requirements. Such orders must have near-term deadlines for action and close oversight to ensure that hazards are controlled promptly. Jurisdictions should subsequently subject these properties to applicable higher-risk safeguards.*

- ❑ **Respond promptly to all public health agency directives** In order to quickly determine the source of lead poisoning, health investigators must have the full cooperation of the property owner to investigate the places where a poisoned child spends time. Property owners should be required to cooperate fully with the public health agency in planning and achieving corrective action.
- ❑ **Provide public health agency access to other units in a multi-family building for environmental investigation** If lead hazards are identified in one unit in a multi-family building, there is a significant likelihood that similar hazards are present in other units in the building, due to the common painting and maintenance history. Property owners should be required to cooperate with the public health agency in inspecting/evaluating all other units in the building by providing access to the units and effective notification of their occupants.
- ❑ **Relocate the occupants if identified hazards are not promptly controlled or if a lead hazard control project requires evacuation** Where hazards remain, resident children ingest more lead. Lead hazard control work can also put occupants at risk. When the work is extensive, lead safe work practices may not be enough to keep them safe. In those instances, property owners should be required to relocate the family until the work is completed.
- ❑ **Submit lead hazard control plans to the public health agency for approval** To prevent foreseeable problems and in order to ensure thorough control of all identified and presumed lead hazards, property owners can be required to submit a lead hazard control plan for review and approval by the public health agency. If the work does not achieve the complete removal of lead-based paint, the property owner can be required to submit an ongoing maintenance plan for review and approval by the public health agency.
- ❑ **Safely control identified lead hazards using a qualified contractor and pass visual inspection and independent clearance dust tests** For high-risk situations, especially those involving a child with an elevated blood lead level, it is vital that all identified lead hazards be safely controlled. Following lead-safe work practices is imperative; using a certified abatement contractor offers the greatest assurance. In either case, clearance testing is critical to ensure the effective control of an identified lead hazard.

## APPENDIX

This decision guide is intended to help jurisdictions build on the foundation of existing federal, state, and local requirements. Federal requirements of particular importance include:

- ❑ **The Fair Housing Act of 1968** (42 U.S.C. § 3601 et. seq.). The Fair Housing Act prohibits discrimination in housing because of (among other things) familial status, which includes families with children under the age of 18, pregnant women and people securing custody of children under 18. The Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members. Discriminatory actions include taking the following actions based on an individual's familial status: refusing to rent or negotiate for housing, or setting different terms, conditions or privileges for the rental of a dwelling. It is also illegal for anyone to advertise or make any statement that indicates a limitation or preference based on familial status. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- ❑ **Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing** (24 C.F.R. Part 35, Subpart H and 40 C.F.R. Part 745, Subpart F). These joint HUD and EPA regulations require lessors of virtually all pre-1978 dwellings to disclose known information about lead hazards and provide an approved educational pamphlet to prospective tenants.
- ❑ **Residential Property Renovation** (40 C.F.R. Part 745, Subpart E). These EPA regulations require landlords (who make repairs themselves) and contractors to distribute an educational pamphlet to owners and occupants before beginning renovation work in most pre-1978 housing.
- ❑ **Requirements for Notification, Evaluation, Reduction, of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance** (24 C.F.R. Part 35). The "Lead Safe Housing Rule" was designed to protect children from lead-based paint hazards in housing that is either receiving assistance from the federal government or is being sold by the government. The regulation establishes procedures for evaluating whether a hazard may be present, controlling or eliminating the hazard, and notifying occupants of what was found and what was done in such housing.
- ❑ **Lead-Based Paint Poisoning Prevention in Certain Residential Structures** (40 C.F.R. Part 745). These EPA regulations identify lead-based paint hazards; standards for lead-based paint hazards in target housing and child-occupied facilities; procedures and requirements for the accreditation of lead-based paint activities training programs; procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities; and work practice standards for performing such activities.

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