

**ORD. 167-17**

**Repealing Toledo Municipal Code Chapter 1760 “Registration of Lead Safe Residential Rental Units”, enacting a new Chapter 1760, “Registration of Lead Safe Residential Units” to extend the deadline for compliance, create a Hardship Extension Program and set forth additional changes to promote compliance and protect the public health.**

**SUMMARY & BACKGROUND:**

Toledo City Council passed Ordinance 226-16 in August of 2016, which created Chapter 1760 of the Toledo Municipal Code, to require that certain rental properties be inspected by Local Lead Inspectors and then certified by the Toledo-Lucas Health Department as lead safe. The original deadline to comply with this law was September 17, 2017. To encourage compliance, this Ordinance amends Chapter 1760 to enact a three-year phase in of the deadline based on a three-tier ranking of Toledo’s census tracts based on the level of greatest danger of lead exposure to children.

The top tier of the most dangerous census tracts must comply with the law by June 30, 2018. The second tier must comply with the law by June 30, 2019. All remaining census tracts must comply with the law by June 30, 2020. This Ordinance also contains other technical changes and policies to promote compliance and protect the public health. NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

**SECTION 1. That Chapter 1760 of the Toledo Municipal Code which states as follows:**

**1760.01 Policy and Intent**

It is the policy of the City of Toledo to help prevent the poisoning of its residents by requiring that the presence of deteriorated paint, which may contain lead, on the interior and exterior of pre-1978 residential structures and on bare soil be identified and correctly addressed by reducing and controlling the deteriorated paint hazards which may be present and covering the bare soil, in order to prevent potential human exposure to lead hazards. All fees and fines generated under this Chapter shall be transferred to the Toledo Lucas County Health Department to be used for the administration, implementation, and enforcement of this Chapter.

**1760.02 Obligations for Residential Rental Properties and Family Child Care Homes**

(a) It is a violation of this Chapter to allow the following conditions to exist in a “Residential Rental Property or a Family child Care Home”: (1) “Deteriorated Paint Hazard,” (2) a “Dust-lead Hazard,” or a (3) “Soil Hazard,” as defined in section 1760.04. Every Owner of Residential Rental Property shall maintain such property free from these Hazards. Once a presumed lead hazard has been identified, that condition is to be remedied in accordance with the requirements of this Chapter. Termination of occupancy of any such Residential Rental Property shall not constitute compliance with the requirements of this Section.

(b) No Owner, Agent, real estate agent or broker, company, or any person or persons shall rent, lease, sublease, let, mortgage with right of occupancy, or otherwise allow the occupancy of any Residential Rental Property, or provide child care services in a Family Child Care Home, as defined in this Chapter, constructed prior to 1978 and which is subject to this Chapter, whether such use, or occupancy is temporary or permanent, unless a “Lead-Safe Certificate” has been issued for such Property.

(c) If a Residential Rental Property or a Family child Care Home has been issued a “Residential Rental Property or Family Child Care Home Maintenance Hazards Report,” a “Residential Rental Property or Family Child Care Home Owner’s Verification of Annual Residential Rental Property or family Child Care Home Inspection” shall be filed with the Toledo Lucas County Health Department annually, commencing one year from the date of issuance of “Lead-Safe Certificate” for the next three (3) years.

(d) All provisions of this Chapter shall apply to Family Child Care Homes, as defined in this Chapter.

### **1760.03 Obtaining a Lead-Safe Certificate**

(a) The Director of the Toledo Lucas County Health Department shall issue a “Lead-Safe Certificate” upon the filing of all of the following with the Toledo Lucas County Health Department:

- (1) A completed application for a “Lead-Safe Certificate,” to include the name, address, and telephone number of the Owner or the Owner’s Agent of the Residential Rental Property or Family Child Care Home and the number of rental units at the address. The names and addresses of each tenant in each unit. If tenancy changes after the issuance of a “Lead-Safe Certificate,” the Owner shall, within 10 days of occupancy by a new tenant, complete and submit a “Tenancy Update Form” to the Toledo Lucas County Health Department.
- (2) A “Lead-Safe Report” issued by a “Local Lead Inspector,” as defined in 1760.04, who has completed a “Local Lead Inspection” in compliance with the requirements of this Chapter, which “Lead-Safe Report” shall have been made and issued within six months of the Owner’s application. In lieu of a “Lead-Safe Report” an application may contain the certification described in section 1760.05(b); and
- (3) A filing fee of forty-five dollars (\$45.00).

(b) The “Lead-Safe Certificate” shall expire from the date of issuance by the Director as follows:

- (1) three (3) years from the date of issuance by the Director for any property that fails the initial visual inspection or dust wipe test; or
- (2) six (6) years from the date of issuance for any property that passes the initial visual and dust wipe inspection;

- (3) if either the Residential Rental Property or Family Child Care Home has undergone Lead Abatement, designed for the single purpose of permanently eliminating lead hazards, consistent with the provisions of Ohio law or has been determined not to contain lead-based paint pursuant to section 1760.05(b), 20 years from the date of issuance by the Director.

(c) Upon the sale, purchase, or transfer of ownership of Residential Rental Property or Family Child Care Home constructed prior to 1978 and which is subject to this Chapter, the Director of the Toledo Lucas County Health Department shall issue an updated “Lead-Safe Certificate” in the name of the new Owner, upon application. The updated “Lead-Safe Certificate” shall expire on the same date as indicated in the original Certificate.

(d) A new application for a “Lead-Safe Certificate” shall be made at least thirty (30) days prior to the expiration date of the current Certificate. An application seeking renewal of a 6 year registration may be submitted for renewal after the fourth year of the 6 year registration period. An application seeking renewal of a 3 year registration may be submitted for renewal after the second year of the 3 year registration period. The application shall include the filing of a new “Lead-Safe Report” and filing fee.

#### **1760.04 Definitions**

(a) As used in this Chapter the following definitions apply:

(1) “Agent” means the individual designated by the owner as the person authorized by the owner to perform any duty imposed upon the owner by the terms of this chapter.

(2) “Director” means the Director of the Toledo-Lucas County Health Department.

(3) “Deteriorated Paint” means 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.

(4) “Dripline” means the area within 3 feet surrounding the perimeter of a building.

(5) “Dust-Lead Hazard” means surface dust (visible or invisible) in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\mu\text{g}/\text{ft}^2$  on floors or 250  $\mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples.

(6) "Dwelling Unit", as defined in this Chapter, means (1) any residential unit constructed as a single family home and built prior to 1978, and (2) any residential unit constructed as a duplex and built prior to 1978, (3) any residential unit, or other unit modified to be a residential unit consisting of between one and four residential units including all of the following:

- (a) The interior surfaces and all common areas of the dwelling unit;

(b) Every attached or unattached structure located within the same lot line as the dwelling unit, that the owner or manager considers to be associated with the operation of the dwelling unit, including garages, play equipment, and fences; and

(c) The lot or land that the dwelling unit occupies.

(7) "Encapsulation" means the coating and sealing of surfaces with durable surface coating specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children.

(8) Family Child Care Home, for purposes of this Chapter, means a type A Home or a type B Home as defined by Ohio Revised Code section 5104.01.

(9) "Interim Controls," for purposes of this Chapter, means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards. Interim Controls include the following:

(a) Paint Stabilization

(1) Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with 24 CFR 35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of Quality Maintenance Practices.

(b) Friction and impact surfaces.

- (1) Friction surfaces are required to be treated only if:
  - (i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in 24 CFR 35.1320(b);
  - (ii) There is evidence that the paint surface is subject to abrasion; and
  - (iii) Lead-based paint is known or presumed to be present on the friction surface.
- (2) Impact surfaces are required to be treated only if:
  - (i) Paint on an impact surface is damaged or otherwise deteriorated;
  - (ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and
  - (iii) Lead-based paint is known or presumed to be present on the impact surface.
- (3) Examples of building components that may contain friction or impact surfaces include the following:
  - (i) Window systems;
  - (ii) Doors;
  - (iii) Stair treads and risers;
  - (iv) Baseboards;
  - (v) Drawers and cabinets; and
  - (vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.
- (4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include rehanging and/or planning doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.
- (5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.
- (6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface that does not protect lead-based paint from impact or abrasion.

(c) Chewable surfaces.

- (1) Chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.
- (2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age. Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(d) Dust-lead hazard control.

(1) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(2) Surfaces covered by a rug or carpeting shall be cleaned as follows:

(i) The floor surface under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(e) Soil-Lead Hazards

(1) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(a) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass nor sod shall be used.

(b) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.

(c) The impermanent surface covering material shall not contain more than 200 µg/g of lead.

(d) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.

(ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.

- (a) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.
- (b) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

(10) "Lead Abatement," for purposes of this Chapter, means a measure or set of measures designed for the single purpose of permanently eliminating lead hazards, in a manner consistent with federal law and regulations, and state law and regulations. "Lead abatement" includes all of the following:

- (a) Removal of lead-based paint and lead-contaminated dust;
- (b) Permanent enclosure or "encapsulation", as defined in this Chapter, of lead-based paint;
- (c) Replacement of surfaces or fixtures painted with lead-based paint;
- (d) Removal or permanent covering of lead-contaminated soil;
- (e) Preparation, cleanup, and disposal activities associated with lead abatement.

(11) "Lead-Contaminated Dust" means the following:

- (a) On interior floors or exterior living area floors containing a lead loading of forty micrograms per square foot or more;
- (b) On interior window sills or exterior living area window sills containing a lead loading of two hundred fifty micrograms per square foot or more;
- (c) On window troughs containing four hundred micrograms per square foot or more lead;
- (d) On any horizontal surface if that surface is not an interior window sill, exterior living area window sill, or window trough containing a lead loading of forty micrograms per square foot or more;

(12) "Lead-Safe Certificate" is a certificate issued by the Toledo Lucas County Health Department that indicates that a Residential Rental Property or a Family Child Care Home has been certified as lead-safe pursuant to this Chapter.

(13) "Lead-Safe Report" means a written report from a "Local Lead Inspector," as defined by this Chapter, verifying that the owner of the "Residential Rental Property" or a "Family Child Care Home" has sufficiently controlled presumed lead hazards and that there are no "Rental Property, or Family Child Care Home Maintenance Hazards." The "Lead-Safe Report" shall be written and shall contain the following:

- (a) The address of the "Residential Rental Property" or "Family Child Care Home";

(b) Name, address, and telephone number of the owner and manager of the “Residential Rental Property” or “Family Child Care Home”;

(c) A statement verifying that the owner of the “Residential Rental Property” or “Family Child Care Home” has sufficiently controlled presumed lead hazards and that there are no “Rental Property or Family Child Care Home Maintenance Hazards”; and

(d) If the Lead-Safe Report has been created after a Local Lead Re-Inspection, it shall contain information on “Quality Maintenance Practices” activities for which the “Residential Rental Property or Family Child Care Home Maintenance Hazards Report” was issued, including:

i. Start and completion dates of the “Quality Maintenance Practices” activities for which the “Residential Rental Property or Family Child Care Home Maintenance Hazards Inspection” was performed;

ii. Name, address, and telephone number of the individual(s) or company performing the “Quality Maintenance Practices” activities and the Toledo Lucas County Health Department registration number of the individual(s) or company performing the “Quality Maintenance Practices” activities; and

iii. A detailed written description of all “Quality Maintenance Practices” activities, locations where each activity was performed, and the materials used.

(14) “Local Lead Inspection” means an inspection that includes a visual assessment of a “Residential Rental Property, or Family Child Care Home,” followed by the collection of environmental samples to determine the presences of presumed lead hazards. When performing a “Local Lead Inspection” in residential units, the “Local Lead Inspector,” shall do all of the following:

(a) Perform a visual assessment in the “Residential Rental Property, or Family Child Care Home” to identify all “Deteriorated Paint,” visible dust, paint chips, debris, or residue. For exterior areas, visually inspect that bare soil within 3 feet surrounding the perimeter of a building on the property has been covered, enclosures have been installed properly, and painted surfaces have been properly sealed.

(b) Following a passing visual assessment, a dust sample shall be collected from a floor, and if present, window sill and window trough in no fewer than four separate rooms. A maximum of 12 samples shall be collected unless the Residential Rental Property, or Family Child Care Home contains less than four rooms, in which case a dust sample shall be collected from a floor, and if present, window sill and window trough, from each room.

(c) Issue either a “Lead-Safe Report” or a “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report.”



- (d) Perform a Local Lead Re-Inspection of the Residential Rental Property, or Family Child Care Home in which a “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report” was issued.

(15) “Local Lead Inspector” means (1) an individual, licensed by the Ohio Department of Health as a lead risk assessor, lead inspector, clearance technician; (2) an EPA certified lead dust sampling technician; or (3) an individual who meets the licensing standards established by the Toledo Lucas County Health Department, subject to approval by the Ohio Department of Health. A “Local Lead Inspector” may not inspect a property he owns, a property owned by a relative, a property in which he has a financial interest, or where he receives or has received payments for providing services to the property owner.

(16) “Local Lead Re-Inspection” means a re-inspection of a “Residential Rental Property, or Family Child Care Home” that was determined to have presumed lead hazards and that the presumed lead hazards have been eliminated in a manner consistent with the requirements of this Ordinance. The re-inspection shall include a visual assessment of a “Residential Rental Property, or Family Child Care Home,” followed by the collection of environmental samples to determine whether the “Interim Controls” in a “Residential Rental Property, or Family Child Care Home” have sufficiently controlled presumed lead hazards, using “Quality Maintenance Practices.” When performing a “Local Lead Re-Inspection” in residential units, or family child care home, the “Local Lead Inspector” shall follow the same procedure of a “Local Lead Inspection.”

(17) “Occupant” means a person who inhabits a dwelling unit.

(18) “Owner” has the same meaning as specified in Toledo Municipal Code Section 1726.01.

(19) “Quality Maintenance Practices” means that persons performing quality maintenance practices shall:

- (a) Only allow persons performing the quality maintenance practices access to the area while work is underway until a “Local Lead Inspection” is completed;

- (b) Cover the floor underneath the area receiving quality maintenance practices with six mil polyethylene plastic or its equivalent until final cleaning is completed;

- (c) Assure that all persons involved in the quality maintenance practices follow the worker protection standards established pursuant to 29 C.F.R. 1926.62 by the United States occupational safety and health administration;

- (d) Post signs clearly defining the work area and warning occupants and other persons not involved in quality maintenance practices to remain outside the work area;

- (e) Before beginning the quality maintenance practices, isolate the work area so that no dust or debris leaves the work area while the work is being performed. In addition, maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any steps necessary to ensure that no dust or debris leaves the work area while the work is being performed.

Containment shall be established in such a manner that it does not interfere with occupant and worker egress in an emergency;

(f) In the case of interior work practices:

(i) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(ii) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(iii) Close windows and doors in the work area. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(iv) Cover all rough, pitted, or porous horizontal surfaces of the inhabited or occupied areas within the residential unit, child care facility, or school with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, carpet, or linoleum;

(v) Cover the floor surface, including installed carpet with taped-down six mil plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing essential maintenance practices or a sufficient distance to contain the dust, whichever is greater; and

(vi) Ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(g) In the case of exterior work practices:

(i) Close all doors and windows within twenty feet of the renovation. On multi-story buildings, close all doors and windows within twenty feet of the renovation on the same floor as the renovation. On floors below the renovation, close all doors and windows directly beneath the work area;

(ii) Ensure that doorways within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while containing dust and debris to the work area; and

(iii) Cover the ground with plastic sheeting or other impermeable material extending ten feet beyond the perimeter of surfaces undergoing essential maintenance practices or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents ten feet of such ground covering.

(h) Collect, wrap or bag, and seal all waste generated from the quality maintenance practices to prevent release of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work areas, it must be covered. In addition, the renovator shall comply with the following:

(i) At the conclusion of each work day and at the conclusion of the quality maintenance practices, store waste under containment or behind a barrier that prevents access to the waste and any dust, debris or both; and

(ii) During transport, waste shall be contained to prevent the release of dust and debris.

(i) For interior and exterior quality maintenance practices, clean the work area until no dust, debris, or residue remains and employ the following cleaning procedures:

(i) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty plastic bag; and

(ii) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty plastic bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(j) In the case of interior work practices, individuals shall implement the following steps:

(i) Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(ii) Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(iii) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

(k) Perform visual examinations for deteriorated paint, underlying damage, and other conditions that may cause exposure to lead;

(l) Promptly and safely repair deteriorated paint or other building components that may cause exposure to lead and eliminate the cause of the deterioration;

(m) Provide tenants in a “Residential Rental Property” with information approved by the Toledo-Lucas County Health Department on cleaning homes and lead in the home.

(n) Cover any bare soil within 3 feet surrounding the perimeter of a building on the property; and

(o) Not perform the following prohibited methods:

(i) Open-flame burning, torching, or charring of paint;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting paint unless the machine used is equipped with a HEPA exhaust control;

(iii) Dry scraping or dry sanding paint, unless the scraping is done in conjunction with heat guns or within one foot of electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell, or totaling no more than twenty square feet on exterior surfaces;

(iv) Use of a heat gun on paint above one thousand one hundred degrees Fahrenheit;

(v) Uncontained hydro-blasting or high pressure washing of lead-based paint; or

(vi) Paint stripping in a poorly ventilated space using a volatile stripper that is considered a hazardous substance pursuant to 16 C.F.R 1500.3 or a hazardous chemical pursuant to 29 C.F.R. 1910.1200 or 29 C.F.R. 1926.59.

(p) If Dust Wipe Samples show the presences of lead dust, ensure that specialized cleaning associated with quality maintenance practices is performed on affected areas of the Residential Rental Property in accordance with current and accepted methodologies, including, but not limited to, the procedures in Chapter 14 of the HUD guidelines and ensure that bare soil of the residential unit, child care facility or school is covered according in accordance with current and accepted methodologies, including, but not limited to, Chapter 11, or Chapter 12, or both, of the HUD guidelines.

(20) “Quality Maintenance Standards” means that a “Residential Rental Property, or a Family Child Care Home ” has received a “Local Lead Inspection” and that the inspection determined that “Residential Rental Property, or a Family Child Care Home” had no “Residential Rental Property, or Family Child Care Home Maintenance Hazards” as defined by this Chapter.

(21) “Residential Rental Property” means a “Dwelling Unit,” as defined by this Chapter, or any part of a “Dwelling Unit” being used or occupied, or intended to be used or occupied as a private residence, including attached structures such as porches or stoops, occupied by any person or persons other than the owner and/or members of the Owner’s immediate family regardless of whether or not the owner occupies another unit in the structure.

(22) “Residential Rental Property, or Family Child Care Home Maintenance Hazards” means “Deteriorated Paint,” visible dust, paint chips, debris or residue, bare soil within 3 feet

surrounding the perimeter of a building on the property, or one or more environmental sample indicates “Lead-Contaminated Dust.”

(23) “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report” means a written report from a “Local Lead Inspector,” as defined by this Chapter, describing the “Rental Property, or Family Child Care Home Maintenance Hazards” identified by the “Local Lead Inspection.” A “Rental Property or Family Child Care Home Maintenance Hazards Report” shall be provided to the property owner or the property management agent and the occupant, specifically describing the nature and the location of any “Rental Property, or Family Child Care Home Maintenance Hazards”. The “Local Lead Inspector,” shall prepare a “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report” for each “Local Lead Inspection” performed. The “Residential Rental Property or Family Child Care Home Maintenance Hazards Report” shall be written and contain the following:

- (a) The address of the “Residential Rental Property, or Family Child Care Home.”
- (b) Name, address, and telephone number of the owner and manager of the “Residential Rental Property, or Family Child Care Home”;
- (c) Name, address, and telephone number, if available, of each tenant in each unit of the “Residential Rental Property.”
- (d) Specific description of the nature and the location of any “Rental Property, or Family Child Care Home Maintenance Hazards” and the steps necessary to eliminate the “Rental Property, or Family Child Care Home Maintenance Hazards” using the “Quality Maintenance Practices”;
- (e) Name, address, license number, and signature of “Local Lead Inspector,” performing the “Local Lead Inspection” and the date that the inspection was performed; and
- (f) A diagram of the floor plan of the “Residential Rental Property, or Family Child Care Home”, illustrating the location of each environmental sample collected;
- (g) Sample location and result of each dust sample analysis in micrograms per square foot;
- (h) Name, address, telephone number, and approval number of each lead analytical laboratory conducting the analysis of any environmental sample and a copy of the laboratory results.

(24) “Residential Rental Property, or Family Child Care Home Owner’s Verification of Annual Residential Rental Property, or Family Child Care Home Inspection” means that a Residential Rental Property, or Family Child Care Home Owner, whose Residential Rental Property, or Family Child Care Home has been issued a “Lead-Safe Certificate,” verifies to the Toledo Lucas County Health Department, on a form created by the Toledo Lucas County Health Department, that:

(a) the Residential Rental Property, or Family Child Care Home Owner had a visual assessment performed of the “Residential Rental Property” to identify all “Deteriorated Paint,” visible dust, paint chips, debris, or residue;

(b) for exterior areas, the Residential Rental Property, or Family Child Care Home was visually inspected to ensure that bare soil within 3 feet surrounding the perimeter of a building on the property has been covered, enclosures have been installed properly, and painted surfaces have been properly sealed; and

(c) the Residential Rental Property, or Family Child Care Home Owner eliminated any “Residential Rental Property, or Family Child Care Home Maintenance Hazards” using the “Quality Maintenance Practices” defined in this Chapter, and without using the unsafe practices prohibited under Ohio law including Ohio Revised Code section 3742.44, and in accordance with methods specified pursuant to Ohio laws and regulations, including Ohio Administrative Code chapter 3701-30.

(25) “Soil Hazard” means bare or exposed soil within the “Dripline.”

### **1760.05 Presumption of Lead-Based Paint**

(a) For purposes of this Chapter, all paint on the interior or exterior of any residential building on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based.

(b) Any person seeking to rebut this presumption may do so by obtaining a certification from a lead-based paint inspector or risk assessor that the property has been determined through a lead-based paint inspection conducted in accordance with the federal regulations at 40 CFR 745.227(b) not to contain lead-based paint.

### **1760.06 Local Lead Inspection**

(a) The “Local Lead Inspection” shall include a full visual assessment for evidence of exterior or interior “Deteriorating Paint” and bare or exposed soil within the “Dripline.” A dust sampling assessment will be performed only after the property being inspected passes the visual inspection with submission of samples to a licensed environmental lead analytical laboratory for analysis for lead, interpretation of sampling results, and preparation of a report. Deteriorated paint is presumed to contain lead unless proven otherwise by a lead-based paint inspection.

(b) The standards to be applied to a “Local Lead Inspection” are as follows:

(1) Visual assessments for presumed lead hazard shall apply the following standards to determine the presence of a presumed lead hazard:

A. Deteriorated paint.

The interior and exterior of any Residential Rental Unit, as defined in Section 1760.03, on which the original construction was completed prior to January 1, 1978, and the exterior of any nonresidential structure on which the original construction was

completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- i. Twenty square feet on exterior surfaces;
- ii. Two square feet in any one interior room or space; or
- iii. Ten percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

For the purpose of determining whether or not deteriorated paint is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior.

B. A full visual assessment of every area of the subject dwelling unit shall be performed to determine if deteriorated paint and/or visible amounts of dust, debris, paint chips, or other residue are present. Interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris, paint chips, or residue are present, they must be eliminated prior to the continuation of the lead hazard inspection, using method specified under this Chapter and Ohio laws and regulations.

(2) Dust wipe testing shall apply the following standards to determine the presence of a presumed lead hazard:

A. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\mu\text{g}/\text{ft}^2$  on floors or 250  $\mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples or 400  $\mu\text{g}/\text{ft}^2$  on interior window troughs based on wipe samples.

B. Dust samples shall be wipe samples and shall be taken on floors, excluding open porches, and interior windowsills and window troughs that have a paint history. Dust samples shall be collected and analyzed in accordance with this section.

- i. Dust samples to be collected in all living areas where young children are most likely to come into contact with dust. Select a minimum of four rooms for dust sampling. The selection of rooms to be tested, where applicable, shall include no less than one bedroom and the living room. At least one wipe sample shall be taken from a windowsill with a paint history, a window trough if present, and one from a floor in each room. Where there are less than four rooms, then all rooms shall be sampled. A maximum of 12 samples shall be collected unless the Residential Rental Property, or Family Child Care Home contains less than four rooms, in which case a dust sample shall be collected from a floor, and if present, window sill and window trough, from each room.

- ii. Dust samples shall be analyzed by a licensed environmental lead analytical laboratory.

(3) Bare Soil Hazard.

A. Bare soil shall not be present within the dripline of any Residential Rental Property on which the original construction was completed prior to January 1, 1978.

(c) If no Residential Rental Property, or Family Child Care Home Maintenance Hazards are identified by the visual assessment, or dust wipe sampling, or bare soil assessment, then a “Lead-Safe Report” indicating that the Residential Rental Property, or Family Child Care Home has met the Quality Maintenance Standards shall be issued by the “Local Lead Inspector.”

(d) Residential Rental Property and Family Child Care Home Maintenance Hazards Reports. If a Residential Rental Property, or Family Child Care Home Maintenance Hazard is identified by the visual assessment or dust wipes sampling, a Residential Rental Property, or Family Child Care Home Maintenance Hazard Report shall be provided to the property owner, or the property management agent, the occupant, and the Toledo Lucas County Health Department, specifically identifying the location of the Residential Rental Property or Family Child Care Home Maintenance Hazards.

(1) The report shall include the following information:

- (a) The address of the residential property, or family child care home and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected;
- (b) The date(s) of the examination;
- (c) The name, address, and signature of each person performing the examination;
- (d) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;
- (e) The results of the analysis of dust samples, in ug per square foot, by location of sample; and
- (f) The name and address of each laboratory that conducted the analysis of the dust samples.

(e) Response to Identified Residential Rental Property, or Family Child Care Home Maintenance Hazards. Once a Residential Rental Property, or Family Child Care Home Maintenance Hazard has been identified, if an Owner decides not to perform a full Lead Abatement, as defined in this Chapter, that condition is to be remedied using Interim Controls and the Quality Maintenance Practices defined in this Chapter, and without using the unsafe practices prohibited under Ohio law including Ohio Revised Code section 3742.44, and in accordance with methods specified pursuant to Ohio laws and regulations, including Ohio Administrative Code chapter 3701-30. The Residential Rental



Property Owner shall certify compliance with the provisions of this section. A Certification of Compliance with Quality Maintenance Practices and Lead Safe Work Practices form shall be made available from the Toledo Lucas County Health Department. If the work was performed by an individual licensed for lead hazard clearance and repair activities, as defined in section 1759.07 of this Chapter, then the Certification of Compliance with Quality Maintenance Practices and Lead Safe Work Practices shall be signed by the licensed individual performing the Residential Rental Property Maintenance Hazards repairs. All Certifications of Compliance with Quality Maintenance Practices and Lead Safe Work Practices shall be provided to the Local Lead Inspector and attached to the Lead-Safe Report prepared by the Local Lead Inspector.

(f) Local Lead Re-Inspection

- (1) After the property owner determines that the repair work has been completed, a Local Lead Re-Inspection shall be performed to determine that the property is free from presumed lead hazards. A Local Lead Re-Inspection shall comply with the standards defined in section 1760.06 (b) of this Article.
- (2) If no paint hazard or lead dust hazard is identified by the Local Lead Re-Inspection and a Lead-Safe Report indicating that the Residential Rental Property, or Family Child Care Home is free of Maintenance Hazards is filed in accordance with this Chapter, a Certificate of Registration of Residential Rental Property, or Family Child Care Home Meeting the Quality Maintenance Practices shall be issued.
- (3) A Local Lead Re-Inspection of the Residential Rental Property, or Family Child Care Home in which a “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report” was issued shall be performed by the “Local Lead Inspector” who issued the “Residential Rental Property, or Family Child Care Home Maintenance Hazards Report.”

**1760.07 Local Lead Inspectors and Workers to be Conducted by Registered Individuals**

- (a) All Local Lead Inspectors must register with the Toledo Lucas County Health Department before performing any Local Lead Inspections.
- (b) Anyone performing work related to Residential Rental Property, or Family Child Care Home Maintenance Hazard clearance and repair activities undertaken in the City must meet the requirements of this Chapter and register with the Toledo Lucas County Health Department before performing any work.
- (c) All work related to Residential Rental Property, or Family Child Care Home Maintenance Hazard clearance and repair activities taken in the City shall be conducted in accordance with the Chapter and Ohio law. Residential Rental Property and Family Child Care Home Owners, and their employees, may attend educational training sessions provided by the Toledo-Lucas County Health Department, or other organizations or agencies approved by the Toledo-Lucas County Health Department. The educational training sessions would provide information to Residential Rental Property and Family Child Care Home Owners, and their employees, on how to maintain properties in a lead safe manner. Attendance at these educational training sessions is optional and is not a guarantee of lead hazard clearance. The Toledo-Lucas County Health Department shall provide

regularly scheduled educational trainings at no cost to owners of the Residential Rental Property and Family Child Care Homes and their employees.

(d) As part of the City's efforts to ensure consistency and compliance with this Chapter and to protect the public health of its citizens, the Toledo Lucas County Health Department may perform inspections of Residential Rental Properties and Family Child Care Homes on a random basis, or based on a reasonable suspicion that a Local Lead Inspector or other contractor or service provider is not conducting inspections, tests, or Local Lead Re-inspections in compliance with this Chapter and Ohio laws and regulations.

(e) Failure to comply with the provisions of this Section shall subject the individual(s) to administrative penalties for each violation as defined in this Chapter.

(f) Rejection of Residential Rental Property, or Family Child Care Home Maintenance Hazard Reports, or a Lead-Safe Report; nonresponsibility of issuer.

(1) The Director of the Toledo Lucas County Health Department or the Director's designee, is authorized to reject a Residential Rental Property, or Family Child Care Home Maintenance Hazard Report, or a Lead-Safe Report that does not meet the requirements of this Chapter, or that is found after an inspection to not substantially represent the conditions present at the Residential Rental Property, or Family Child Care Home for which the report was prepared. The reasons for the rejection shall be set forth in writing to the issuer of the report and to the Owner of the property to which the report pertains.

(2) No Residential Rental Property, or Family Child Care Home Maintenance Hazard Report, or Lead-Safe Report shall be accepted from an issuer who is not registered with the Toledo Lucas County Health Department, or who has been found by the Director to be nonresponsible.

(3) The Director shall inform an issuer in writing of a nonresponsibility determination and the reasons therefor.

(4) Upon making a nonresponsibility determination, the Director may bar the issuer and affiliated organizations, as further set forth herein, from submitting lead hazard inspection reports to the City for a period not to exceed three years. If a corporation is found to be a nonresponsible issuer, that finding may be applied to a parent, affiliate or subsidiary corporation, if the Director finds that an officer, director or person directly or indirectly controlling 10% or more of the stock of the corporation found to be nonresponsible is an officer, director or person directly or indirectly controlling 10% or more of the stock of the parent, affiliate or subsidiary corporation. If an unincorporated association is found to be nonresponsible, that finding may be extended to other related associations upon a finding by the Director that the related associations have substantially the same ownership, management or operating personnel.

(5) In determining the nonresponsibility of an issuer, the Director shall consider:

A. The record of performance of the issuer., including but not limited to suspension or debarment by the state or federal government; or a history of lead hazard inspections that do not meet federal, state or City requirements.

- B. Criminal conduct in connection with Local Lead Inspections, government contracts or business activities.
- C. Violations of labor or employment laws.
- D. Violations of federal or state environmental statutes or regulations.
- E. Any other cause of so serious or compelling a nature that it raises questions about the responsibility of an issuer, including, but not limited to, submission to the City of a false or misleading statement in connection with a lead hazard inspection.
- F. In addition to the factors specified above, the Director may also give due consideration to any other factors considered to bear upon issuer responsibility, including, but not limited to, any mitigating factors brought to the City's attention by the issuer.

(6) The Director may develop rules and regulations to implement these guidelines and may request a sworn statement of issuer qualifications to gather the necessary information set forth herein. The Director may use the information contained in the response to the sworn statement in making a determination of issuer nonresponsibility.

(7) Any issuer or Owner who is adversely affected by any fine, order or ruling issued pursuant to this Chapter may appeal such fine, order or ruling by requesting a hearing before the Nuisance Abatement Housing Appeals Board pursuant to Section 1726.04(b) and (c).

#### **1760.08 Right of Inspection and Enforcement**

The Director of the Toledo Lucas County Health Department and/or his/her designee is authorized to enter on and into and inspect all premises, dwellings, dwelling units and accessory buildings, subject to the provisions of this Chapter and in accordance with the right of entry defined in Toledo Municipal Code Section 1303.0900 for the purpose of determining compliance with the provisions of this Chapter. The owner or other person in charge of the premises shall permit entry by any authorized officer or employee of the City for the limited and exclusive purpose of conducting such inspection, provided that the inspection is carried out at a reasonable time, that sufficient advance notice has been given to the occupants, and that permission to enter was requested and denied by the occupants.

#### **1760.09 Residential Rental Property and Family Child Care Home Registration Ordinance Implementation and Compliance**

##### **(a) Implementation and Compliance Plan**

The Toledo Lucas County Health Department shall develop an implementation and compliance plan so that within three years of enactment of this Ordinance, all Residential Rental Units and Family Child Care Home, as defined by and subject to the provisions of this Chapter, shall be register and determined to be in compliance with Residential Rental Property and Family Child Care Home Quality Maintenance Standards.

(b) Toledo Lead Poisoning Prevention Coalition

The Toledo Lead Poisoning Prevention Coalition shall discuss and advise the Toledo Lucas County Health Department on issues relating to the Toledo's Residential Rental Property and Family Child Care Home Registration Ordinance, its implementation, and compliance with the provisions of the Ordinance by those Residential Rental Property and Family Child Care Home Owners subject to the provisions of the Ordinance.

(c) Annual Report to Mayor and City Council

The Toledo Lucas County Health Department shall provide the Mayor and City Council with an Annual Report summarizing the progress of implementation of this Chapter, including, but not limited to the number of Residential Rental Property and Family Child Care Home applications for a Lead-Safe Certificate and the number of compliance actions taken against Owners of Residential Rental Properties and Family Child Care Homes that fail to comply with provisions of this Chapter.

**1760.10 Prohibition of Retaliatory Action.**

It is unlawful for an Owner, or any person acting on his or her behalf, to take any retaliatory action toward an occupant, lessee, or tenant who reports a failure of the Owner to obtain a Lead-Safe Certificate, or who reports suspected lead-based paint hazard to the Owner or to the City, or reports other issues suggesting non-compliance with this Chapter or the City Building or Housing Code. Retaliatory actions include, but are not limited to any actions that materially alter the terms of the tenancy (including unsupported rent increases and non-renewals) or interfere with the occupants' use of the property.

**1760.11 Lead Poisoning Prevention Materials for Tenants, Tenant Protection for Families living in Rental Properties and Requirements for Rental Property Owners to Provide Lead Poisoning Information.**

- (a) The Toledo Lucas County Health Department shall create educational materials for distribution to tenants of residential rental property, informing them of the steps that can be taken by families to prevent Lead Poisoning. In addition, specific information and educational materials will be provided to each tenant that addressed the following topics:
- (1) The importance and steps necessary to have children tested for lead poisoning.
  - (2) Based on the Residential Rental Property Maintenance Hazards Report issued for the property in which the tenants are living, the specific steps that the tenants needs to follow in order to keep the property in "Lead Safe" condition, including the steps that need to be followed to clean the property in a manner that will result in protection from "Lead Dust."
  - (3) How to identify the presence of "Deteriorating Paint" and "Bare Soil" at the dripline and the requirement to notify the property owner, or property manager.
  - (4) The steps required to notify the Toledo Lucas County Health Department of "Potential lead Hazards" if after notifying the property owner or property manager of the presence of "Deteriorating Paint" and "Bare Soil" at the dripline, no action is taken by the property owner or property manager.

(b) Tenants need to take responsibility to protect themselves and their families from lead exposure. Tenants should take the following precautions to protect their family:

- (1) Notify the landlord of peeling or chipping paint. If the landlord fails to address the problem, contact the Toledo Lucas county Health Department.
- (2) Keep painted surfaces clean and free of dust. Clean floors, window frames, window sills, and other surfaces weekly. Use a mop or sponge with warm water and a general all-purpose cleaner. Never mix ammonia and bleach products together because they can form a dangerous gas.
- (3) Carefully clean up paint chips immediately without creating dust.
- (4) Thoroughly rinse sponges and mop heads often during cleaning of dirty or dusty areas, and again afterward.
- (5) Keep children from chewing window sills or other painted surfaces, or eating soil.

(c) Landlords must give prospective tenants of buildings built before 1978:

- (1) An EPA-approved information pamphlet on identifying and controlling lead-based paint hazards.
- (2) Any known information concerning lead-based paint or lead-based paint hazards pertaining to the building.
- (3) For multi-unit buildings this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
- (4) A lead disclosure attachment to the lease, or language inserted in the lease, that includes a "Lead Warning Statement" and confirms that you have complied with all notification requirements.

### **1760.12 Lead Poisoning Prevention Resources and Technical Support for Property Owners and Family Child Care Homes**

The Toledo Lucas County Health Department shall create, and make available to residential rental property owners and Family Child Care Home owners, Lead Poisoning Prevention Materials, technical materials relating to Lead Hazard Assessment and repairs of Lead Hazards using Interim controls. In addition, The Toledo Lucas County Health Department shall create a grant process by which residential rental property owners, who are determined to be eligible, may apply for a grant to offset the cost of clearing the Lead Hazards from their property.

### **1760.13 Lead Safe Residential Rental Property Registry**

(a) The Toledo Lucas County Health Department shall create an electronic Lead Safe Residential Rental Property and Family Child Care Home Registry, which will provide information regarding the residential rental properties that have complied with the Ordinance and have been determined to be Lead Safe. This information shall be made available to the public, especially potential tenants of residential rental property.

(b) The Toledo Lucas County Health Department shall create an electronic Residential Rental Property and Family Child Care Home Registry for residential rental properties and family child care homes that have failed a Lead Hazard Assessment. Once a residential rental property. Or family child care home has been determined to be Lead Safe, the property will be removed from this

registry. This information shall be made available to the public, especially potential tenants of residential rental property.

#### **1760.14 Residential Rental Property and Family Child Care Home Lead Safe Requirement**

No Certificate of Property Code Compliance may be issued in accordance with this Chapter unless a Lead-Safe Certificate has been issued if required pursuant to Section 1760.02.

#### **1760.15 Fines for Non-Compliance**

(a) After 365 days have passed from the effective date of this Chapter, anyone in violation of Section 1760.02 shall be subject to a fifty dollar (\$50.00) per day administrative fine per dwelling unit with a maximum penalty of ten thousand dollars (\$10,000) per year per dwelling unit.

(b) Anyone assessed an administrative fine under the proceeding section shall have the right to appeal the imposition of the administrative fine to the Board of Nuisance Abatement/Housing Appeals by filing an application in writing with the Board of Nuisance Abatement/Housing Appeals the applicable one hundred dollar (\$100.00) non-refundable filing fee no later than thirty (30) calendar days from the date notice of the fine was received.

(c) Anyone in violation of Section 1760.07 shall be subject to a five hundred dollar (\$500.00) fine per violation as an administrative penalty.

(d) Anyone assessed an administrative fine under the proceeding section shall have the right to appeal the imposition of the administrative fine to the Board of Nuisance Abatement/Housing Appeals by filing an application in writing with the Board of Nuisance Abatement/Housing Appeals the applicable one hundred dollar (\$100.00) non-refundable filing fee no later than thirty (30) calendar days from the date notice of the fine was received.

(e) All fines imposed and collected pursuant to this Section shall be transferred to and used by the Toledo Lucas County Health Department for the administration, implementation and compliance activities related to this Chapter.

#### **1760.16 Deferments**

The Director shall grant an Owner a single 12-month deferral from the requirements of this Chapter under the following conditions:

(1) the Owner possesses more than 10 properties that would require Certificates of Registration of Residential Rental Property Meeting the Quality Maintenance Standards under this Chapter;

(2) the Owner successfully complies with this Chapter in obtaining Certificates of Registration of Residential Rental Property Meeting the Quality Maintenance Standards for 10 properties in the Owner's name;

(3) the Owner requests in writing to the Director that a deferral be granted and lists the address of each property for which the deferral is requested;

(4) each property request for a deferral may not have previously been granted a deferral.

(5) the Deferment will immediately terminate and the Rental Property Owner shall be required to bring all the Owner's rental properties into compliance with this Chapter within 45 days of the discovery that a child has been lead poisoned, at a level of 5 ug/dL or greater, in one of the Owner's rental properties

### **1760.17 Exemptions and Waivers.**

#### **Exemptions and Waivers shall apply to the following described properties:**

(a) This Chapter shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and:

- (1) scheduled for demolition; or
- (2) scheduled for sale within 12 months.

(b) This Chapter shall not apply to Residential Rental Properties owned and operated by the Lucas Metropolitan Housing Authority's (LMHA) public housing program and subject to the required inspections, performed by a certified employee of the Lucas Metropolitan Housing Authority, except that Sections 1760.03 (a)(1) and 1760.08 of this Chapter shall apply to Residential Rental Properties owned and operated by LMHA. However, LMHA shall not be required to include the names and addresses of their tenants when applying for a Lead-Safe Certificate. LMHA shall be responsible to provide the educational materials described in Section 1760.11 to tenants living in properties subject to this exemption. LMHA shall not be assessed a registration fee for any of the properties registered.

(c) The Toledo Lucas County Health Department shall waive the requirement for an interior inspection prior to the issuance of a "Lead-Safe Certificate" for a unit upon submission of a certification by the Lucas Metropolitan Housing Authority (LMHA) stating that the dwelling unit in a "Residential Rental Property" is in compliance with the inspection and clearance requirements of the LMHA's housing programs as governed by the Department of Housing and Urban Development (HUD). A copy of the inspection and clearance reports shall be attached to the certification provided by LMHA. Properties subject to this waiver shall comply with all other provisions of this Chapter, except the requirement for an interior inspection. The Waiver shall not be granted to any "Residential Rental Property" in which the inspection or clearance reports indicates the presences of deteriorating paint or bare soil. These properties will be required to comply with all provisions of this Chapter.

is hereby repealed.

SECTION 2. A new section of the Chapter 1760 Toledo Municipal Code is hereby enacted as follows:

#### **1760.01 Policy and Intent**

It is the policy of the City of Toledo to help prevent the poisoning of its residents by requiring that the presence of deteriorated paint, bare soil and lead dust on the interior and exterior of pre-1978 residential structures be identified and correctly addressed in accordance with federal, state, and local

laws, regulations and guidelines in order to prevent potential human exposure to lead hazards. An analysis of the risk assessments conducted in Toledo by the Health Department indicates that the majority of lead poisoning of children occurs in rental properties that are either single-family homes or four (4) units or less. All fees and fines generated under this Chapter shall be transferred to the Health Department to be used for the administration, implementation, and enforcement of this Chapter.

### **1760.02 Obligations for Residential Rental Properties and Family Child Care Homes**

(a) It is a violation of this Chapter to allow the following conditions - to exist in a “Residential Rental Property or a Family child Care Home”: (1) “Deteriorated Paint Condition,” (2) “Lead Dust Condition,” or a (3) “Bare Soil Condition,” as defined in section 1760.04. Every Owner of Residential Rental Property shall maintain such property free from these conditions. Once identified, the condition is to be remedied in accordance with the requirements of this Chapter. Termination of occupancy of any such Residential Rental Property shall not constitute compliance with the requirements of this Section.

(b) No Owner, Agent, real estate agent or broker, company, or any person or persons shall rent, lease, sublease, let, or otherwise allow the occupancy of any Residential Rental Property, or provide child care services in a Family Child Care Home, as defined in this Chapter, constructed prior to 1978 and which is subject to this Chapter, whether such use, or occupancy is temporary or permanent, unless a “Lead-Safe Certificate” has been issued for such Property.

(c) If a Residential Rental Property or a Family Child Care Home has been issued a “Residential Rental Property or Family Child Care Home Maintenance Conditions Report,” a “Residential Rental Property or Family Child Care Home Owner’s Annual Verification” shall be filed with the Health Department annually, commencing one year from the date of issuance of “Lead-Safe Certificate” for the next three (3) years.

(d) All provisions of this Chapter shall apply to Family Child Care Homes, as defined in this Chapter.

### **1760.03 Obtaining a Lead-Safe Certificate**

(a) The Commissioner of the Health Department shall issue a “Lead-Safe Certificate” upon the filing of all of the following with the Health Department:

- (1) A completed application for a “Lead-Safe Certificate,” to include the name, address, and telephone number of the Owner or the Owner’s Agent of the Residential Rental Property or Family Child Care Home and the number of rental units at the address.
- (2) A “Lead-Safe Report” issued by a “Local Lead Inspector,” as defined in 1760.04, who has completed a “Local Lead Inspection” in compliance with the requirements of this Chapter, which “Lead-Safe Report” shall have been made and issued within six months of the Owner’s application. In lieu of a “Lead-Safe Report” an application may contain the certification described in section 1760.05(b); and
- (3) A filing fee of forty-five dollars (\$45.00).



(b) The “Lead-Safe Certificate” shall expire from the date of issuance by the Commissioner as follows:

- (1) three (3) years from the date of issuance for any property that fails the initial visual inspection or dust wipe test; or
- (2) six (6) years from the date of issuance for any property that passes the initial visual and dust wipe inspection;
- (3) twenty (20) years from the date of issuance by the Commissioner if either the Residential Rental Property or Family Child Care Home has undergone Lead Abatement, designed for the single purpose of permanently eliminating lead hazards consistent with the provisions of Ohio law, or has been determined not to contain lead-based paint pursuant to section 1760.05(b) and a tested composite sample of soil from within the Dripline contains less than four hundred micrograms per gram of lead.

(c) Upon the sale, purchase, or transfer of ownership of Residential Rental Property or Family Child Care Home constructed prior to 1978 and which is subject to this Chapter, the Commissioner of the Health Department shall issue an updated “Lead-Safe Certificate” in the name of the new Owner, upon application. The updated “Lead-Safe Certificate” shall expire on the same date as indicated in the original Certificate.

(d) A new application for a “Lead-Safe Certificate” shall be made at least thirty (30) days prior to the expiration date of the current Certificate. An application seeking renewal of a 6 year registration may be submitted for renewal after the fourth year of the 6 year registration period. An application seeking renewal of a 3 year registration may be submitted for renewal after the second year of the 3 year registration period. The application shall include the filing of a new “Lead-Safe Report” and filing fee.

#### **1760.04 Definitions**

(a) As used in this Chapter the following definitions apply:

- (1) “Agent” means the individual designated by the owner as the person authorized by the owner to perform any duty imposed upon the owner by the terms of this chapter.
- (2) “Bare Soil Condition” means bare or exposed soil within the “Dripline.”
- (3) “Commissioner” means the Health Commissioner of the Toledo-Lucas County Health District.
- (4) “Deteriorated Paint Condition” means 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.
- (5) “Dripline” means the area within 3 feet surrounding the perimeter of a building.

(6) " Dwelling Unit", as defined in this Chapter, means (1) any residential unit constructed as a single family home and built prior to 1978, and (2) any residential unit constructed as a duplex and built prior to 1978, (3) any residential unit, or other unit modified to be a residential unit consisting of between one and four residential units including all of the following:

(a) The interior surfaces and all common areas of the dwelling unit;

(b) Every attached or unattached structure located within the same lot line as the dwelling unit, that the owner or manager considers to be associated with the operation of the dwelling unit, including garages, play equipment, and fences; and

(c) The lot or land that the dwelling unit occupies.

(7) " Family Child Care Home", for purposes of this Chapter, means a type A Home or a type B Home as defined by Ohio Revised Code section 5104.01.

(8) " Health Department" means the Toledo-Lucas County Health District.

(9) " Immediate Family" for the purpose of this Chapter includes father, mother, brother, sister, spouse, child, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepmother, stepfather, grandmother, grandfather and grandchild.

(10) " Interim Controls" for purposes of this Chapter, means a set of measures designed to reduce temporarily human exposure or likely exposure to the Maintenance Conditions identified in section 1760.02(a). These measures include specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of Maintenance Conditions or potential Maintenance Conditions. Interim Controls include the following:

(a) Paint Stabilization

(1) Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with 24 CFR 35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of Quality Maintenance Practices.

(b) Friction and impact surfaces.

(1) Friction surfaces are required to be treated only if:

- (i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in 24 CFR 35.1320(b);
- (ii) There is evidence that the paint surface is subject to abrasion; and
- (iii) Lead-based paint is known or presumed to be present on the friction surface.

(2) Impact surfaces are required to be treated only if:

- (i) Paint on an impact surface is damaged or otherwise deteriorated;
- (ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and
- (iii) Lead-based paint is known or presumed to be present on the impact surface.

(3) Examples of building components that may contain friction or impact surfaces include the following:

- (i) Window systems;
- (ii) Doors;
- (iii) Stair treads and risers;
- (iv) Baseboards;
- (v) Drawers and cabinets; and
- (vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include rehangng and/or planing doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.

(5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.

(6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface that does not protect lead-based paint from impact or abrasion.

(c) Chewable surfaces.

(1) Chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

(2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age.

Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(d) Dust control.

(1) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(2) Surfaces covered by a rug or carpeting shall be cleaned as follows:

(i) The floor surface under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(e) Bare Soil Condition

(1) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(a) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass nor sod shall be used.

- (b) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.
- (c) The impermanent surface covering material shall not contain more than 200 µg/g of lead.
- (d) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.
- (ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.
  - (a) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.
  - (b) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

(11) "Lead Abatement," for purposes of this Chapter has the same meaning as it does in Ohio Revised Code section 3742.01.

(12) "Lead Dust Condition" means surface dust (visible or invisible) in a residential dwelling 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, 250 µg/ft<sup>2</sup> on interior window sills, or 400µg/ft<sup>2</sup> in window troughs based on wipe samples.

(13) "Lead-Safe Certificate" is a certificate issued by the Health Department that indicates that a Residential Rental Property or a Family Child Care Home has been certified as lead-safe pursuant to this Chapter.

(14) "Lead-Safe Report" means a written report from a "Local Lead Inspector," as defined by this Chapter, verifying that the owner of the "Residential Rental Property" or a "Family Child Care Home" has sufficiently controlled Maintenance Conditions, utilizing the "Quality Maintenance Practices" defined in this Chapter. The "Lead-Safe Report" shall be written and shall contain the following:

- (a) The address of the "Residential Rental Property" or "Family Child Care Home";
- (b) Name, address, and telephone number of the owner and manager of the "Residential Rental Property" or "Family Child Care Home";
- (c) A statement verifying that the owner of the "Residential Rental Property" or "Family Child Care Home" has sufficiently controlled Maintenance Conditions, utilizing the "Quality Maintenance Practices" defined in this Chapter;
- (d) Name, address, license number, and signature of "Local Lead Inspector," performing the "Local Lead Inspection" and the date that the inspection was performed; and

(e) If the Lead-Safe Report has been created after a Local Lead Re-Inspection, it shall contain information on “Quality Maintenance Practices” activities for which the “Residential Rental Property or Family Child Care Home Maintenance Conditions Report” was issued, including:

- i. Start and completion dates of the “Quality Maintenance Practices” activities for which the “Residential Rental Property or Family Child Care Home Maintenance Conditions Inspection” was performed;
- ii. Name, address, and telephone number of the individual(s) or company performing the “Quality Maintenance Practices” activities; and
- iii. A detailed written description of all “Quality Maintenance Practices” activities, locations where each activity was performed, and the materials used.

(15) “Local Lead Inspection” means an inspection that includes a visual assessment of a “Residential Rental Property, or Family Child Care Home,” followed by the collection of environmental samples to determine the presences of Maintenance Conditions. When performing a “Local Lead Inspection” in residential units, the “Local Lead Inspector,” shall do all of the following:

- (e) Perform a visual assessment in the “Residential Rental Property, or Family Child Care Home” to identify all “Deteriorated Paint,” visible dust, paint chips, debris, or residue. For exterior areas, visually inspect that bare soil within 3 feet surrounding the perimeter of a building on the property has been covered, enclosures have been installed properly, and painted surfaces have been properly sealed.
- (f) Following a passing visual assessment, a dust sample shall be collected from a floor, and if present, window sill and window trough in no fewer than four separate rooms. A maximum of 12 samples shall be collected unless the Residential Rental Property, or Family Child Care Home contains less than four rooms, in which case a dust sample shall be collected from a floor, and if present, window sill and window trough, from each room.
- (g) Issue either a “Lead-Safe Report” or a “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report.”
- (h) Perform a Local Lead Re-Inspection of the Residential Rental Property, or Family Child Care Home in which a “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report” was issued.

(16) “Local Lead Inspector” means (1) an individual, licensed by the Ohio Department of Health as a lead risk assessor, lead inspector, clearance technician or (2) an individual who meets the licensing standards established by the Health Department, subject to approval by the Ohio Department of Health. A “Local Lead Inspector” may not inspect a property he owns, a property owned by a relative, a property in which he has a financial interest, or where he receives or has received payments for providing services to the property owner –exclusive of an initial consultation related to a Local Lead Inspection.

(17) “Local Lead Re-Inspection” means a re-inspection of a “Residential Rental Property, or Family Child Care Home” that was determined to have Maintenance Conditions and that the Maintenance Conditions have been eliminated in a manner consistent with the requirements of this Ordinance. The re-inspection shall include a visual assessment of a “Residential Rental Property, or Family Child Care Home,” followed by the collection of environmental samples to determine whether the Maintenance Conditions in a “Residential Rental Property, or Family Child Care Home” have been sufficiently controlled using “Quality Maintenance Practices.” When performing a “Local Lead Re-Inspection” in residential units, or family child care home, the “Local Lead Inspector” shall follow the same procedure of a “Local Lead Inspection.”

(18) “Maintenance Conditions” means the existence of any of the following a Deteriorated Paint Condition, a Lead Dust Condition or a Bare Soil Condition, which are presumed lead hazards.

(19) “Occupant” means a person who inhabits a dwelling unit.

(20) “Owner” has the same meaning as specified in Toledo Municipal Code Section 1726.01.

(21) “Quality Maintenance Practices” for purposes of this Chapter has the same meaning as the US EPA’s Lead Renovation, Repair and Painting Program Rules codified at 40 CFR 745, subpart E.

(22) “Residential Rental Property” means a “Dwelling Unit,” as defined by this Chapter, or any part of a “Dwelling Unit” being used or occupied, or intended to be used or occupied as a private residence, including attached structures such as porches or stoops, occupied by any person or persons other than the owner and/or members of the Owner’s immediate family regardless of whether or not the owner occupies another unit in the structure.

(23) “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report” means a written report from a “Local Lead Inspector,” as defined by this Chapter, describing the “Rental Property, or Family Child Care Home Maintenance Conditions” identified by the “Local Lead Inspection.” A “Rental Property or Family Child Care Home Maintenance Conditions Report” shall be provided to the property owner or the property management agent and the occupant, specifically describing the nature and the location of any “Rental Property, or Family Child Care Home Maintenance Conditions”. The “Local Lead Inspector,” shall prepare a “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report” for each “Local Lead Inspection” performed. The “Residential Rental Property or Family Child Care Home Maintenance Conditions Report” shall be written and contain the following:

(a) The address of the “Residential Rental Property”, or “Family Child Care Home”;

(b) Name, address, and telephone number of the owner and manager of the “Residential Rental Property, or Family Child Care Home”;

- (c) Specific description of the nature and the location of any “Rental Property, or Family Child Care Home Maintenance Conditions”;
- (d) Name, address, license number, and signature of “Local Lead Inspector,” performing the “Local Lead Inspection” and the date that the inspection was performed; and
- (e) A diagram of the floor plan of the “Residential Rental Property, or Family Child Care Home”, illustrating the location of each environmental sample collected;
- (f) Sample location and result of each dust sample analysis in micrograms per square foot;
- (g) Name, address, telephone number, and approval number of each lead analytical laboratory conducting the analysis of any environmental sample and a copy of the laboratory results.

(24) “Residential Rental Property, or Family Child Care Home Owner’s Annual Verification” means that a Residential Rental Property, or Family Child Care Home Owner, whose Residential Rental Property, or Family Child Care Home has initially failed a “Local Lead Inspection,” corrected all maintenance conditions listed in the “Maintenance Conditions Report,” has passed the “Local Lead Re-Inspection,” and has been issued a “Lead-Safe Certificate,” verifies to the Health Department, on a form created by the Health Department, that:

- (a) the Residential Rental Property, or Family Child Care Home Owner had a visual assessment performed of the “Residential Rental Property” to identify any “Deteriorated Paint Conditions”;
- (b) for exterior areas, the Residential Rental Property, or Family Child Care Home was visually inspected to ensure that bare soil within 3 feet surrounding the perimeter of a building on the property has been covered, enclosures have been installed properly, and painted surfaces have been properly sealed; and
- (c) the Residential Rental Property, or Family Child Care Home Owner has addressed any “Residential Rental Property, or Family Child Care Home Maintenance Conditions” using the “Quality Maintenance Practices” defined in this Chapter, and without using the unsafe practices prohibited under Ohio law including Ohio Revised Code section 3742.44, and in accordance with methods specified pursuant to Ohio laws and regulations, including Ohio Administrative Code chapter 3701-30.

#### **1760.05 Presumption of Lead-Based Paint**

- (a) For purposes of this Chapter, all paint on the interior or exterior of any residential building on which the original construction was completed prior to January 1, 1978, shall be presumed to be lead-based.
- (b) Any person seeking to rebut this presumption may do so by obtaining a certification from a lead-based paint inspector or risk assessor that the property has been determined through a lead-based



paint inspection conducted in accordance with the federal regulations at 40 CFR 745.227(b) not to contain lead-based paint.

### **1760.06 Local Lead Inspection**

(a) The “Local Lead Inspection” shall include a full visual assessment for evidence of exterior or interior “Deteriorating Paint” and bare or exposed soil within the “Dripline.” A dust sampling assessment will be performed only after the property being inspected passes the visual inspection with submission of samples to a licensed environmental lead analytical laboratory for analysis for lead, interpretation of sampling results, and preparation of a report. Deteriorated paint is presumed to contain lead unless proven otherwise by a lead-based paint inspection.

(b) The standards to be applied to a “Local Lead Inspection” are as follows:

(1) Visual assessments for presumed lead hazard shall apply the following standards to determine the presence of a presumed lead hazard:

A. Deteriorated paint.

The interior and exterior of any Residential Rental Unit, as defined in Section 1760.03, on which the original construction was completed prior to January 1, 1978, and the exterior of any nonresidential structure on which the original construction was completed prior to January 1, 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint, unless the deteriorated paint surfaces total no more than:

- i. Twenty square feet on exterior surfaces;
- ii. Two square feet in any one interior room or space; or
- iii. Ten percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include windowsills, baseboards, and trim.

For the purpose of determining whether or not deteriorated paint is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior.

B. A full visual assessment of every area of the subject dwelling unit shall be performed to determine if deteriorated paint and/or visible amounts of dust, debris, paint chips, or other residue are present. Interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint and visible dust, debris, paint chips, or residue are present, they must be eliminated prior to the continuation of the “Local Lead Inspection” using methods specified under this Chapter and Ohio laws and regulations.

(2) Dust wipe testing shall apply the following standards to determine the presence of a Lead Dust Condition:

A. A Lead Dust Condition occurs when surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding  $40 \mu\text{g}/\text{ft}^2$  on floors or  $250 \mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples or  $400 \mu\text{g}/\text{ft}^2$  on interior window troughs based on wipe samples.

B. Dust samples shall be wipe samples and shall be taken on floors, excluding open porches, and interior windowsills and window troughs that have a paint history. Dust samples shall be collected and analyzed in accordance with this section.

- i. Dust samples to be collected in all living areas where young children are most likely to come into contact with dust. Select a minimum of four rooms for dust sampling. The selection of rooms to be tested, where applicable, shall include no less than one bedroom and the living room. At least one wipe sample shall be taken from a windowsill with a paint history, a window trough if present, and one from a floor in each room. Where there are less than four rooms, then all rooms shall be sampled. A maximum of 12 samples shall be collected unless the Residential Rental Property, or Family Child Care Home contains less than four rooms, in which case a dust sample shall be collected from a floor, and if present, window sill and window trough, from each room.
- ii. Dust samples shall be analyzed by a licensed environmental lead analytical laboratory.

(3) Bare Soil Condition.

A. Bare soil shall not be present within the dripline of any Residential Rental Property on which the original construction was completed prior to January 1, 1978.

(c) If no Residential Rental Property, or Family Child Care Home Maintenance Conditions are identified by the visual assessment, or dust wipe sampling, or bare soil assessment, then a “Lead-Safe Report” indicating that the Residential Rental Property, or Family Child Care Home has met the Quality Maintenance Standards shall be issued by the “Local Lead Inspector.”

(d) If a Residential Rental Property, or Family Child Care Home Maintenance Condition is identified by the visual assessment, bare soil assessment, or dust wipes sampling, a Residential Rental Property, or Family Child Care Home Maintenance Condition Report shall be provided to the property owner, or the property management agent, the occupant, and the Health Department, specifically identifying the location of the Residential Rental Property or Family Child Care Home Maintenance Condition. A copy of all Maintenance Conditions Report shall be submitted to the Health Department no later than thirty (30) days after the report is provided to the property owner, or the property management agent and the occupant.

(e) Response to Identified Residential Rental Property, or Family Child Care Home Maintenance Condition. Once a Residential Rental Property, or Family Child Care Home Maintenance Condition has been identified, that condition is to be remedied using Quality Maintenance Practices defined in this Chapter, and without using the unsafe practices prohibited under Ohio law including Ohio

Revised Code section 3742.44, and in accordance with methods specified pursuant to Ohio laws and regulations, including Ohio Administrative Code chapter 3701-30.

(f) Local Lead Re-Inspection

- (1) After the property owner determines that the repair work has been completed, a Local Lead Re-Inspection shall be performed to determine that the property is free from Maintenance Conditions. A Local Lead Re-Inspection shall comply with the standards defined in section 1760.06 (b) of this Article.
- (2) If no Maintenance Conditions are identified by the Local Lead Re-Inspection and a Lead-Safe Report indicating that the Residential Rental Property, or Family Child Care Home is free of Maintenance Conditions filed in accordance with this Chapter, a Lead-Safe Certificate shall be issued pursuant to section 1760.03(a).
- (3) A Local Lead Re-Inspection of the Residential Rental Property, or Family Child Care Home in which a “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report” was issued shall be performed by the “Local Lead Inspector” who issued the “Residential Rental Property, or Family Child Care Home Maintenance Conditions Report.”

**1760.07 Local Lead Inspectors and Workers to be Conducted by Registered Individuals**

- (a) All Local Lead Inspectors must register with the Health Department before performing any Local Lead Inspections.
- (b) Anyone performing work related to a Residential Rental Property, or Family Child Care Home Maintenance Conditions Report must meet the requirements of this Chapter including performing the work using Quality Maintenance Practices.
- (c) All work related to Residential Rental Property, or Family Child Care Home Maintenance Conditions shall be conducted in accordance with the Chapter and Ohio law. Residential Rental Property and Family Child Care Home Owners, and their employees, may attend educational training sessions provided by the Toledo-Lucas County Health Department, or other organizations or agencies approved by the Toledo-Lucas County Health Department. The educational training sessions would provide information to Residential Rental Property and Family Child Care Home Owners, and their employees, on how to maintain properties in a lead safe manner. Attendance at these educational training sessions is optional and is not a guarantee of Maintenance Condition compliance or lead hazard clearance. The Toledo-Lucas County Health Department shall provide regularly scheduled educational trainings at no cost to owners of the Residential Rental Property and Family Child Care Homes and their employees.
- (d) As part of the City's efforts to ensure consistency and compliance with this Chapter and to protect the public health of its citizens, the Health Department may perform inspections of Residential Rental Properties and Family Child Care Homes on a random basis, or based on a reasonable suspicion that a Local Lead Inspector or other contractor or service provider is not conducting inspections, tests, or Local Lead Re-inspections in compliance with this Chapter and Ohio laws and regulations.

(e) Failure to comply with the provisions of this Section shall subject the individual(s) to administrative penalties for each violation as defined in this Chapter.

(f) Rejection of Residential Rental Property, or Family Child Care Home Maintenance Conditions Reports, or a Lead-Safe Report; nonresponsibility of issuer.

(1) The Commissioner of the Health Department or the Commissioner's designee, is authorized to reject a Residential Rental Property, or Family Child Care Home Maintenance Conditions Report, or a Lead-Safe Report that does not meet the requirements of this Chapter, or that is found after an inspection to not substantially represent the conditions present at the Residential Rental Property, or Family Child Care Home for which the report was prepared. The reasons for the rejection shall be set forth in writing to the issuer of the report and to the Owner of the property to which the report pertains.

(2) No Residential Rental Property, or Family Child Care Home Maintenance Conditions Report, or Lead-Safe Report shall be accepted from an issuer who is not registered with the Health Department, or who has been found by the Commissioner to be nonresponsible.

(3) The Commissioner shall inform an issuer in writing of a nonresponsibility determination and the reasons therefor.

(4) Upon making a nonresponsibility determination, the Commissioner may bar the issuer and affiliated organizations, as further set forth herein, from submitting Local Lead Inspection Reports to the Health Department for a period not to exceed three years. If a corporation is found to be a nonresponsible issuer, that finding may be applied to a parent, affiliate or subsidiary corporation, if the Commissioner finds that an officer, director or person directly or indirectly controlling 10% or more of the stock of the corporation found to be nonresponsible is an officer, director or person directly or indirectly controlling 10% or more of the stock of the parent, affiliate or subsidiary corporation. If an unincorporated association is found to be nonresponsible, that finding may be extended to other related associations upon a finding by the Commissioner that the related associations have substantially the same ownership, management or operating personnel.

(5) In determining the nonresponsibility of an issuer, the Commissioner shall consider:

A. The record of performance of the issuer, including but not limited to suspension or debarment by the state or federal government; or a history of lead hazard inspections that do not meet federal, state or City requirements.

B. Criminal conduct in connection with Local Lead Inspections, government contracts or business activities.

C. Violations of labor or employment laws.

D. Violations of federal or state environmental statutes or regulations.

E. Any other cause of so serious or compelling a nature that it raises questions about the responsibility of an issuer, including, but not limited to, submission to the City of a false or misleading statement in connection with a Local Lead Inspection.

F. In addition to the factors specified above, the Commissioner may also give due consideration to any other factors considered to bear upon issuer responsibility, including, but not limited to, any mitigating factors brought to the City's attention by the issuer.

(6) The Commissioner may develop rules and regulations to implement these guidelines and may request a sworn statement of issuer qualifications to gather the necessary information set forth herein. The Commissioner may use the information contained in the response to the sworn statement in making a determination of issuer nonresponsibility.

(7) Any issuer or Owner who is adversely affected by any fine, order or ruling issued pursuant to this Chapter may appeal such fine, order or ruling by requesting a hearing before the Nuisance Abatement Housing Appeals Board pursuant to Section 1726.04(b) and (c).

### **1760.08 Right of Inspection and Enforcement**

The Commissioner of the Health Department and/or his/her designee is authorized to enter on and into and inspect all premises, dwellings, dwelling units and accessory buildings, subject to the provisions of this Chapter and in accordance with the right of entry defined in Toledo Municipal Code Section 1303.0900 for the purpose of determining compliance with the provisions of this Chapter. The owner or other person in charge of the premises shall permit entry by any authorized officer or employee of the City for the limited and exclusive purpose of conducting such inspection, provided that the inspection is carried out at a reasonable time, that sufficient advance notice has been given to the occupants, and that permission to enter was requested and denied by the occupants. Where permission to enter has not been obtained, is denied, or there is probable cause to believe a violation of this Chapter has occurred in a dwelling unit, the Commissioner shall have recourse to the remedies provided by law to secure entry. The Commissioner of the Health Department and the Director of the Department of Neighborhoods may petition any court of competent jurisdiction to seek any relief necessary to enforce the provisions of this Chapter, including, but not limited to, the collection of any fines assessed pursuant to Section 1760.15.

### **1760.09 Residential Rental Property and Family Child Care Home Registration Ordinance Implementation and Compliance**

#### **(a) Implementation and Compliance Plan**

The Health Department shall develop an implementation and compliance plan so that within three years of enactment of this Ordinance, all Residential Rental Units and Family Child Care Home, as defined by and subject to the provisions of this Chapter, shall be register and determined to be in compliance with this Chapter.

#### **(b) Toledo Lead Poisoning Prevention Coalition**

The Toledo Lead Poisoning Prevention Coalition shall discuss and advise the Health Department on issues relating to the Toledo's Residential Rental Property and Family Child Care Home Registration Ordinance, its implementation, and compliance with the provisions of the Ordinance by those Residential Rental Property and Family Child Care Home Owners subject to the provisions of the Ordinance.

(c) Annual Report to Mayor and City Council

The Health Department shall provide the Mayor and City Council with an Annual Report summarizing the progress of implementation of this Chapter, including, but not limited to the number of Residential Rental Property and Family Child Care Home applications for a Lead-Safe Certificate and the number of compliance actions taken against Owners of Residential Rental Properties and Family Child Care Homes that fail to comply with provisions of this Chapter.

**1760.10 Prohibition of Retaliatory Action.**

It is unlawful for an Owner, or any person acting on his or her behalf, to take any retaliatory action toward an occupant, lessee, or tenant who reports a failure of the Owner to obtain a Lead-Safe Certificate, or who reports suspected lead-based paint hazard to the Owner or to the City, or reports other issues suggesting non-compliance with this Chapter or the City Building or Housing Code. Retaliatory actions include, but are not limited to any actions that materially alter the terms of the tenancy (including unsupported rent increases and non-renewals) or interfere with the occupants' use of the property.

**1760.11 Lead Poisoning Prevention Materials for Tenants, Tenant Protection for Families living in Rental Properties and Requirements for Rental Property Owners to Provide Lead Poisoning Information.**

(c) The Health Department shall create educational materials for distribution to tenants of residential rental property, informing them of the steps that can be taken by families to prevent Lead Poisoning. In addition, specific information and educational materials will be provided to each tenant that addressed the following topics:

- (5) The importance and steps necessary to have children tested for lead poisoning.
- (6) Based on the Residential Rental Property Maintenance Conditions Report issued for the property in which the tenants are living, the specific steps that the tenants needs to follow in order to keep the property in "Lead Safe" condition, including the steps that need to be followed to clean the property in a manner that will result in protection from "Lead Dust."
- (7) How to identify the presence of "Maintenance Conditions" and the requirement to notify the property owner, or property manager.
- (8) The steps required to notify the Health Department of "Maintenance Conditions" if after notifying the property owner or property manager of the presence of the "Maintenance Conditions," no action is taken by the property owner or property manager.

(d) Tenants need to take responsibility to protect themselves and their families from lead exposure. Tenants should take the following precautions to protect their family:

- (6) Notify the landlord of peeling or chipping paint. If the landlord fails to address the problem, contact the Health Department.
- (7) Keep painted surfaces clean and free of dust. Clean floors, window frames, window sills, and other surfaces weekly. Use a mop or sponge with warm water and a general

all-purpose cleaner. Never mix ammonia and bleach products together because they can form a dangerous gas.

- (8) Carefully clean up paint chips immediately without creating dust.
- (9) Thoroughly rinse sponges and mop heads often during cleaning of dirty or dusty areas, and again afterward.
- (10) Keep children from chewing window sills or other painted surfaces, or eating soil.

(c) Landlords must give prospective tenants of buildings built before 1978:

- (2) An EPA-approved information pamphlet on identifying and controlling lead-based paint hazards.
- (2) Any known information concerning lead-based paint or lead-based paint hazards pertaining to the building.
- (3) For multi-unit buildings this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation.
- (4) A lead disclosure attachment to the lease, or language inserted in the lease, that includes a "Lead Warning Statement" and confirms that you have complied with all notification requirements.

### **1760.12 Lead Poisoning Prevention Resources and Technical Support for Property Owners and Family Child Care Homes**

The Health Department shall create, and make available to residential rental property owners and Family Child Care Home owners, Lead Poisoning Prevention Materials, technical materials relating to Local Lead Inspections and the standards for repairs required by federal law and regulations. In addition, The Health Department shall create a grant process by which residential rental property owners, who are determined to be eligible, may apply for a grant to offset the cost of addressing the Maintenance conditions identified by Local Lead Inspections.

### **1760.13 Lead Safe Residential Rental Property Registry**

(a) The Health Department shall create an electronic Lead Safe Residential Rental Property and Family Child Care Home Registry, which will provide information regarding the residential rental properties that have complied with the Ordinance and have been determined to be Lead Safe. This information shall be made available to the public, especially potential tenants of residential rental property.

(b) The Health Department shall create an electronic Residential Rental Property and Family Child Care Home Registry for residential rental properties and family child care homes that have failed a Local Lead Inspection. Once a residential rental property. Or family child care home has been determined to be Lead Safe, the property will be removed from this registry. This information shall be made available to the public, especially potential tenants of residential rental property.

### **1760.14 Residential Rental Property and Family Child Care Home Lead Safe Requirement**

No Certificate of Property Code Compliance may be issued in accordance with this Chapter unless a Lead-Safe Certificate has been issued if required pursuant to Section 1760.02.

### **1760.15 Fines for Non-Compliance**

(a) Based on an analysis of public health data, including all the reported cases in which children have been lead poisoned over the past five years, Census as well as residential parcel information, each Census Tract in the City of Toledo has been analyzed, using these variables. The following three year phase in of this Chapter is based on requiring those rental properties that are located in Census Tracts that have been determine to pose the greatest danger of lead exposure to children shall be required to register first, those rental properties that pose the next greatest risk to register second and those rental properties posing the least risk of lead exposure to children registering third:

1. Dwelling Units in the following Census Tracts shall comply by June 30, 2018:

Census Tract 48, Census Tract 54, Census Tract 51, Census Tract 16,  
Census Tract 18, Census Tract 21, Census Tract 42, Census Tract 103,  
Census Tract 39, Census Tract 30, Census Tract 44, Census Tract 20,  
Census Tract 6, Census Tract 33, Census Tract 29, Census Tract 9,  
Census Tract 49, Census Tract 40, Census Tract 25, Census Tract 7,  
Census Tract 36, Census Tract 17, Census Tract 22, Census Tract 35,  
Census Tract 47.01, Census Tract 8, Census Tract 32, Census Tract 10,  
Census Tract 14, Census Tract 4, Census Tract 2, Census Tract 47.02

2. Dwelling Units in the following Census Tracts shall comply by June 30, 2019:

Census Tract 46, Census Tract 15, Census Tract 19, Census Tract 3,  
Census Tract 24.01, Census Tract 27, Census Tract 52, Census Tract 12.02,  
Census Tract 26, Census Tract 13.03, Census Tract 24.02, Census Tract 28, Census  
Tract 11, Census Tract 45.01, Census Tract 53, Census Tract 31,  
Census Tract 63, Census Tract 74, Census Tract 23, Census Tract 50,  
Census Tract 68, Census Tract 37, Census Tract 102, Census Tract 65,  
Census Tract 86, Census Tract 73.03, Census Tract 57.02, Census Tract 76, Census  
Tract 55.02, Census Tract 66, Census Tract 57.03, Census Tract 62, Census Tract  
55.01, Census Tract 64, Census Tract 13.02

3. Dwelling units in the flowing Census Track shall comply by June 30, 2020:

Census Tract 83.01, Census Tract 34, Census Tract 79.02, Census Tract 59.02,  
Census Tract 58.02, Census Tract 13.01, Census Tract 72.05, Census Tract 61  
Census Tract 67, Census Tract 45.04, Census Tract 104, Census Tract 75,  
Census Tract 85, Census Tract 78, Census Tract 58.01, Census Tract 57.01, Census  
Tract 72.04, Census Tract 84, Census Tract 56, Census Tract 77,  
Census Tract 69, Census Tract 45.03, Census Tract 79.01, Census Tract 72.02, Census  
Tract 72.03, Census Tract 12.01, Census Tract 80, Census Tract 73.01, Census Tract  
60, Census Tract 55.03, Census Tract 73.02, Census Tract 59.01, Census Tract 83.02



After June 30, 2020, all dwelling units shall comply with this Chapter. This Chapter only applies to dwelling units located within the geographical limits of the City of Toledo.

(b) Anyone in violation of Section 1760.02 shall be subject to a fifty dollar (\$50.00) per day administrative fine per dwelling unit with a maximum penalty of ten thousand dollars (\$10,000) per year per dwelling unit if the dwelling unit is not in compliance with the deadlines established in Section 1760.15(a).

(c) Anyone assessed an administrative fine under the proceeding section shall have the right to appeal the imposition of the administrative fine to the Board of Nuisance Abatement/Housing Appeals by filing an application in writing with the Board of Nuisance Abatement/Housing Appeals the applicable one hundred dollar (\$100.00) non-refundable filing fee no later than thirty (30) calendar days from the date notice of the fine was received.

(d) Anyone in violation of Section 1760.07 shall be subject to a five hundred dollar (\$500.00) fine per violation as an administrative penalty.

(e) Anyone assessed an administrative fine under the proceeding section shall have the right to appeal the imposition of the administrative fine to the Board of Nuisance Abatement Housing Appeals by filing an application in writing to the Director of the Department of Neighborhoods and a one-hundred dollar (\$100.00) non-refundable filing fee no later than thirty (30) calendar days from the date notice of the fine was received.

(f) All fines imposed and collected pursuant to this Section shall be transferred to and used by the Health Department for the administration, implementation and compliance activities related to this Chapter.

### **1760.16 Deferments**

The Commissioner shall grant an Owner a single 12-month deferral from the requirements of this Chapter if all of the following conditions apply:

- (1) the Owner possesses more than 10 properties that would require Certificates of Registration of Residential Rental Property Meeting the Quality Maintenance Standards under this Chapter;
- (2) the Owner successfully complies with this Chapter in obtaining Certificates of Registration of Residential Rental Property Meeting the Quality Maintenance Standards for 10 properties in the Owner's name;
- (3) the Owner requests in writing to the Commissioner that a deferral be granted and lists the address of each property for which the deferral is requested;
- (4) each property request for a deferral may not have previously been granted a deferral.

The Deferral will immediately terminate and the Rental Property Owner shall be required to bring all the Owner's rental properties into compliance with this Chapter within 45 days of the discovery that a child has been lead poisoned at the location of one of the Owner's rental properties at a level of 5 ug/dL or greater.

## **1760.17 Exemptions and Waivers**

### **Exemptions and Waivers shall apply to the following described properties:**

(a) This Chapter shall not apply to properties taken by a governmental entity in a foreclosure proceeding which are vacant and secured and:

(4) scheduled for demolition; or

(5) scheduled for sale within 12 months.

(b) This Chapter shall not apply to Residential Rental Properties owned and operated by the Lucas Metropolitan Housing Authority's (LMHA) public housing program and subject to the required inspections, performed by a certified employee of the Lucas Metropolitan Housing Authority, except that Sections 1760.03 (a)(1) and 1760.08 of this Chapter shall apply to Residential Rental Properties owned and operated by LMHA. However, LMHA shall not be required to include the names and addresses of their tenants when applying for a Lead-Safe Certificate. LMHA shall be responsible to provide the educational materials described in Section 1760.11 to tenants living in properties subject to this exemption. LMHA shall not be assessed a registration fee for any of the properties registered.

(c) This Chapter shall not apply to Residential Rental Properties that are part of the Housing Choice Voucher Program, commonly referred to as Section 8 Housing, that have complied with HUD's inspection and clearance requirements, except that Sections 1760.03 (a)(1), 1760.08 and 1760.11(c) of this Chapter shall apply. The Commissioner may only issue a one (1) year Lead-Safe Certificate for these properties, but may not charge a registration fee for the certificate. In lieu of a Lead-Safe Report, an owner shall submit documentation showing compliance with HUD's inspection and clearance requirements with the application.

## **1760.18 Hardship Extension Program**

(a) The Owner of a property who has received a Rental Property, or Family Child Care Home Maintenance Conditions Report may apply to the Director of the Department of Neighborhoods for a hardship extension to comply with this Chapter on a form created by the Director.

(b) A hardship extension may be granted after considering the following factors:

- (1) the cost of addressing the Maintenance Conditions for the particular property;
- (2) the financial status of the owner;
- (3) the number of properties owned by the owner;
- (4) if the property unit is located in a historic district;
- (5) other issues that may delay compliance with this Chapter;
- (6) the risk of noncompliance to the health of the tenants.

(c) The Director of the Department of Neighborhoods or the Director's Designee may issue a hardship extension for up to eighteen (18) months and will report that a hardship extension was granted to the Health Department. The Department of Neighborhoods will immediately notify the Health Department when an extension is terminated.

- (d) If an Owner has been granted a hardship extension, no fines may be issued against that owner pursuant to this Chapter so long as the owner has entered into a Compliance Agreement. A Compliance Agreement will include the following:
  - (1) A list all dwelling units owned by the Owner;
  - (2) A copy of all Lead-Safe Reports and Residential Rental Property, or Family Child Care Home Maintenance Conditions Reports attached;
  - (3) A list of each Maintenance Condition, the address of the dwelling unit where each Maintenance Condition is located and milestone dates by which each Maintenance Condition must be addressed.
  
- (e) If more than forty-five (45) days remain in a hardship extension and a child is discovered to have been lead poisoned at the location of one of the Owner's rental properties, at a level of 5 ug/dL or greater, the hardship extension will terminate forty-five (45) days after the date of the discovery.
  
- (f) The Director of the Department of Neighborhoods may request proof that a milestone date has been satisfied. In the event that a milestone date is missed, or the Owner fails to provide proof of compliance by the Director's requested deadline, the hardship extension will terminate thirty (30) days later.
  
- (g) An Owner shall have the right to appeal the decision of the Director to the Board of Nuisance Abatement Housing Appeals by filing an application in writing to the Director with a fifty dollar (\$50.00) non-refundable filing fee no later than ten (10) calendar days from the date the decision was made.

SECTION 3. That the Mayor is authorized to enter into all necessary agreements with the Toledo-Lucas County Health Department in order to facilitate the enforcement of Chapter 1760 of the Toledo Municipal Code.

SECTION 4. This Ordinance will not invalidate any decisions made by the Toledo-Lucas County Health Department under the previous version of Chapter 1760, including but not limited to the expiration date of any Lead-Safe Certificates that were issued before this Ordinance takes effect.

SECTION 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 18, 2017: yeas 10, nays 1.

Attest:

Gerald E. Dendinger  
Clerk of Council

Steven C. Steel  
President of Council