

ADAIR COUNTY LEAD ORDINANCE
ORDINANCE # 11

AN ORDINANCE CONTROLLING LEAD HAZARDS IN DWELLINGS, INCLUDING ESTABLISHING MINIMUM STANDARDS FOR INSPECTIONS AND PROVIDING PENALTIES FOR VIOLATION OF THE PROVISIONS HEREOF.

Section 1. Definitions: The following words shall have the following meanings for the purpose of this regulation.

A. Accessible, Impact or Friction surfaces; shall include but not be limited to such surfaces as window sills, doors and door frames, protruding corners, stair treads and lips, floors, and any other areas offering Accessible, Impact or Friction surfaces.

1. Accessible - means any surface at a level or height which is easily accessible for children to bite, chew, or mouth, (e.g. window sills).
2. Impact - means any surface where hard objects often hit or run into the surface and cause the paint to be knocked off (e.g. protruding corners).
3. Friction - means any surface where there is any rubbing movement that creates dust. (E.g. floors).

B. Board of Health means the Adair County Board of Health pursuant to Chapter 137 of the Code of Iowa.

C. Child-occupied facility is a building or portion of a building, visited by the same child, six years of age or under, for a period that exceeds six (6) hours within any week (Sunday through Saturday period). Child occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms.

1. Child refers to a person 0 - 6 years of age.

D. Deteriorated lead-based paint means any lead-based paint that is loose, chipping, peeling, cracking, flaking, chalking, or otherwise coming off a surface.

E. Dwelling; means a building or structure occupied, designed or intended to be occupied as a place for human habitation and use, and shall be construed to include one or more dwelling units or any accessory building structure, or yard area appurtenant thereto.

F. Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit, with facilities which are used or intended to be used for any of the following: living, sleeping, cooking, and/or eating.

G. EBL (Elevated Blood Lead) Child is any child who has had one venous blood lead level of ≥ 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

H. Health Department means the Adair County Health Department.

I. Health Officer means the Environmental Officer or authorized representative of the Adair County Board of Health.

J. Lead-Based Paint means any paint or other surface coating already applied which contains a quantity of lead equal to or in excess of 1.0 milligrams of lead per square centimeter (1.0 mg/cm²) when tested by a radioisotope X-ray fluorescence analyzer (XRF) or more than five-tenths of one percent (0.5%) lead by weight.

K. Occupant means any person living, sleeping, cooking, eating in, or having any actual possession of a dwelling unit.

L. Owner means any person who, alone or jointly or severally with others:

1. Shall have a legal title to any dwelling, with or without accompanying actual possession thereof, or
2. Shall have charge, care or control of any dwelling, by acting as the agent of the owner or as the executor, administrator, trustee, or guardian of the estate for the owner.

M. Premise means a lot, plot or parcel of land including all dwellings, dwelling units, and child-occupied facilities and improvements thereon.

Section 2: Lead Hazards

A. Any lead-based paint shall be considered a lead hazard if:

1. The paint exists in or about a premise, in which children under age six (6) commonly reside or visit,

and

2. The paint is determined to be on any accessible, impact, or friction surface or on any other surface where the paint is determined to be deteriorating in any manner. This shall also include areas of bare soil which contain lead-based paint chips. In addition, this shall also include surfaces which contain lead dust that exceeds the EPA/HUD guidelines (Bare floors-100 milligrams per square foot, Interior window sills-500 milligrams per square foot, Window wells-800 milligrams per square foot).

Section 3: Scope and Applicability

A. This ordinance shall affect only those premises in which an EBL child resides or commonly visits. All owners shall comply with the provisions of this ordinance and of the rules, resolutions, and order adopted pursuant to this ordinance.

Section 4: Use or Sale of Lead-Based Paint

A. No person shall possess, sell, expose for sale, deliver, or give away any lead-based paint intended for painting or covering any surface on the interior or exterior of a residential dwelling.

Section 5: Disposal of Lead-Based Paint

A. Lead-based paint shall be disposed of in accordance with local, state, and federal regulations for disposing of hazardous waste.

B. All repair, renovation, or remodeling waste which contains lead-based paint shall be disposed of according to local waste disposal regulations. No person shall re-use or recycle such waste for residential purposes.

Section 6: Inspections

A. The Health Officer may cause to have inspected the premises of an EBL child for lead hazards. The inspection shall consist of a visual assessment of the condition of all interior and exterior surfaces and a determination of the lead content of the paint on these surfaces. The lead content of the paint shall be determined only through the use of an X-ray fluorescence (XRF) analyzer or laboratory chemical analysis. Methods such as swabs shall not be considered an acceptable means of testing for lead-based paint. Tests which show the presence of lead-based paint on a surface may be extrapolated to similar surfaces in the same room that would be expected to be finished with the same type of paint. A determination of the lead hazards will be made from lead content of the paint and the conditions observed. The findings of such inspection will be recorded and documented by the Health Officer.

B. When a lead hazard is found in a premise inspected pursuant to this section or otherwise, the Health Officer shall recommend to have examined all children six (6) years of age and under, such other children he/she may find advisable to examine, or other persons, residing or who have recently resided, or frequently visit in said premise for undue lead exposure. The results of such examination shall be reported to the Health Officer, the affected individual, and when applicable, their parent or legal guardian.

C. The results of an investigation for lead hazards, including the presence or absence of lead-based paint which are not considered to be lead hazards, shall be reported in a written notice, which suggested remedial/maintenance actions within one (1) week to the owner of the premise and all affected occupants. The Health Officer shall inform such other persons or agencies as he/she deems advisable.

Section 7: Refusal of Admittance

A. In the event the Health Officer in proceeding to enter any premises for the purpose of making an inspection to carry out the provisions of this ordinance shall be refused entry, a complaint may be made under oath to any magistrate of Adair County. Said magistrate shall issue a warrant to a peace officer of the county directing him between the hours of sunrise and sunset to accompany the Health Officer when entering said premise to make such inspection, and to obtain such samples as may be required to carry out the provisions of this ordinance.

Section 8: Hazard Reduction

A. When the Health Officer determines that a lead hazard is present in a premises where an EBL child lives, frequently visits, or has recently resided, he/she shall, in accordance with Section 6C, issue a written notice within one (1) week to the owner, operator, and/or occupant, per certified mail to eliminate the hazard with suggested remedial/maintenance actions to be completed in a time period not to exceed thirty (30) days from date of delivery of the certified notice. However, at the discretion of the Health Officer, additional time may be granted to eliminate said hazard. Methods for compliance shall be in accordance with this section.

1. In the event the premise is vacated by the occupant who occupied same at the time of the issuance of corrective notice referred to in this section, such dwelling shall not be let or occupied by any other person until such corrective notice is complied with.

B. The owner of any premises that has been determined to contain lead hazards shall correct these lead hazards by methods approved by the Health Officer within the time period specified by the Health Officer in a written notice. Failure to correct the lead hazard(s) within the allotted time period shall result in the appropriate legal action against the owner for noncompliance, pursuant to Section 13.

C. Lead hazards on surfaces other than accessible, impact or friction surfaces shall be corrected through one of the three (3) following methods:

1. All areas of deteriorating lead-based paint on both interior and exterior surfaces and any other appurtenances shall be entirely removed and the surface(s) shall be properly prepared before repainting with lead-free paint or refinishing so that the surface does not begin to deteriorate again. Repainting with lead-free paint without prior removal of all deteriorating lead-based paint shall not be considered an approved method of correcting lead hazards.

2. The interior or exterior surface or appurtenance which has areas of deteriorating lead-based paint shall be removed from the dwelling and replaced with a surface free of a lead-based paint.

3. The interior or exterior surface or appurtenance which has areas of deteriorating lead-based paint shall be covered with a permanently affixed lead-free covering. The permanently affixed covering shall be incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed so as to expose the hazardous surface.

D. Lead hazards on surfaces which are accessible, impact or friction surfaces shall be corrected through one of the three (3) following methods:

1. All lead-based paint on both interior and exterior surfaces and appurtenances which are on accessible, impact, or friction surfaces shall be entirely removed to the substrate. The surface(s) must be properly prepared and repainted with lead-free paint or refinished. Repainting with lead-free paint without prior removal of all lead-based paint down to the substrate shall not be considered an approved method of correcting lead hazards on accessible, impact, or friction surfaces.

2. The interior or exterior surface or appurtenance, which is or contains an accessible, impact, or friction surface shall be removed from the dwelling and replaced with a surface or appurtenance that is finished with a lead-free coating.

3. The interior or exterior surface or appurtenance which is an accessible, impact, or friction surface shall be covered with a permanently affixed lead-free covering. The permanently affixed covering shall be incapable of being readily chewed through, torn from the surface, pierced, or otherwise removed so as to expose the hazardous surface.

E. The Health Officer shall inspect all areas cited as lead hazards after remediation is complete and either approve them as “lead-safe” or require further corrective action as necessary. A written notice shall be issued to all affected parties and retained by the Health Officer, stating that the property is “lead-safe” and that proper maintenance must occur to ensure the property remains “lead-safe”.

Section 9: Retaliatory Actions

A. It shall be unlawful for the owner of a premise or his/her employees, agents or persons acting in his/her behalf to retaliate against lessee of dwellings whose occupants has been tested for lead poisoning.

B. It shall be unlawful for the owner of a premise or his/her employees, agents, or persons acting in his/her behalf to prohibit or discourage the occupants of the premise from participating in the lead poisoning screening program.

C. “Retaliation” shall include harassment, unlawful termination of the tenancy, unlawful discontinuation of utilities or other services, and any other action taken against the lessee. An action taken against the tenant shall not be considered retaliation if:

1. It is supported by reasonable cause unrelated to the occupants’ participation in the lead poisoning screening program; OR

2. It is shown to have occurred as a result of accident or mistake, and not be the intentional act of the owner or his/her employees, agents or persons acting in his/her behalf.

Section 10: Hearings

A. In the event any person is aggrieved by any order of the Health Officer, he/she may within ten (10) days of the date of such order appeal to the Board of Health and in writing, state his/her reasons for requesting such order to be rescinded or modified. The Board of Health shall review the action of the Health Officer, and shall modify, withdraw, or order compliance with said order. Appeal from any order of the Board of Health may be taken within ten (10) days to the District Court in Adair County.

Section 11: Jurisdiction

A. The provisions of this ordinance shall apply throughout Adair County including cities and towns therein, unless the cities and towns have adopted a lead ordinance.

Section 12: Enforcement

A. The Health Officer shall have the duty and responsibility of enforcing this ordinance.

Section 13: Injunction

A. Nothing in this ordinance shall be construed to prohibit the Adair County Board of Health from injunctive relief or other relief as allowed by law.

Section 14: Penalty

A. Any person violating this ordinance or any provision thereof, shall be guilty of a simple misdemeanor and upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00) or imprisoned in jail for a period not to exceed thirty (30) days. Each day that a violation occurs constitutes a separate offense.

B. In the event of failure of any person to correct a lead hazard found on his/her property, the Board of Health may direct or cause the correction of said lead hazards. All expenses incurred thereby may be recovered by suit in the name of the Board of Health, or the Board of Health may certify the amount of said expenses, together with a description of the property to the County Treasurer who shall enter the same upon the tax books as costs for removing a lead hazard and said amounts shall be collected as other taxes.

Section 15: Separability of Provisions

A. If any section, paragraph, clause or provision of the ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provisions shall not affect any of the remaining provisions of this ordinance.

Section 16: Variances

A. The Health Officer shall have the authority to determine a surface, that may otherwise be identified as a lead hazard, lead safe. If the Health Officer is able to determine a surface that fits the definition of a lead hazard is not causing or does not have reasonable potential to cause lead exposure, the Health Officer may, with written notice to the owner and occupant, deem that surface as lead safe. This may be done only after a thorough investigation of the entire premises is complete, and careful evaluation of the source(s) identified as the cause or potential cause of lead poisoning are identified. Detailed documentation of such surfaces shall be included in the final report of the premises and be provided to the owner, tenant, occupant and Health Officer. However, any surface with deteriorating lead-based paint will not, under any circumstance, be allowed to be identified as lead-safe.

Section 17: Effective Date.

A. This ordinance shall be in effect after its final passage, approval, and publication as provided by law.

Passed this 12th day of November, 1997, and approved this 12th day of November, 1997.

Diane Weiland
Chairman of the Board of Supervisors

Attest: _____
Jenice Wallace, Auditor

I certify that the foregoing was published as Adair County Lead Ordinance on the _____ day of _____, 1997.

11-27-97 Adair News

11-19-97 Adair County Free Press
