

LEAD HAZARD REDUCTION ORDINANCE

Cedar County Ordinance #26

AN ORDINANCE REGULATING AND CONTROLLING LEAD HAZARDS IN DWELLINGS AND MINIMUM STANDARDS FOR INSPECTIONS IN CEDAR COUNTY, IOWA, AND PROVIDING PENALTIES FOR A VIOLATION OF THE PROVISIONS THEREOF.

BE IT ORDAINED by the County of Cedar, State of Iowa, pursuant to S331.302 and S331.307, Chapters 137.6 and 137.7 of the Code of Iowa:

That an ordinance regulating and controlling lead hazards in dwellings and minimum standards for inspections and providing penalties for violations of lead hazard regulations, to be cited and known as "The Lead Hazard Reduction Ordinance", be enacted as follows:

Section 1. DEFINITIONS

- A. The following words shall have the following meaning for the purpose of this regulation:
1. Chewable, Impact, or Friction Surfaces; shall include but not be limited to such surfaces as windowsills, doors, and door frames, protruding corners, stair treads and lips, floors, and any other areas offering Chewable, Impact, or Friction surfaces.
 - Chewable – means an interior or exterior surface painted with lead based paint that a young child can mouth or chew.
 - Impact – means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.
 - Friction – means any surface where there is any rubbing movement that creates dust (e.g. floors).
 2. Board of Health. Cedar County Board of Health.
 3. Child-Occupied Facility. Any building, or portion of a building constructed prior to 1978, visited by the same child under the age of six years on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child occupied facilities may include, but are not limited to, day-care centers, pre-schools, and kindergarten class rooms.
 4. Certified elevated blood lead (EBL) inspector/risk assessor means a person who has met the requirements of Iowa Administrative Code 641-70.5(135) for certification or interim certification and who has been certified by the department.
 5. Clearance testing means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation or sampling results, and the preparation of a report.
 6. Deteriorated Lead-Based Paint. Any interior and exterior lead-based paint that is loose, chipping, peeling, cracking, flaking, chalking, or otherwise coming off a surface.
 7. Dripline means that area within three feet surrounding the perimeter of a building.
 8. Dust-lead Hazard means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present on floors, interior, windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window

troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior, windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property. If the dust samples are not taken, it may be assumed that surfaces in rooms with hazardous lead-based paint or where renovation, remodeling, or repainting has occurred recently are dust lead hazards.

9. Dwelling. A building or structure occupied or designed or intended to be occupied as a place for human habitation and use, and construed to include one or more dwelling units or any accessory building, structure, or yard area belonging thereto.
10. Dwelling Unit. 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.
11. EBL (Elevated Blood Lead) Child. Any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.
12. Elevated blood lead (EBL) inspection means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigations to the property owner and occupant of the dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) inspector/risk assessor shall not determine that a dwelling is free of lead-based paint as a result of an elevated blood lead (EBL) inspection
13. Hazardous Lead-Based Paint means lead-based paint that is present on a friction surface where there is evidence of abrasion or where the dust-lead level on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) is equal to or greater than the dust-lead hazard level, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any dwelling or child-occupied facility or on the exterior of a dwelling or child-occupied facility.
14. Health Department. The Cedar County Health Department.
15. Health Officer. The chairperson of the Cedar County Board of Health or his/her authorized representative.
16. Lead-Based Paint. Any paint, compound or other surface coating already applied which contains a quantity of lead 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. Lead-based paint is present on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight and on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.
17. Lead-Based Paint Hazard means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard.
18. Mid-yard means an area of a residential yard approximately midway between the dripline of a dwelling and the nearest property boundary or between the driplines of a dwelling and another building on the same property.
19. Occupant. Any person living, sleeping, cooking, eating in, visiting or having any actual possession of a dwelling or dwelling unit.
20. Owner. Any person who, alone or jointly with others:
 - Shall have legal title to any dwelling, with or without accompanying actual thereof, or
 - 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 of the owner.
21. Paint-lead hazard means the presence of hazardous lead-based paint in a dwelling or a child-occupied facility.
22. Person. Any individual, firm, corporation or legal entity and authorized agents and/or officers thereof.
23. Play area means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, factors including the following: the presence of play equipment (sandboxes, swing sets, and sliding boards), toys, or other children's possessions; observations of play patterns;

or information provided by parents, residents, caregivers, or property owners.

24. Premise. A lot, parcel or tract of land including all facilities and improvements thereon.
25. Retaliation. Any action by an owner against an occupant, including harassment, termination of tenancy, discontinuation of utilities or other services, and any other action taken against the occupant.
26. Soil-lead Hazard means bare soil on residential real property or on the property of a child-occupied facility that contains total lead greater than or equal to 400 parts per million for the dripline, mid-yard, and play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is greater than or equal to 400 parts per million. If soil samples are not taken, it may be assumed that bare soil within three feet of the foundations of a garage or other structure built prior to 1978 is a soil-lead hazard.

Section 2. 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. Lead based paint shall be disposed of in accordance with Section 3 of this Ordinance.

Section 3. DISPOSAL OF LEAD-BASED PAINT

- A. Lead-based paint must be disposed of in accordance with state and federal regulations for disposing of hazardous waste.
- B. All repair, renovation or remodeling waste which contains lead-based paint must be disposed of according to local and state waste disposal regulations. No person shall re-use or recycle such waste for residential purposes.

Section 4. INSPECTIONS AND REPORTING

1. The Board of Health shall appoint a certified elevated blood lead (EBL) inspector/risk assessor to conduct elevated blood lead (EBL) inspections in dwellings and child-occupied facilities where an elevated blood lead (EBL) child lives, visits, or has recently lived. All owners and occupants shall allow access to the dwellings and child-occupied facilities that the certified elevated blood lead (EBL) inspector/risk assessor desires to inspect.
2. When the certified elevated blood lead (EBL) inspector/risk assessor appointed by the Board of Health determines that hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard is present in a dwelling unit or child-occupied facility where an elevated blood lead (EBL) child lives, frequently visits, or has recently resided, the certified elevated blood lead inspector/risk assessor shall issue a written notice to the owner within two weeks of the inspection and receipt of any laboratory results. The written notice shall require the owner to complete lead hazard reduction in a time period determined by the certified elevated blood lead (EBL) inspector/risk assessor.
3. When a lead-based paint hazard is found in, dwelling or dwelling unit, inspected pursuant to this section and ordinance, the Health Officer shall give cause and recommend to have examined all children under six (6) years of age, such other children he/she may find advisable to examine, or other persons, residing or who have recently resided, or frequently visit in said dwelling or dwelling unit, for undue lead exposure. The results of such examination shall be reported to the Health Officer, the affected individual, and their parent or legal guardian.

Section 5. REFUSAL OF ADMITTANCE

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, an Application for a search warrant, including but not limited to a warrant described in Section 808.14 of the Code of Iowa, may be made per Chapter 808 of the Code of Iowa.

Section 6. HAZARD REDUCTION

1. The owner of any dwelling or child-occupied facility which has been determined to contain hazardous lead-based paint, a soil-lead hazard, or a dust-lead hazard shall correct these hazards within the time period allowed by the certified elevated blood lead (EBL) inspector/risk assessor in the written notice. However, at the discretion of the Health Officer, additional time may be granted to remove, reduce or remedy such condition for such unusual circumstances such as adverse weather conditions, inability to secure a contractor or lack of a permitted solid waste disposal site. The granting of additional time shall be in writing. The owner of any residential dwelling or child-occupied facility which has been determined to contain hazardous lead-based paint, a soil-lead hazard or a dust-lead hazard, shall provide a written corrective action plan within ten (10) days of a written notice to the Health Officer, and correct these lead hazards by methods approved by the Health Officer within the time period allowed by the Health Officer in a written notice. Failure to correct the lead hazard (s) within the allotted time period shall result in the enforcement of this Ordinance in accordance with Sections 9, 10, 11, and 12, against the owner for noncompliance. The following methods shall be used for lead hazard reduction. These methods shall not require the services of a lead abatement contractor certified in accordance with Iowa Administrative Code 641-70.5(135). However, other local, state, or federal regulations may require the use of a contractor who has completed an eight-hour lead-safe work practices course or a lead abatement contractor or lead abatement worker certified in accordance with Iowa Administrative Code 641-70.5(135).

a. On a surface that contains hazardous lead-based paint, but is not chewable and does not have evidence of impact or friction, the lead-based paint hazard shall be reduced by removing all loose and deteriorated paint from the surface, preparing the surface for repainting, and repainting the surface with a lead-free coating.

b. On a surface that contains hazardous lead-based paint and is chewable or has evidence of impact or friction, the lead-based paint hazard shall be reduced by treating the surface one-inch back from the edge or corner through one of the following methods.

(1) All lead-based paint on the treatment area shall be removed to the bare substrate. The surface shall be prepared for repainting and repainted with a lead-free coating.

(2) The treatment area shall be covered with a permanently affixed lead-free material such as plastic, wood, or vinyl. Carpet may be used on floors and stair trends.

c. Dust-lead hazards shall be reduced by thoroughly cleaning the affected surface.

d. Soil-lead hazards shall be reduced by planting grass or ground cover, applying sod or, covering the affected area with six inches of bark, gravel, or other material.

e. Lead hazard reduction shall be conducted using lead-safe work practices to protect the safety of the occupants and workers. Occupants shall not enter the work area while work is underway.

The following are prohibited methods of lead hazard reductions:

1. Open flame burning or torching of lead-based paint.

2. Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

3. Uncontained water blasting of lead-based paint.

4. Dry scraping or dry sanding or lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

5. Operating a heat gun at a temperature above 1100 degrees Fahrenheit.

2. In the event the dwelling 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.

3. The certified elevated blood lead (EBL) inspector/risk assessor shall inspect all areas identified as hazards after lead hazard reduction is complete. The certified elevated blood lead (EBL) inspector/risk assessor may conduct clearance testing pursuant to Iowa Administrative Code 641-Chapter 70 to ensure that no dust-lead hazards exist after the work is complete. Within two weeks of verifying that all lead hazard reduction has been completed as required, the certified elevated blood lead (EBL) inspector/risk assessor shall issue a written notice to the owner and occupant stating that the lead hazard reduction has been completed and that the repaired surfaces must be maintained in good condition.

Section 7. RETALIATORY ACTIONS

1. It shall be unlawful for the lessor of a dwelling, or his/her employees, agents or person acting in his/her behalf to retaliate against lessees of dwellings whose occupants have been tested for lead poisoning.
2. It shall be unlawful for the owner of a dwelling, or his/her employees, agents, or persons acting in his/her behalf to prohibit or discourage the occupants of the dwelling from participating in the lead poisoning screening program.
3. Any action taken against the occupant shall not be considered retaliation if it is supported by reasonable cause unrelated to the testing of an occupant for lead poisoning or if it is shown to have occurred as a result of accident or mistake and not be the intentional act of the lessor of a dwelling, the employees of the lessor, and agents or persons acting on behalf of the lessor.

Section 8. 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 in writing, state his/her reasons for requesting 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 schedule a hearing and review the action of the Health Officer, and following such hearing, 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 of Cedar County, Iowa.

Section 9. ENFORCEMENT

The Health Officer and his/her authorized representative shall have the duty and responsibility of enforcing this Ordinance. In the event a violation of this Ordinance is prosecuted as a simple misdemeanor, the Health Officer or his/her representative shall file a complaint and affidavit in the Iowa District Court in and for Cedar County and request the Magistrate or District Court Clerk issue a citation per Iowa Rule of Criminal Procedure 38 for the appearance of person(s) alleged to have violated the Ordinance.

In the event a violation of this Ordinance is prosecuted as a county infraction, the Health Officer or his/her authorized representative shall issue a civil citation to the violator per Iowa Code, Section 331.307(4) and file a copy with the Clerk of the Iowa District Court in and for Cedar County. The citation shall contain:

- A. The name and address of the defendant.
- B. The name or description of the infraction attested to by the officer issuing the citation.
- C. The location and time of the infraction.
- D. The amount of civil penalty to be assessed or the alternate relief sought, or both.
- E. The manner, location and time in which the penalty may be paid.
- F. The time and place of court appearance.
- G. The penalty for failure to appear in court.

Section 10. PENALTY

- A. Any person violating this ordinance or any provision thereof, or who fails to comply with any order of the Health Officer to abate a lead hazard, or who interferes with or obstructs the Health Officer in his/her investigation of a premise for lead hazards, shall be guilty of a county infraction subject to the provisions and penalties as set out in Iowa Code, Section 331.307.
- B. Any violation of this Ordinance shall, in addition, be a simple misdemeanor and upon conviction thereof, may be fined not more than One Hundred Dollars (\$100.00). Each day that a violation occurs constitutes a separate offense.

Section 11. COLLECTION OF COST ABATEMENT

Upon failure of any person to correct a lead hazard from his or her property or the property he/she occupies, the Board of Health may prosecute the matter as a county infraction and seek a civil penalty and/or alternative relief, including but not limited to a Court order authorizing Cedar County to abate or correct the violation with costs to be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

Section 12. INJUNCTION, MANDAMUS

A. Nothing in this Ordinance shall be construed to prohibit the Cedar County Board of Health from injunctive relief or otherwise stated by law.

Section 13. VARIANCES

The elevated blood lead (EBL) inspector/risk assessor may determine that a chewable surface that would otherwise be identified as a hazard by this chapter is not causing or does not have reasonable potential to cause lead exposure and is not required to be corrected through lead hazard reduction. The elevated blood lead (EBL) inspector/risk assessor shall document the reason for this determination in the inspection report. However, the elevated blood lead (EBL) inspector/risk assessor shall not, under any circumstances, determine that any other surface meeting the definition of hazardous lead-based paint does not need to be corrected through lead hazard reduction.

Section 14. VALIDITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is held to be unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance. The political subdivision passing this Ordinance hereby declares that it would have passed this Ordinance and such section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional.

Section 15. APPLICABILITY AND SCOPE

This Ordinance shall affect only those dwellings, dwelling units and premises in which an EBL child resides or commonly visits within the boundaries of Cedar County, Iowa. All owners shall be bound to comply with this Ordinance, and all of the rules and provisions adopted thereto.

Section 16. FEES

The Cedar County Board of Supervisors, shall by Resolution, establish fees as may be necessary for the implementation of this Ordinance.

Section 17. EFFECTIVE DATE

This Ordinance shall be in full force and effect after its passage and publication as required by law.