

Ordinance 45A

Cerro Gordo County
Department of Public Health
Lead Ordinance

Effective Date: July 1, 2004

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

- A. The following words shall have the following meaning for the purpose of this regulation.
1. **Accessible, Impact, or Friction surfaces:** shall include, but not be limited to such surfaces as windowsills, window troughs, window tracks, doors and door frames, protruding corners, stair treads and lips, floors.
 - i. Accessible — means any surface at a level or height (\leq four (4) feet) which is easily accessible for children to bite, chew, or mouth, (e.g. windowsills, stair spindles).
 - ii. 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, door/door jams, window troughs, window sashes).
 - iii. Friction — means any surface where there is any rubbing movement that creates dust, (e.g. stairs, floors, window tracks).
 2. **Board of Health:** Means the Cerro Gordo County Board of Health pursuant to Chapter 137 of the Code of Iowa.
 3. **Child occupied facility:** A building, or portion of a building, visited by the same child, six (6) years of age or under, for a period that exceeds ten (10) hours within any week (Sunday through Saturday period). Child occupied facilities may include, but are not limited to: day-care centers, preschools, nurseries, clinics, treatment centers, and kindergarten classrooms. This includes all outbuildings or other structures used in conjunction therewith.
 4. **Deteriorated lead-based paint:** means any lead-based paint that is loose, chipping, peeling, cracking, flaking, chalking, or otherwise coming off a surface.
 5. **Dwelling:** means a building or structure occupied or designed or intended to be occupied as a place for human habitation and use, including any accessory building, structure, or yard area belonging thereto.
 6. **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.
 7. **EBL (Elevated Blood Lead) Child:** any child who has had one venous blood lead level of \geq 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.
 8. **Health Department:** means the Cerro Gordo County Department of Public Health.
 9. **Environmental Health Inspector:** means a representative of the Cerro Gordo County Board of Health who has obtained proper licensure from the State of Iowa as a Certified Lead Inspector/Risk Assessor.
 10. **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/cm^2) when tested by a radioisotope x-ray fluorescence analyzer (XRF) or more than five-tenths of one percent (0.5%) lead by weight.

11. **Lead Hazard:** any lead-based paint shall be considered a lead hazard if the paint already exists in or about a dwelling or other child occupied facility in which children under age six (6) commonly reside or visit and if:
 - i. 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 that contain lead-based paint chips. In addition, this shall also include surfaces that contain lead dust that exceeds the EPA/HUD guidelines (bare floors – 40 milligrams per square foot, interior window sills – 250 milligrams per square foot, window wells – 400 milligrams per square foot).
 - ii. If the paint is likely to be lead-based paint, based on a visual assessment and age of the dwelling, and is deteriorating, or on accessible, impact, or friction surface.
12. **Occupant:** means any person or entity living, sleeping, cooking, eating in, or having any actual possession of a dwelling or dwelling unit.
13. **Owner:** means any person or entity who, alone or jointly with others: (1) shall have 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 and the estate of the owner, as tenant or lessor, or as contract buyer.
14. **Premises:** means a lot, plot, or parcel of land including all facilities and improvements thereon.
15. **XRF instrument:** means any of the devices which use x-ray fluorescence in measuring concentrations of lead on site in applied paints in milligrams per square centimeter.

Section 2: Scope and Applicability

This Ordinance shall affect only those dwellings, dwelling units, or child occupied facilities in which an EBL child resides for a period of ten (10) hours within any week (Sunday through Saturday period). All owners shall comply with the provisions of this Ordinance and of the rules, resolutions, and order adopted pursuant to this Ordinance.

Section 3: Use or Sale of Lead-Based Paint

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 dwelling, dwelling unit, or child occupied facility.

Section 4: 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, recycle, or give away such waste for residential purposes.

Section 5: Inspections

- A. The Environmental Health Inspector may require the inspection of the dwelling, dwelling unit or child-occupied facility 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 that 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 Environmental Health Inspector.
- B. The Environmental Health Inspector will be granted access to inspect any dwelling(s), dwelling unit(s) and/or child occupied facilities of an EBL child within fourteen (14) days of notification of family of said Elevated Blood Level. However, at the discretion of the Environmental Health Inspector, additional time may be granted to schedule the inspection.
- C. When a lead hazard is found in a dwelling, dwelling unit or child occupied facility inspected pursuant to this section or otherwise, the Environmental Health Inspector shall 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 (a period that exceeds ten (10) hours within any week (Sunday through Saturday period)) in said dwelling, dwelling unit, or child occupied facility for undue lead exposure. The results of such examination shall be reported to the Environmental Health Inspector, the affected individual, and when applicable, their parent or legal guardian.
- D. The results of an investigation for lead hazards, including the presence and/or absence of lead-based paint which is and is not considered to be lead hazards, shall be reported in a written notice, with suggested remedial/maintenance actions for the listed lead hazards, within one (1) week to the owner. The Environmental Health Inspector shall inform other persons or agencies, as he/she deems advisable.
- E. A dwelling, dwelling unit, or child occupied facility does not require inspection if it was built after 1978. However, in certain instances, at the discretion of the Environmental Health Inspector, an inspection may be deemed necessary.
- F. The Environmental Health Inspector must have access to the entire dwelling, dwelling unit or child occupied facility.

Section 6: Refusal of Admittance

In the event the Environmental Health Inspector, 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 Cerro Gordo County who shall issue a warrant to a Peace Officer of Cerro Gordo County directing him/her between the hours of sunrise and sunset, to accompany the Environmental Health Inspector when entering said premise to make such an inspection and to obtain such samples as may be required to carry out the provisions of this Ordinance. The Environmental Health Inspector and Peace Officer at the time of this inspection must have access to the entire dwelling.

Section 7: Hazard Reduction

- A. When the Environmental Health Inspector determines that a lead hazard is present in a dwelling, dwelling unit, or child occupied facility where an EBL child lives, frequently visits (a period that exceeds ten (10) hours within any week (Sunday through Saturday period)), or has recently resided, he/she shall, in accordance with Section 5.C., issue a written notice within one (1) week to the owner to eliminate the hazard with suggested remedial/maintenance actions to be completed in a time period not to exceed thirty (30) days. However, at the discretion of the Environmental Health Inspector, additional time may be granted to eliminate said hazard.
 1. In the event the dwelling is vacated by the occupant who occupied 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 obeyed.
 2. If, before the end of the thirty (30) day remediation/maintenance period or its extension, the owner sells the dwelling, dwelling unit, or child occupied facility, he/she shall notify the prospective buyer of the lead problem and the new owner shall assume the responsibility of carrying out the requirements of this Ordinance within the specified time period and shall not occupy the dwelling, dwelling unit, or child occupied facility until the remediation is complete.
- B. The owner(s) of any dwelling, dwelling unit, or child occupied facility which has been determined to contain lead hazards shall correct these lead hazards by methods approved by the Environmental Health Inspector within the time period allowed by the Environmental Health Inspector 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(s) for noncompliance, pursuant to Section 13.
- C. 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.
- D. 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.

- E. The Environmental Health Inspector shall inspect all areas cited as lead hazards after remediation is complete and approve them as "lead-safe." A written notice shall be issued to all affected parties and retained by the Environmental Health Inspector, stating that the property is "lead-safe" and that proper maintenance must occur to ensure the property remains "lead-safe."

Section 8: Retaliatory Actions

- A. It shall be unlawful for the lessor of a dwelling, or his/her employees, agents, or persons acting in his/her behalf to retaliate against lessees of a dwelling whose occupants have been tested for lead poisoning.
- B. It shall be unlawful for the lessor 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.
- C. "Retaliation" shall include harassment, termination of the tenancy, discontinuation of utilities or other services, and any other adverse action taken against the lessee.
- D. "Occupants" shall include visitors in the dwelling.
- E. 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 and would have occurred even in the absence of participation by the lessee in the screening or testing; OR
 2. It is shown to have occurred as a result of accident or mistake, and that it was not the intentional act of the lessor or his/her employees, agents, or persons acting in his/her behalf to retaliate.

Section 9: Appeals

In the event any person is aggrieved by any order of the Environmental Health Inspector, 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 Environmental Health Inspector, and shall modify, withdraw, or order compliance with said order. Appeal from any order of the Board of Health may be taken to the District Court by writ of certiorari commenced pursuant to the Iowa Rules of Civil Procedure.

Section 10: Jurisdiction

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

Section 11: Enforcement

The Environmental Health Inspector shall have the duty and responsibility of enforcing this Ordinance.

Section 12: Injunction

Nothing in this Ordinance shall be construed to prohibit the Cerro Gordo County Board of Health from injunctive relief or other relief as allowed by law.

Section 13: 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 five hundred dollars(\$500.00) or imprisoned in jail for a period not to exceed thirty (30) days. Each day that a violation occurs constitutes a separate offense.
- B. Upon failure of any person to correct a lead hazard found on his/her property after a period of six (6) months from initial written notification of said hazards, 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 Cerro Gordo County Board of Supervisors, or the Cerro Gordo County Board of Supervisors by resolution may certify the amount of said expenses, together with a description of the property to the County Treasurer who shall assess all expenses on the said property. Assessed expense shall also be recorded in Cerro Gordo County Recorder's office.

Section 14: Separability of Provisions

If any section, paragraph, clause, or provision of this 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 15: Variances

- A. The Environmental Health Inspector shall have the authority to determine a surface, that may otherwise be identified as a lead hazard, "lead-safe." If the Environmental Health Inspector is able to determine a surface (that fits the description of that lead hazard) is not causing or does not have reasonable potential to cause lead exposure, the Environmental Health Inspector may, with written notice, 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 communication of such surfaces shall be included in the final report of the premises and be provided to the owner, tenant, and Environmental Health Inspector.
- B. Any surface with deteriorating lead-based paint will not, under any circumstances, be allowed to be identified as "lead-safe."

Section 16: Regulation Effective Upon Publication

This Ordinance shall be in force and effective on July 1, 2004, following passage and publication as provided by law.

Section 17: All references to him, her, or person in this Ordinance shall include both natural persons, partnerships, and other entities.

Approved by:

Cerro Gordo County Board of Health
Mark C. Johnson, MD, Chairperson

Cerro Gordo County Board of Supervisors
Jay Urdahl, Chairperson
July 19, 2005

Attest:

Kenneth W. Kline
County Auditor