



February 3, 2019

## **PROPOSED BALLOT INITIATIVE OVERVIEW**

### **1. Who does the bill affect?**

This proposed bill affects the owners of residential rental property in the City of Cleveland. Under the proposed language, the owners of residential rental properties will need to certify that their units' lead safety status as part of re-certifying their rental registration each year. By 2021 the owners of residential rental properties must certify that their homes are lead safe.

The bill also affects residents who run day care facilities. Beginning in 2021, residents who wish to obtain child day care facility permits will need to provide proof that their day care facilities are in a lead safety property.

### **2. Does this bill affect owner-occupied properties or properties where owners are renting to their immediate family members?**

No.

### **3. What are the options for landlords to certify lead safety status?**

There are 6 options for landlords to certify a rental property's lead safety status:

1. Lead safe
2. Lead safe as part of a multi-unit building
3. Lead free
4. Exempt from lead safe status because the home was built after 1978
5. Exempt from lead safe status because the home is being rented to the owner's immediate family
6. Not lead safe.

### **4. How can landlords prove that their rental unit is lead safe for the first time?**

To show that a unit is lead safe, a landlord will have to show proof of a passing lead risk assessment or lead clearance test. Ohio's lead laws clearly outline the parameters for

lead risk assessments, remediation of hazards, and lead clearance tests.<sup>1</sup> Currently these tests are only used after a child gets poisoned. The proposed program uses the exact same standards, but applies them to rental units *before* a child is poisoned.

Step one is obtaining a lead risk assessment. If the house passes the lead risk assessment, that assessment is sufficient proof of lead safety. If the house fails the lead risk assessment, the landlord must remediate the lead hazards and obtain a passing clearance examination. If the house passes the clearance examination, that is also proof of lead safety. This is the same lead safety procedure originally used in 990-17.

**5. How can landlords who own a multi-unit building show that their units are lead safe?**

In larger buildings, so long as a representative sample of units (10%) pass a lead risk assessment, and all other units pass a visual assessment, each unit in the building can be certified as lead safe without having to repeat multiple full lead risk assessments in each unit. This sampling method is in line with HUD and Ohio guidelines for assessing multi-unit properties.

**6. How often will landlords need to test their homes?**

Landlords will need to provide renewed proof of lead safety every two years. This timeline is necessary because making a home lead safe does not mean it is lead free. Lead hazards can emerge or re-emerge because of moisture or deterioration of paint. For landlords who maintain their property, a less expensive passing lead clearance examination is all that will be needed for continued proof of lead safety after the initial lead risk assessment.

**7. What will it cost and who will pay for landlords to prove that their home is lead safe?**

The lead risk assessment typically costs between \$300 and \$500. Research in comparable markets has shown that more than the majority of homes pass a lead risk assessment.<sup>2</sup> Those landlords will not have to make any other expenditures. In a study of Rochester's program, the median cost to fix homes that tested positive was \$300.<sup>3</sup> It is true that some homes will cost more to fix, particularly if they need new windows. However there are already existing programs and resources for landlords who have to make significant expenditures.

Moreover, CLASH is dedicated to securing funding to help defray the costs of lead risk assessments *and* remediation. This bill provides for a Lead Assessment and

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<sup>1</sup> R.C. 3742 *et seq.*, OAC 3701-32 *et seq.*

<sup>2</sup> Korfmacher, K.S, M. Ayoob, R.L. Morley. 2012. Rochester's lead law: Evaluation of an environmental health policy innovation. *Environmental Health Perspectives*. 120(2):309-315, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3279433/>

<sup>3</sup> *Id.*

Remediation Fund which, when funded, can help landlords, especially lower-income, mom-and-pop landlords, afford the lead risk assessment and remediation.

**8. Why integrate the lead safe housing requirement into the rental registration program?**

The rental registry currently has 59,000 of the approximately 90,000 rental units in the City of Cleveland. A rental registration is required under local housing court rules for a landlord to evict. Landlords already have to provide information about the property when certifying their units. Moreover, the rental registration is already used as the basis for the City's Healthy Homes inspections, which can, in some cases, include lead analysis.<sup>4</sup> This bill builds off the existing programming on the rental registry to ease administrative costs and decrease duplicative efforts. Moreover, the bill flexibly allows the City to continue its Healthy Homes inspections at the same time that it incentivizes landlords to obtain lead risk assessments on the private market.

**9. Will the cost of getting on the rental registry change?**

Yes, the cost per unit will double from \$35 to \$70, with the goal of increasing revenue to fund the costs of lead risk assessments for low-income landlords. The \$70 fee will be waived for any landlord who obtains proof of lead safety by hiring their own lead risk assessor or lead clearance technician.

**10. What happens if a landlord does not certify their home as lead safe?**

Under the proposed language, landlords have until March 1, 2021 to certify their properties as lead safe. After that time, the City is authorized to issue misdemeanor tickets, as it is authorized to do for many building and housing infractions. The first four offenses are third degree misdemeanors punishable by up to a \$500 fine every three months. Only after a landlord has four violations do the tickets escalate to \$1000 every three months. By comparison many building and housing code violations are ticketable at up to \$1000 every day.

**11. Who enforces this law?**

This bill will succeed through public buy-in, community education, strong leadership, and financial incentives. In other words, there is a toolbox of affirmative "carrots" to propel success.

First, tenants have expanded rights under this bill. For instance, tenants will find it easier to deposit their rent because of their landlord's failure to certify the home as lead safe.

Second, the bill aims to increase consumer knowledge and consumer choice about lead. The bill calls for landlords to disclose the rental registration lead safety status of their

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<sup>4</sup> Rachel Dissell, Brie Zeltner, Cleveland voluntary rental inspection program turns up few violations, lead hazards in first year, Cleveland.com, [https://www.cleveland.com/metro/index.ssf/2018/09/cleveland\\_rental\\_inspection\\_un.html](https://www.cleveland.com/metro/index.ssf/2018/09/cleveland_rental_inspection_un.html)

property at the time of lease and when advertising a property. These disclosures go beyond traditional EPA disclosures, which just provide general information about lead hazards to renters of all pre-1978 homes. As more units certify their lead safety status, disclosures in advertising and at the point of lease will increase consumer knowledge. Additionally, the bill calls for a public, searchable database of homes certified as lead safe and not lead safe. All of provisions will help to increase public awareness.

Third, landlords have incentives to prove that their home is lead safe. For instance, once their home is lead safe, their rental registration fee will be waived and they will be entitled to a presumption that any lead poisoning is not a result of their property. As consumer awareness increases, landlords will have a market incentive to make their homes lead safe. Moreover, once the City commits to funding the Lead Risk Assessment and Remediation Fund, there will be financial support available to landlords to help defray costs.

Fourth, the bill calls for the creation of a Lead Advisory Board which will hold regular public meetings to discuss implementation of the bill. The Lead Advisory Board will receive quarterly reports from each department that is in charge of implementing parts of the bill. These reports will be public and will also help increase public understanding of the progress being made towards a lead safe Cleveland.

Only if these affirmative “carrots” fail does the City have to fall back on its “stick” -- misdemeanor ticket enforcement by Building and Housing.

## **12. What will stop tenants from being displaced?**

Other cities have found that the majority of homes pass a lead risk assessment without any hazard being found. When lead hazards are found at a unit, most can be taken care of through “interim controls” which, if they require temporary relocation at all, only require relocation for a few days. This proposed bill makes clear that, if faced with temporary displacement, tenants have the right to terminate their lease agreement, have their rent abated, or have their landlord secure alternative housing.

Critics of a lead safe housing mandate have talked about the risk of generalized displacement – that the additional pressures of making property lead safe will lead to increased evictions and other bad behavior by landlords. There has yet to be evidence of such displacement from other cities that implemented a lead safe housing program. But if those risks do arise, this bill provides protections by linking lead safe status to the State and City retaliation laws. Moreover, the City is already making significant strides towards improving tenant protections by implementing a right-to-counsel pilot project. Each of these programs will help protect tenants if generalized displacement become a threat.

Finally, under existing law, the City has the authority to relocate occupants and certify the expenses to the County Auditor to be assessed against the landlord. If the City becomes aware of any instances where a lead hazard is causing a family to have to relocate and the landlord is not living up to his or her responsibilities, the City has the authority to intervene and collect the costs from the landlord later.

**13. What will day care facilities have to do to prove they are lead safe?**

The proposed legislation also calls for day care facilities to prove they are lead safe by November 1, 2021. November 1 is the annual renewal deadline for day care facility permits under City law. Every parent in Cleveland should know they are dropping off their young child at a lead safe day care. Those who run day cares can use the same procedures to prove lead safety as rental units. That process is outlined in Section 240.08.

**14. What sections of the existing law have been changed?**

As an aid to those reviewing the draft language, CLASH wants to highlight the significant changes to existing legislative language, which appear at 365.01(b), (c), and (d); 365.02(a)(3), (c)(9), and (g); 365.03; 365.04(b); 365.05; 356.06; 367.99(g); 240.06(d); 240.08; 240.10; 240.11; 240.12; 227.03. This is not an exhaustive list of all changes.