

ORDINANCE NO. 120725

Amending Chapter 34, Code of Ordinances, by repealing Article X, Lead Poisoning Control, and enacting a new Article X of like name and subject matter, consisting of Sections 34-401 through 34-440, to prohibit the use or sale of lead-bearing substances or the sale or distribution of products containing certain levels of lead.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 34, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Article X consisting of Sections 34-401 through 34-440, and enacting in lieu thereof a new Article X of like number and subject matter, to read as follows:

Sec. 34-401. Purpose of article.

Lead poisoning in humans is a reportable condition as established in section 34-54. The purpose of this article is to prevent lead poisoning resulting from the internal consumption of lead-bearing substances into the human body by means of, without limitation, ingestion, inhalation and absorption, which internal consumption is hereby declared to constitute a serious hazard to the health, safety and welfare of the inhabitants of this city.

Sec. 34-402. Applicability of article.

The provisions of this article shall apply to all buildings or portions thereof within the corporate limits of the city used or designed, or intended to be used, for human habitation or human occupancy, which include but are not limited to residential, public, commercial or industrial structures, whether such buildings exist at the time the provisions of this article become effective or are constructed thereafter, and shall include alteration, repair, maintenance or renovation for continued use for human occupancy or habitation, or demolition. The provisions of this article shall apply to all places used as commercial establishments, including retail and wholesale sales establishments.

Sec. 34-403. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Children means individuals, male or female, whose chronological age is less than or equal to twelve years.

Children's Product means those toys and other articles which are intended to be entrusted to or for use by children or other products marketed for use by children.

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Children's product includes all jewelry, whether marketed to or intended for use by children.

Director means the director of health of the city or his or her duly authorized representatives.

Dwelling means any grounds or premises with any type of structure (e.g. residential, commercial, industrial and public), and any related ancillary or accessory structure to such structures or premises, interior or exterior, including but not necessarily limited to garages, carports, sheds, yards, playgrounds, driveways, carriage houses, fences or gates; any room, group of rooms or other interior or exterior area of a dwelling, all or part of which room, group of rooms or other interior or exterior area is either designed or used for human habitation by human occupancy or commonly occupied by children, such as a day care center, school or recreational facility.

Dwelling unit means any room, group of rooms or other interior area of a dwelling, all or part of which room, group of rooms or other interior area which is either designed or used for human habitation or human occupancy, or commonly occupied by children such as a day care center or school.

Furniture article means those movable articles used to support people or things or other functional or decorative items that equip a room, house or other structure.

Hollowware means ceramic or pottery articles which have an internal depth measured from the lowest point to the horizontal plane passing through the upper rim, greater than 25 mm.

Large hollowware means hollowware with a capacity of 1.1 liter or more.

Lead poisoning hazard means any open or exposed surface or substrata in any dwelling which is coated with, consists of or contains any lead-bearing substance is declared to be a hazard if such surface, substrata or generated debris is accessible or may become accessible to ingestion or inhalation by any person but particularly children under the age of six, or may become accessible as a result of any remediation, abatement, maintenance, repainting, renovation or demolition, and is flaking, cracking, peeling, scaling, blistered, chipped or loose, and is present on or in any interior or exterior surface on, but not necessarily limited to, any porches or their steps, decking, banisters or railings, or on walls, windows and sills, doors and jambs, ceilings, or exterior trim, boarding or fascia. The quantity of lead concentration of various substances (including but not limited to superficial dusts, paint, air contaminants, water, soils and debris) which constitutes a hazard shall be determined by the director and made available to the public upon request.

Lead-bearing substance includes but is not necessarily limited to any paint, lacquer, putty, plaster, structural material, soil, water, air, dust, pipes, fixtures or similar

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substance containing a quantity of lead determined by the director to constitute a hazard to health.

Lead-containing paint means paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.009 % by weight of the total nonvolatile content of the paint or the weight of the dried paint film (90 ppm).

Open or exposed surface means any interior surface of a dwelling or any exterior surface thereof, to which children may be commonly exposed.

Paint and other similar surface-coating materials means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic or other surface.

ppm means parts per million.

Small hollowware means hollowware with a capacity of less than 1.1 liter. Cereal bowls are a common example of small hollowware.

Sec. 34-404. Use or sale of lead-bearing substances prohibited.

(a) No person shall knowingly:

- (1) Offer for occupation any dwelling or dwelling unit which has in or upon any open or exposed surface any lead-bearing substance in a deteriorated condition so as to create a lead poisoning hazard; or
- (2) Erect, construct, remodel or alter any dwelling so that when it is occupied it has any open or exposed surface containing any lead-bearing substance.
- (3) Repair, renovate or demolish any dwelling in such a manner that any occupant, worker or any person on any adjacent property may be exposed or have access to the resulting dust, contaminants or debris from lead-bearing substances.

(b) It shall be unlawful for any person to apply to any toy, furniture article, or interior or exterior surface of any dwelling paint or any other similar surface-coating material containing lead compounds of which the lead content (calculated as the metal) is in a quantity determined by the director to constitute a hazard to health.

(c) It shall be unlawful for any person to sell, or offer for sale at wholesale or retail, or distribute in any manner any paint or other similar surface-coating material intended for, or packaged in a form suitable for use on toys or furniture, or in or around

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habitable premises, which contains lead compounds of which the lead content (calculated as the metal) is in a quantity determined by the director to constitute a hazard to health.

Sec. 34-405. Inspections.

(a) Upon reasonable suspicion by the director of a lead poisoning hazard, regardless of source, the director shall inspect the dwelling for the presence of lead-bearing substances in or upon any open or exposed surfaces by use of an in situ analyzer device, or by removing samples for laboratory analysis. The director, for the purposes of this article, shall have the right to enter and inspect any dwelling for the presence of lead-bearing substances upon a report of the director that a child has an elevated blood lead level, pursuant to the standard determined by the director, and that the child is an inhabitant or frequent visitor to the dwelling.

(b) If consent has not been given to enter the premises, building or structure to inspect alleged violations of this article, no entry, inspection or testing shall be made without the procurement of a warrant from a judge presiding in the Municipal Division, Kansas City, 16th Judicial Circuit Court of Missouri. If a complaint in writing is filed by the director of health or the director's authorized representative, any police officer, deputy or city attorney of the city, with the Municipal Division judge stating that he or she has probable cause to believe there exists in the premises, more particularly described therein, a violation or violations of the provisions of this article and is within the territorial jurisdiction of the city, and if such complaint is verified by the oath or affirmation stating evidential facts from which such judge determines the existence of probable cause, then such judge shall issue a search warrant directed to the authorized person to search the premises, building or structure therein described for the purposes requested or conduct any tests authorized by this article therein. Such search warrant may be executed and returned only within ten days after the date of its issuance. The person authorized to search and conduct tests shall make a return promptly after concluding the search, and such return shall contain an itemization of all violations of this article discovered pursuant to such search and tests. Refusal to allow entry upon presentation of a search warrant shall be an ordinance violation.

(c) If any citizen has reason to suspect a lead poisoning hazard, the director shall provide such information that the citizen may take steps to prevent lead poisoning and pursue obtaining an inspection from a qualified lead inspector.

Sec. 34-406. - Determination of violation; notice; hearing.

(a) *Report of findings.* The director, upon completing a test for lead-bearing substances, shall make a written report to the owner of record and/or his or her agent as to whether such substances are present in or upon any open or exposed surfaces of a dwelling.

(b) *Action Plan.* If applicable, the director shall create an action plan to be delivered to the owner of record and/or his or her agent. Such action plan shall state what

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steps the owner of record or his or her agent must take to control or remediate the lead hazards within a reasonable time specified by the director. The action plan shall also include statements that:

- (1) identified lead-bearing substances on open or exposed surfaces be thoroughly and properly treated so as to reduce and diminish the potential exposure to health hazards;
 - (2) all conditions constituting a lead poisoning hazard be mitigated or eliminated in an efficient manner satisfactory to the director by means of acceptable methodology.
 - (3) all identified lead poisoning hazards be thoroughly and properly treated, so as to reduce the lead concentration of the substance (substances) to a level below that which is defined as a lead poisoning hazard.
 - (4) all treatment of lead-bearing substances shall be conducted in a manner which shall not endanger the health of any human being and which will result in the safe elimination from the dwelling and the safe disposal of flakes, chips, debris and other material.
- (c) *Hearing.*
- (1) Within ten days of the date listed on the action plan, an owner and/or his or her agent may request in writing a hearing before the director to determine the reasonableness of the action plan.
 - (2) The person requesting the hearing may appear to testify and present relevant evidence and witnesses.
 - (3) Such hearing shall be held not less than five nor more than thirty days after the proper filing of a request for hearing unless continued for good cause shown.
 - (4) The director shall notify the owner and/or his or her agent of his or her decision in writing within ten days of the conclusion of the hearing.

Sec. 34-407. Violation for failure to comply with action plan.

Failure to comply with an action plan prepared by the director shall constitute an ordinance violation. The director may apply to the prosecuting attorney to proceed with prosecution and/or may take any other such steps necessary and pursue any other appropriate remedies to assure remediation of the lead hazard.

Sec. 34-408. Danger to inhabitants; tenants' rights.

(a) If an inhabitant whose health is threatened, or that person's parents or guardian on his or her behalf, voluntarily and permanently vacates the dwelling in question, then the requirements set forth in this section shall continue to be applicable.

(b) A landlord or its agent may not retaliate by increasing obligations of the tenant or decrease services, harassing, threatening to evict or evicting the tenant because:

- (1) The tenant has complained in good faith to a governmental agency charged with responsibility for enforcement of a violation of the provisions of this article applicable to the premises; or
- (2) The tenant has complained in good faith to the landlord or his agent of a violation of a provision of this article.

(c) Any landlord or his agent who acts in violation of this subsection shall be deemed guilty of a violation of this article.

Sec. 34-409. - Declaration of nuisance.

All dwellings found to have a lead poisoning hazard, are hereby declared to be a nuisance, and that hazard shall be remediated, or vacated and remediated, as provided by the Charter and ordinances of this city.

Sec. 34-410. Sale or distribution of certain items containing lead or painted with lead-containing paint prohibited.

No person shall sell, or offer for sale at wholesale or retail, or distribute in any manner any item that is:

- (1) a banned hazardous substance under the federal Hazardous Substances Act;
- (2) a product that contains more lead than the limits established by the Federal Hazardous Substances Act, the Consumer Product Safety Improvement Act or by any federal or state agency or regulatory body including the Food and Drug Administration, the Environmental Protection Agency and the Consumer Product Safety Commission;
- (3) a candy that contains lead exceeding levels of 0.1 ppm (or any level adopted by any state or federal body subsequent to passage of this section);
- (4) a children's product or furniture article with a surface coating that contains lead exceeding 90 ppm (or any level adopted by any state or federal body subsequent to passage of this section);

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- (5) a children's product or furniture article of which any part contains lead exceeding levels of 100 ppm (or any level adopted by any state or federal body subsequent to passage of this section);
- (6) any ceramic or pottery glaze that exceeds the following levels (or any level adopted by any state or federal body subsequent to passage of this section):
 - a. 3 ppm leachate for plates, saucers and other flatware;
 - b. 2 ppm leachate for small hollowware, such as cereal bowls;
 - c. 1 ppm leachate for large hollowware; and
 - d. 0.5 ppm leachate for cups, mugs and pitchers.
- (7) a product that contains lead in excess of levels allowed by law and verified by the director through a qualified independent lab.

Sec. 34-411. Notice of violation from director; order to cease and desist.

(a) Upon determination from the director that a qualified approved lab has confirmed lead in products in excess of levels allowed by law, he or she shall send a copy of the lab results with a notice to the owner, manager or seller that states that the sale or offer for sale or distribution of such products is prohibited by law. Such notice shall also include an Order to Cease and Desist the sale, offering for sale or distribution of such products.

(b) Such notice shall be in addition to any other enforcement rights of the director, including prosecution in municipal court or an order from a court enjoining the future sale, offering for sale or distribution of said products.

(c) Failure to comply with an Order to Cease and Desist issued by the director pursuant to this section shall be an ordinance violation.

Sec. 34-412. Signage required when.

(a) If the director has cause to believe that products contain lead in excess of the limits allowed by law, he or she may notify the person selling or offering for sale or distribution the products in question that such cause exists and that a sample of the product is being sent to a qualified independent laboratory for definitive testing.

(b) Upon such notification, no person shall sell, or offer for sale at wholesale or retail any item that the director has probable cause to believe may contain lead in excess of the limits contained herein unless a sign is affixed adjacent to the products or on the shelves containing the products that reads as follows: "WARNING: THESE

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PRODUCTS MAY CONTAIN LEAD AND ARE CURRENTLY BEING TESTED BY THE DIRECTOR OF HEALTH.”

(c) Signage shall be placed in a manner that clearly and conspicuously demonstrates to which products the signage applies.

(d) Such signage may only be removed when either:

- (1) The director has notified the owner or manager of the establishment that lab results failed to confirm the existence of lead in excess of levels allowed by law; or
- (2) The owner removes all products of the same type and from the same manufacturer from the shelves or other distribution channels.

Sec. 34-413. Enforcement of article.

The authority to administer the provisions of this article is vested in the director of health and his or her duly authorized representatives. Whenever the need arises, the director of health may call upon the other departments of the city or the police to aid in the enforcement of the provisions of this article.

Sec. 34-414. Penalty for violation of article.

Every person convicted of a violation of any section of this article shall be punished by a fine of not more than \$500.00, or by imprisonment for not more than 180 days, or by both such fine and imprisonment. Every day that a violation continues shall be considered a new and separate offense, for which the violator may be arrested, tried and convicted.

Secs. 34-415—34-440. Reserved.

Approved as to form and legality:

Joseph Guarino
Assistant City Attorney