



Legislation Text

File #: 190927, **Version:** 2

190927
SUBSTITUTE 2

ALD. PEREZ

A substitute ordinance relating to the enforcement of lead hazard regulations.

60-53	cr
61-16-2-0	am
66-22-3	rc
66-22-4-0	am
66-22-4-c-2	am
66-22-4-c-3	cr
66-22-4-d	rc
66-22-4.3	cr
66-22-4.5	cr
66-22-5-0	am
66-22-5-d-2	am
66-22-5-e	rp
66-22-5-g	rc
66-22-14	rc
66-22-15	rp

This ordinance:

1. Exempts violations of the lead poisoning prevention and control regulations from the general \$10,000 limit on accumulated forfeitures, raising the limit to \$30,000.
2. Allows the health commissioner to charge a fee of \$150 for inspections necessary to ensure compliance with lead hazard reduction orders, with fees rising to \$300 for subsequent reinspections. No fee will be charged if compliance with the order is found during the reinspection.
3. Provides that, if lead hazard abatement orders are not complied with by the expiration date, the health commissioner may, in addition to other enforcement measures authorized by law:
 - a. Issue a citation.
 - b. Refer the failure to comply to the commissioner of neighborhood services for issuance of a rent withholding notification.
 - c. Provided the health department has funds available, secure an appropriate court-issued warrant for entry to the premises to abate or remove the nuisance and use the authority delegated under the city charter to summarily abate or remove a nuisance.
The cost of the abatement, interim controls and relocation associated with making the property lead-

safe shall be assessed and collected as a special charge on the property.

d. If the health commissioner determines that the cost to abate the lead hazard would exceed 50 percent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin department of revenue for the city of Milwaukee, and the lead hazard cannot be controlled by interim controls, presume such repairs are unreasonable and refer the property to the commissioner of neighborhood services for an order to raze.

4. Provides that, if in the judgment of the health commissioner any dwelling, dwelling unit, supplemental location or premises is unsafe or unfit for human habitation due to the presence of imminent lead hazards as defined by Wisconsin statutes, the commissioner may refer the property to the commissioner of neighborhood services for a determination to issue an order to discontinue occupancy or use.

5. Revises the provisions of the lead poisoning and prevention control regulations relating to retaliation against a non-owner occupant of a dwelling, dwelling unit, supplemental location or premises for taking certain actions related to suspected or known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 60-53 of the code is created to read:

60-53. Lead Hazard Inspection Fee. The fee for each lead hazard inspection necessary to determine compliance with an order issued under s. 66-22-4-c shall be \$150 per dwelling, dwelling unit, supplemental location or premises. The fee for each subsequent reinspection shall be \$300 until full compliance with the order is found.
(See s. 66-22.)

Part 2. Section 61-16-2-0 of the code is amended to read:

61-16. Class J.

2. The minimum forfeiture shall be not less than \$500 for a second or subsequent conviction of any of the following violations committed within a 2-year period. >>Each day of continued violation of subs. a and b shall constitute a separate offense. Accumulated forfeitures recoverable in any one action for violations of pars. a and b shall not exceed \$30,000.<< All other penalty provisions for violations of s. 66-22 shall be as provided in sub. 1.

Part 3. Section 66-22-3 of the code is repealed and recreated to read:

66-22. Lead Poisoning Prevention and Control Regulations.

3. EVICTION OR RETALIATION PROHIBITED. a. No non-owner occupant of a dwelling, dwelling unit, supplemental location or premises shall be evicted or otherwise retaliated against because of any of the following activities:

a-1. An occupant or someone on the occupant's behalf sought advice or services to guard household

members from exposure to suspected or known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-2. An occupant or someone on the occupant's behalf cooperated with the city or other entity investigating possible lead-based nuisances or abating lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-3. An occupant or someone on the occupant's behalf arranged the abatement of known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-4. Any person made a complaint to the department about suspected or known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

b. It shall be presumed that any attempt to terminate the tenancy, increase rent or other charges, reduce services, refuse to renew a rental agreement, or to otherwise harass or retaliate against a non-owner occupant within 24 months of the activities described in par. a. is done in retaliation and is void. In order to overcome such presumption, it shall be shown by a preponderance of the evidence that such acts were based upon good cause. "Good cause" as used in this paragraph means that one is required to show a good reason for his or her actions, other than one related to or caused by the activities described in par. a., including but not limited to normal rental increases due to tax increases or increases in maintenance costs.

c. An occupant may be evicted if the occupant fails to pay rent other than a rent increase prohibited by this subsection, commits waste upon the premises, or commits a substantial violation of a written rental agreement.

d. Any person who violates this subsection shall be liable upon conviction to a Class J penalty under s. 61-16. Each and every act of violation shall constitute a separate offense.

Part 4. Section 66-22-4-0 and c-2 of the code is amended to read:

4. ~~[[ENFORCEMENT]]~~ >>INSPECTION AND ORDERS FOR LEAD HAZARD REDUCTION ACTIVITIES<< .

c.

c-2. Issue >>written<< orders for lead hazard reduction activities to address those lead-based nuisances found to exceed allowable lead levels as provided in s. 66-21-18. The order shall state that the order may be appealed, the deadline by which the appeal must be filed and the entity to which the appeal must be made. >>An owner who is served an order may, prior to the time specified for compliance, submit a written appeal to the commissioner. The appeal shall state with specificity the reason that the appellant believes the order was issued in error. The commissioner may affirm, reverse or modify the order and shall mail or deliver to the appellant his or her written determination stating the reasons therefore. Such determination shall be a final determination.<<

Part 5. Section 66-22-4-c-3 of the code is created to read:

c-3. Post in a conspicuous place upon the dwelling, dwelling unit, supplemental location or premises

a notice of the presence of a lead hazard.

Part 6. Section 66-22-4-d of the code is repealed and recreated to read:

d. An additional fee in the amount specified in s. 60-53 may be charged for any lead hazard reinspection necessary to determine compliance with an order issued under par. c-2 unless compliance with such order is found.

Part 7. Section 66-22-4.3 of the code is created to read:

4.3. ENFORCEMENT. If orders are not complied with by the expiration date, the commissioner may, in addition to other enforcement measures authorized by law:

a. Issue a citation pursuant to s. 66-29.

b. Refer the failure to comply to the commissioner of neighborhood services for issuance of a rent withholding notification pursuant to s. 200-22.

c. Provided the department has funds available, secure an appropriate court-issued warrant for entry to the premises to abate or remove the nuisance and use the authority delegated under ch. 17 of the city charter to summarily abate or remove a nuisance.

The cost of the abatement, interim controls and relocation associated with making the property lead-safe shall be assessed and collected as a special charge on the property.

d. If the commissioner determines that the cost to abate the lead hazard would exceed 50 percent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin department of revenue for the city of Milwaukee, and the lead hazard cannot be controlled by interim controls, presume such repairs are unreasonable and refer the property to the commissioner of neighborhood services for an order to raze, pursuant to s. 218-4.

Part 8. Section 66-22-4.5 of the code is created to read:

4.5. ORDER TO DISCONTINUE OCCUPANCY OR USE. a. If in the judgment of the commissioner any dwelling, dwelling unit, supplemental location or premises is unsafe or unfit for human habitation due to the presence of imminent lead hazards as defined by Wisconsin statutes, the commissioner may refer the property to the commissioner of neighborhood services for a determination to issue an order for enforcement pursuant to s. 200-11-5 and 6.

b. Orders and placards shall remain effective until the required lead hazard reduction activity has been completed. No person may remove a posted order or placard, or occupy, use or enter a posted or placarded dwelling, dwelling unit, supplemental location or premises, except for the purpose of carrying out the required lead hazard reduction activity, without written permission from the commissioner of neighborhood services.

Part 9. Section 66-22-5-0 of the code is amended to read:

5. LEAD HAZARD REDUCTION PROJECT PERMIT REQUIRED.

Except as otherwise provided in par. a, no person may conduct or perform work on a lead hazard reduction project without obtaining a lead hazard reduction project permit approved by the department. Permit-holders shall follow the interior and exterior lead hazard site preparation and reduction standards in subs. ~~[[5 to 9]]~~ >>6 to 10<< .

Part 10. Section 66-22-5-d-2 of the code is amended to read:

d. Permit Denial or Granting with Conditions.

d-2. Whenever a permit is denied or granted with conditions under subd. 1, the commissioner shall so notify the applicant in writing. The notice shall state that the applicant may appeal the decision under sub. ~~[[13]]~~ >>14<< and shall specify how such appeal may be made.

Part 11. Section 66-22-5-e of the code is repealed.

(Note: The provision being repealed reads as follows:

e. Commissioner to Enforce Appeal Decisions. Based upon the record of a hearing conducted under sub. 13, the commissioner shall enforce the decision of the board.)

Part 12. Section 66-22-5-g of the code is repealed and recreated to read:

g. Permit Suspension. If proper procedures and compliance with the approved treatments are not followed or conditions result that create a hazardous environment, the commissioner may give written notice to suspend the lead hazard reduction permit. When a permit is suspended, all work shall be stopped and the lead hazards shall be contained or cleaned pending correction of the violation and reissuance of the permit. The notice shall state that the applicant may appeal the decision under sub. 14 and shall specify how such appeal may be made.

Part 13. Section 66-22-14 of the code is repealed and recreated to read:

14. APPEALS. a. A person who seeks to appeal an order or permit decision of the department under this subchapter, other than an order under sub. 4-c-2, shall file a written appeal with the commissioner within 5 working days after the person has received written notice of the order or decision to be appealed. The appeal shall state with specificity the reason that the appellant believes the order or decision was issued in error.

b. At the time of filing a written appeal under this subsection, the person affected by the order or permit decision may request and shall be granted a hearing on the matter before the commissioner. Within 10 days of receipt of the written appeal and request for hearing, the commissioner shall set a time and place for a hearing and shall give the applicant written notice thereof. The hearing before the commissioner shall be conducted in the following manner:

b-1. The hearing shall be commenced not later than 30 days after the date on which the appeal and request for hearing was filed, provided that upon written application by the appellant to the commissioner, the commissioner may postpone the date of the hearing for a reasonable time beyond such 30-day period if, in the commissioner's judgment, the appellant has submitted a good and

sufficient reason for such postponement. The commissioner may also postpone the hearing to gather testimony and data.

b-2 At the hearing, the appellant and the department may each be represented by an attorney and present evidence, call and examine witnesses, and cross-examine witnesses of the other party. Such witnesses and the appellant shall be sworn by the commissioner.

b-3. The appellant's attorney may issue a request to compel the attendance of witnesses or the production of evidence. The request issued by an attorney shall be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and shall be served in the same manner as provided in s. 805.07(5), Wis. Stats. The attorney shall, at the time of issuance, send a copy of the request to all concerned parties.

b-4. The commissioner shall take notes of the testimony and shall mark and preserve all exhibits. The commissioner may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city.

c. The commissioner may affirm, reverse or modify the original order or action of the department. Within 20 days of completion of the hearing conducted under this subsection and the filing of briefs, if any, the commissioner shall mail or deliver to the appellant his or her written determination stating the reasons therefor. Such determination shall be a final determination.

Part 14. Section 66-22-15 of the code is repealed.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB174430-4
Jeff Osterman
07/20/2022