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Rhode Island Department of Health

**GUIDANCE FOR LOCAL CODE ENFORCEMENT**

**TO:** Cities and Towns of the State of Rhode Island *pfv*  
**FROM:** Rhode Island Office of the Attorney General &  
 Rhode Island Department of Health  
**DATE:** January 26, 2022  
**SUBJECT:** Lead Hazard Violations and Local Code Enforcement

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Every child in every home in Rhode Island deserves to be safe from lead poisoning. Cities and towns, alongside the Rhode Island Attorney General’s Office and the Rhode Island Department of Health (“RIDOH”), have a key role to play and the tools necessary to protect children from the devastating and permanent injuries that can be caused by lead, including damage to the brain and nervous system, slowed growth and development as well as learning, speech, hearing, and behavior problems.

State and local officials can act together to respond to the significant threat posed by lead hazards. The Attorney General is required by law to maintain an Office of the Lead Advocate to ensure that Rhode Island children are protected from lead poisoning. *See* R.I.G.L. § 23-24.6-23(c). RIDOH’s Environmental Lead Program is similarly committed to protecting Rhode Islanders’ health and safety by identifying and decreasing environmental lead hazards. Together, the Attorney General and RIDOH are committed to rectifying lead hazard violations in circumstances in which they are able to act, such as when a child is lead poisoned and a property owner fails to remediate extant lead hazards as required by law. *See generally* R.I.G.L. § 23-24.6-23. Cities and towns can also take action, using authority that is not available to the Attorney General or RIDOH, like enforcement of certain lead compliance certificate requirements described below. This Guidance explains the contribution municipalities can make to enforcing the law and taking lead out of homes.

Rhode Island homes built prior to 1978 are at significant risk of containing lead-based paint and other lead hazards.<sup>1</sup> Because of the health risks that are associated with lead hazard exposure—particularly to children and pregnant women—Rhode Island’s Lead Hazard Mitigation Act and Lead Poisoning Prevention Act, and regulations passed pursuant to these laws, along with the Rhode Island Property Maintenance Code and the Rhode Island Housing Maintenance and Occupancy Code, require owners of non-exempt<sup>2</sup> pre-1978 dwellings to ensure that lead hazards

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<sup>1</sup> *See Childhood Lead Poisoning*, RHODE ISLAND DEPARTMENT OF HEALTH; R.I.G.L. § 23-24.6-12.

<sup>2</sup> Under the Rhode Island Lead Hazard Mitigation Act, exempted dwellings are (1) temporary housing; (2) elderly housing; (3) one, two and three-unit homes, one unit of which is occupied by the property owner; and (4) units that have been found to be lead-safe or lead-free through some

are reduced to a level that is safe for tenants, and provide state and local officials with various enforcement tools. Pursuant to these laws, landlords of non-exempt dwellings are required to allow inspections for lead hazards and are required to abate or mitigate any lead hazards found.

Cities and towns throughout Rhode Island, together with state agencies and dedicated non-profits, already engage in important work to remediate lead hazards and prevent lead poisoning. The Attorney General's Office and RIDOH commend these entities for their efforts in keeping Rhode Islanders safe. To support these efforts, the following guidance to cities and towns describes local code enforcement's broad power to enforce lead hazard mitigation and lead poisoning prevention laws.

**Can local code enforcement authorities enforce the Lead Hazard Mitigation Act and the Lead Poisoning Prevention Act?**

Yes. Pursuant to Section 305.3 of the Property Maintenance Code, local code enforcement can enforce lead safety requirements provided for in the Lead Hazard Mitigation and Lead Poisoning Prevention Acts.

**Are non-exempt, pre-1978 property owners required to have a lead compliance certificate?**

Yes. The Lead Hazard Mitigation and Lead Poisoning Prevention Acts require non-exempt pre-1978 dwellings to be in a lead safe condition, free from lead hazards, as evidenced by one of the lead compliance certificates described below. Under the Rhode Island Lead Hazard Mitigation Act, dwellings that are exempt from obtaining the certificates listed below are (1) temporary housing; (2) elderly housing; (3) one, two and three-unit homes, one unit of which is occupied by the property owner; and (4) units that have been found to be lead-safe or lead-free through the proper certification.

Landlords for all other dwellings must conform to RIDOH and Housing Resources Commission lead safe compliance standards as evidenced by a:

- Current Certificate of Conformance; or
- Certificate of Conformance and a current notarized Affidavit of Completion of Visual Inspection; or
- Current Certificate of Presumptive Compliance; or
- An owner may also document lead safe compliance with a Current Conditional Lead Safe Certificate, a Full Lead Safe Certificate, or a Certification of Lead Free Status. *See* 860-RICR-00-00-2.6.

At a minimum, a non-exempt, pre-1978 property owner must have one of these lead compliance certificates.

**Can local code enforcement issue a Notice of Violation if a non-exempt pre-1978 dwelling does not have a certificate?**

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type of certification. All other landlords must comply with the requirement to obtain a Certificate of Conformance or other lead compliance certification under Rhode Island Law.

Yes. A landlord's failure to have a valid lead compliance certificate such as a Certificate of Conformance for a non-exempt dwelling is itself grounds for a housing code violation under R.I.G.L. § 42-128.1-8(a)(3) and pursuant to regulations 860-RICR-00-00-2.6 and 216-RICR-50-15-3.2.4(B). Local code enforcement can thus issue Notices of Violation (NOVs). *See* Rhode Island Property Maintenance Code Section 305.3; R.I.G.L. § 45-24.3-17.

If, after the first NOV, the violations are not corrected, enforcing officers may issue a second NOV that includes a recurring civil penalty. R.I.G.L. § 45-24.3-17(e).

### **What additional information can cities provide to a property owner who receives a Notice of Violation?**

Cities can provide information describing property owners' responsibilities, tenants' rights (including the right to lead safe housing), city lead hazard reduction programs, lead-safe work and cleaning practices, the lead abatement income tax credit, the lead professionals database, and financial assistance programs (such as the RIHousing LeadSafe Homes Program which provides forgivable loans for lead hazard abatement).

### **What if an owner has a lead compliance certificate, such as a Certificate of Conformance, but there is a reason to believe that lead hazards are still present?**

Local code enforcement can still act. Whenever there is a "reason to believe" that lead hazards are present in a dwelling's paint, dust, soil, and/or water, local code enforcement may arrange a Comprehensive Environmental Lead Inspection (CELI) and issue NOVs where any lead violations are found. Rhode Island Property Maintenance Code §§ 305.3.3 and 305.3.4. A child lead poisoning, tenant complaint, RIDOH referral of an inspection report that detected lead hazards, or observation of damaged, peeling, or chipping paint during a visual inspection of a home all provide sufficient reason to believe lead-based substances are present.

### **If RIDOH refers a case to local code enforcement, what can local authorities do?**

Local code enforcement can address cases that RIDOH refers to them, which may include cases in which a child has been lead poisoned.

If a child has an elevated blood lead level ("EBLL") of 5 mcg/dL or greater, RIDOH will have offered to perform an inspection of the child's home. Should RIDOH's inspection show that a lead hazard is present, the results of the inspection can be provided to local code enforcement. Local code enforcement can issue an NOV on the basis of the lead hazard present in the RIDOH inspection results; municipal enforcement officers may exercise emergency protocols to issue NOVs with more stringent time requirements and higher civil penalties in these circumstances. Rhode Island Property Maintenance Code § 305.3.5; *see also* R.I.G.L. § 45-24.3-21(c) and 18(a). RIDOH will then reinspect the property until the landlord has removed lead hazards, and, if local code enforcement has become involved in the case, should notify local code enforcement when the property obtains a clearance inspection that show that lead hazards have been fully remediated.

If local code enforcement is made aware (for example, by a parent) of a case involving a child with an elevated blood lead level (EBLL) of *less than* 5 mcg/dL, enforcing officers may confirm whether the property has a Certificate of Conformance or other lead compliance certificate, issue an NOV if it does not, and/or in the appropriate circumstances may arrange a CELI. Rhode

Island Property Maintenance Code § 305.3. Local code enforcement could also cite the property for any damaged, peeling, or chipping paint present during a visual inspection of the home.

### **How can local code enforcement arrange for a CELI?**

A CELI is a surface-by-surface inspection that determines whether a dwelling's paint, dust, soil, and water are within lead-safe or lead free standards. 216-RICR-50-15-3.3(24). CELIs can only be performed by certified lead inspectors who are licensed by RIDOH. Local code enforcement may find certified lead inspectors in the database on RIDOH's website.

If a dwelling passes a CELI, the owner will receive either a Full Lead Safe Certificate, a Conditional Lead Safe Certificate, or an Interior Conditional Lead Safe Certificate. 216-RICR-50-15-3.5.3(F). If a dwelling does not pass a CELI, local code enforcement may issue an NOV. *See* Rhode Island Property Maintenance Code § 305.3.3; R.I.G.L. § 45-24.3-17.

### **What happens if lead is detected in drinking water?**

If a CELI detects lead hazards in drinking water, code enforcement may issue an NOV and require owners to comply with RIDOH regulations for lead hazards in water. *See* Rhode Island Property Maintenance Code § 305.3.3. Pursuant to RIDOH regulations, owners must label taps containing detected hazards (lead-safe levels will vary depending upon the sample method used by the CELI inspector) with a warning that states "Lead Warning: Do not use for drinking or cooking" in the primary language of the occupants, must provide bottled water for drinking and cooking until the water reaches a lead-safe level, and replace lead-containing pipes with lead free materials. 216-RICR-50-15-3.16.16.

### **What if an owner fails to comply with a second NOV?**

Local code enforcement may seek civil and/or criminal penalties, or request that a court appoint a receiver who may apply for funding necessary to correct lead hazards, in certain circumstances. *See* R.I.G.L. § 45-24.3-18(b) and (c); R.I.G.L. § 23-24.6-23(d).

### **Are there resources available to help property owners remediate lead hazards?**

Yes, a variety of resources are available. Property owners may hire a RIDOH certified lead contractor or licensed renovation firm to perform lead hazard reduction or control. Alternatively, property owners can remediate lead violations themselves after taking an initial 8-hour Lead Renovator training course with a certified training provider and receiving a Lead Renovation Firm license from RIDOH. *See* 216-RICR-50-15-3.11.2 and 3.11.4(A). Should property owners choose to become qualified to make repairs themselves, they must submit their Lead Renovator certification to RIDOH along with all other materials necessary to apply for a Lead Renovation Firm License as outlined in 216-RICR-50-15-3.10.8 and 3.11.3. Conducting lead hazard reduction work without a required license or certification may result in an enforcement action by RIDOH and the Attorney General's Office, and fines of up to \$5,000 per day. *See* 216-RICR-50-15-3.19.3. Owners can access information about and providers for lead hazard reduction and control services through RIDOH's database.

Property owners may also apply to financial assistance programs. The RI Housing LeadSafe Homes Program provides owners with assistance in remediating lead paint hazards. Cities or towns may also offer financial assistance programs. For example, Providence's Lead Safe Providence Program provides forgivable loans to help make properties lead safe, and

Woonsocket's Lead Hazard Reduction Program coordinates and provides forgivable loans for applicants' lead hazard reduction projects. Information on these programs can be found on [RIDOH's website](#). Additionally, the Rhode Island Residential Lead Abatement Income Tax Credit provides property owners with a tax credit of up to \$5,000 per dwelling unit for money spent to correct lead hazards. To learn more and access the Residential Lead Abatement Income Tax Credit Form RI-6238, visit the [Division of Taxation's website](#).

More informational resources to help property owners remediate lead hazards and ensure compliance with the Lead Hazard Mitigation Act can be found on [RIDOH's website](#).

**Where can local code enforcement and other city officials go for more information and training on lead poisoning prevention?**

For additional information regarding lead training courses, licensing requirements for lead professionals, lead safe work practices, and lead poisoning screening for children, please visit [www.health.ri.gov/lead](http://www.health.ri.gov/lead).

To learn more about the dangers of childhood lead poisoning, you can also visit the Childhood Lead Action Project at [www.lead safekids.org](http://www.lead safekids.org).

To learn about the requirements for removal of lead-based paint from exterior surfaces, see Department of Environmental Management regulation [No. 24](#) and Air Pollution Control regulation [No. 5](#).