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..XXBY: ALD. HINES, WITKOWIAK, GORDON, D'AMATO, RICHARDS, JOHNSON-
ODOM, MURPHY AND PRATT
..TITL: A substitute ordinance relating to a pilot project for lead-based paint hazard
control in residential rental properties.
..SECS: 60-55 cr
61-16-2 am
66-41 cr
66-43 cr
66-45 cr
66-47 cr
66-48 cr
66-49 cr
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200-22-1-a rc
..ANLS: - Analysis -

This ordinance establishes a 3-year pilot project to control lead-based paint hazards in rental residential properties built before 1950 in 2 areas of the city.

The boundary of the north side area begins at North 36th Street and West North Avenue, east along West North Avenue to North 32nd Street, south along North 32nd Street to West Lisbon Avenue, west along West Lisbon Avenue to North 34th Street, south along North 34th Street to West Walnut Street, west along West Walnut Street to West Sarnow Street, northwest along West Sarnow Street to West Lisbon Avenue, east along West Lisbon Avenue to North 38th Street, north along North 38th Street to West Brown Street, east along West Brown Street to North 36th Street and north along North 36th Street to West North Avenue.

The boundary of the south side area begins at South 15th Place and West Scott Street, east along West Scott Street to South 15th Street, south along South 15th Street to West Madison Street, east along West Madison Street to South 12th Street, south along South 12th Street to

3) Beginning May 1, 2000, the health department is authorized to perform risk assessments on units which the department has reason to believe are not in compliance with the ordinance. If a lead-based paint hazard is found, the department may issue orders to reduce the hazard. If the owner does not comply with the order, the health department may seek a special warrant to enter and summarily control or reduce the lead-based paint hazard and levy the cost on the property tax roll as a special charge. The special charge may not exceed 40% of the assessed market value of the property. The owner may appeal this action to the common council public safety committee and the common council.

The ordinance modifies existing special charge regulations to delete provisions allowing such charges to be paid over a period of years and to require appeals to be to the common council instead of the administrative appeals review board. These changes were recommended by the city attorney to comply with statutory requirements.

4) After May 1, 2000, a unit without a certificate may be subject to decertification as eligible for city rent assistance funds.

A unit whose owner has failed to obtain a certificate is eligible for rent withholding under the building code in the same manner as is currently provided for units with lead nuisance violations. (Rent withholding does not apply to owner-occupied 2-family dwellings.) The ordinance modifies current rent withholding requirements to provide for proportionality of rent withholding for tenants who remain in the unit and to make rent withholding unavailable when the damage is caused by the tenant.

The ordinance includes common council findings concerning the health dangers of lead-based paint exposure, particularly in young children, the prevalence of such paint in the older, rental residences in the pilot project areas, the high incidence of lead-poisoned children in the pilot project areas, the value of grant funding in reducing lead problems in economically distressed areas and the responsibility of paint manufacturers to assist.

...BODY

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

Part 1. Section 60-55 of the code is created to read:

60-55. Lead-based Paint Hazard Control Permit. 1. Each unit for which lead-based paint hazard control is performed under the residential rental property lead control pilot project shall have a lead-based paint hazard control permit.

2. Whenever a permit issued under sub. 1 expires before completion of the work, lead-based paint hazard control work may not continue until a lead-based paint hazard control permit extension for the unit has been applied for and procured.

3. a. There shall be no fee for a permit issued under sub. 1.

b. A \$50 fee may be charged for a permit extension issued under sub. 2.
(See s. 66-48.)

Part 2. Section 61-16-2 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. All other penalty provisions for violations of s. 66-22 >>and of subchapter 3<< shall be as provided in sub. 1.

a. Violation of any provision of s. 66-22 >>or of subchapter 3<< .

b. Failure to obey any order of the commissioner to conform to any provision of s. 66-22 >>or of subchapter 3<< .

Part 3. Subchapter 3 of chapter 66 of the code is created to read:

SUBCHAPTER 3
RESIDENTIAL RENTAL PROPERTY LEAD-BASED PAINT
HAZARD CONTROL PILOT PROJECT

66-41. Legislative Findings. Based on objective scientific evidence, the common council finds that:

1. A minute amount of lead can cause elevated blood lead levels and irreversible developmental damage to a young child.
2. Deteriorated lead-based painted surfaces are a significant source of the lead which causes elevated blood lead levels in young children. Such surfaces may be directly accessed by the children via hand-to-mouth behavior which results in lead ingestion.
3. Properties built before 1950 are statistically much more likely to contain lead-based paint hazards than buildings constructed more recently.
4. Residential properties are more likely to cause elevated lead blood levels in young children than are non-residential properties.
5. Rental properties are more likely to be inadequately maintained and therefore to be the subject of health department orders and citations. Paint surface deterioration, which results in accessible lead-based paint hazards, is similarly more likely to occur in rental residences than in owner-occupied residential properties and such properties are more likely to be inadequately maintained, particularly in housing with values lower than the city average.
6. Therefore, the existence of lead-based paint hazards in Milwaukee is most common, and presents the most serious risk for vulnerable young children, in rental housing built before 1950.
7. The north side pilot project area is statistically the most likely north side area to present a risk of lead-based paint hazards. The south side pilot project area is statistically the most likely south side area to present a risk of lead-based paint hazards.
 - a. Over 99% of the homes in the pilot project areas were built before 1950.
 - b. The north side pilot project area had a 1997 childhood lead poisoning prevalence rate of 66% and the south side pilot project area had a 1997 childhood lead poisoning rate of 31%. (The national childhood lead poisoning rate is 4.4% and the Milwaukee average is 22%.)
 - c. In the north side pilot project area, 76.5% of housing units are rented, and in the south side pilot project area 75% of the housing units are rented. City-wide, 56% of housing units are rented.
 - d. The average value of one- and 2-family rental housing in Milwaukee is \$51,993. The average rental housing value in the north side pilot project area is \$13,893 and in the south side pilot project area, \$20,605.
8. It is in the public interest for all persons to know whether lead-based paint hazards in a property have been controlled so that renters can make informed housing decisions about the health hazards to which their families may be exposed. A proactive approach to controlling lead-

based paint hazards may prevent children from being irreversibly affected by lead-based paint hazards in such properties and reduce the societal costs of childhood lead poisoning.

9. The pilot project areas are economically distressed neighborhoods of the city, and grant funding is important in helping the city reduce lead-based paint hazards and assist children and other residents of such neighborhoods. The manufacturers of lead paint and pigment have a moral and financial responsibility to help the city, individuals and organizations eliminate the lead hazards created by their products in the city of Milwaukee.

10. A property owner who addresses the problems associated with lead-based paint by bringing property into compliance with this subchapter should not be held liable with respect to a person who develops lead poisoning or lead exposure on the property, but it is appropriate to hold a non-compliant owner responsible for lead poisoning or lead exposure that occurs on the property. The standards of this subchapter and this restriction on owner liability will improve the quality of Milwaukee's rental residential housing stock and should result in greater availability of insurance coverage for lead hazards.

11. The residential rental property lead control pilot project is established to require property owners to control lead-based paint hazards in residential rental properties before children who live and play in those properties are permanently harmed and to evaluate whether the project should be expanded into additional areas of the city in the future.

66-43. Definitions. In this subchapter:

- 1.** ABATEMENT means any activity or set of activities with the intent to permanently remove, encapsulate, enclose or replace lead based paint hazards.
- 2.** CERTIFICATE means a certificate of lead-based paint hazard control issued under s. 66-57.
- 3.** CHILD means any youth under 7 years of age.
- 4.** COMMISSIONER means the commissioner of health or an authorized representative.
- 5.** COMPLIANCE PERIOD means the period preceding May 1, 2000.
- 6.** DEPARTMENT means the health department.
- 7.** DWELLING UNIT means any structure, vacant or occupied, all or part of which is designed for human habitation.
- 8.** ELEVATED BLOOD LEAD LEVEL means a concentration of lead in whole blood at the current level set by the U.S. public health service, center for disease control and prevention.
- 9.** ESSENTIAL MAINTENANCE PRACTICES means the activities described in s. 66-47-4.
- 10.** HEPA VACUUM means a high efficiency particulate air vacuum or similar device capable of removing particles 0.3 microns or greater at 99.97% efficiency.
- 11.** INTERIM CONTROL ACTIVITY means any measure or set of measures designed to temporarily reduce human exposure or likely exposure to a lead-based paint hazard.
- 12.** LEAD-BASED PAINT means any painted or coated surface, having a lead content greater than or equal to .7 mg/cm² as measured by an x-ray fluorescence analyzer, or greater than or equal to .06% lead by weight as determined by laboratory analysis or other department field method.

13. LEAD-BASED PAINT HAZARD means defective or deteriorated lead-based painted surfaces that are damaged due to friction, impact, chipping, peeling, flaking or water or moisture damage, which may reasonably contribute to lead exposure due to lead content, condition or location.

14. LEAD-BASED PAINT HAZARD CONTROL PROJECT means controlling lead-based paint hazards in a unit by using essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5, to repair deteriorated lead-based paint and the cause of the deterioration as provided in a department scope of work.

15. OWNER means any person who alone or jointly or severally with others:

a. Has legal or equitable title to a unit, or

b. Has charge, care or control of a unit as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

16. PILOT PROJECT AREA means all of the following:

a. The north side pilot project is the area enclosed by a boundary running along the center lines of the boundary streets and beginning at the intersection of North 36th Street and West North Avenue, east along West North Avenue to North 32nd Street, south along North 32nd Street to West Lisbon Avenue, west along West Lisbon Avenue to North 34th Street, south along North 34th Street to West Walnut Street, west along West Walnut Street to West Sarnow Street, northwest along West Sarnow Street to West Lisbon Avenue, east along West Lisbon Avenue to North 38th Street, north along North 38th Street to West Brown Street, east along West Brown Street to North 36th Street and north along North 36th Street to the intersection with West North Avenue and the point of beginning.

b. The south side pilot project area is the area enclosed by a boundary running along the center lines of the boundary streets and beginning at the intersection of South 15th Place and West Scott Street, east along West Scott Street to South 15th Street, south along South 15th Street to West Madison Street, east along West Madison Street to South 12th Street, south along South 12th Street to West Lapham Street, west along West Lapham Street to South 15th Place and north along South 15th Place to the intersection with West Scott Street and the point of beginning.

17. STANDARD TREATMENTS means the activities described in s. 66-47-5.

18. UNIT means a residential rental dwelling unit in the pilot project area.

19. UNIT TURNOVER means when a tenant or tenants vacate a unit.

66-45. Certificate of Lead-based Paint Hazard Control Required. 1. Beginning May 1, 2000, an owner of residential rental property that is rented or available for rent and was built before 1950 in the pilot project area shall be required to have a valid certificate of lead-based paint hazard control issued under this subchapter for each such unit, unless the department determines under s. 66-52 that the owner is eligible for funding assistance and no funding assistance is available for the unit. Certification shall be maintained until May 1, 2002.

2. An owner who has a unit that is not rented or available for rent is not required to have a certificate under this subchapter if the owner provides the department with an affidavit that the unit is not rented and the owner does not intend to rent it.

66-47. Lead-based Paint Hazard Control Regulations. 1. No person shall control lead-based paint hazards in a unit except as provided in this subchapter.

2. After receipt of a certificate application, the department shall conduct a risk assessment and develop a scope of work for the project prior to issuing a lead-based paint hazard control permit.

3. All lead-based paint hazard control work shall be conducted in conformance with essential maintenance practices and standard treatments as specified in subs. 4 and 5.

4. Essential maintenance practices shall be performed at each unit turnover, in response to a tenant complaint under s. 66-63 and as ongoing activities required under s. 66-65. Essential maintenance practices shall also serve as work practice standards necessary for compliance with standard treatments in lead based paint hazard control projects. Essential maintenance practices are the following:

a. Visual examination. A visual examination for deteriorating paint shall be made unless the paint is found not to be lead-based paint. Lead-based paint hazards shall be controlled as provided in pars. b to i.

b. Site preparation. b-1. Interior site preparation. b-1-a. Furnishings shall be removed from each room or area as it is prepared for lead-based paint hazard control or covered with plastic at least 6 mils thick and sealed with tape. All furnishings remaining in the reduction area shall be HEPA vacuumed prior to project completion.

b-1-b. All heating, ventilating, air conditioning openings and entrances to a reduction site, with the exception of the entrance used by workers, shall be sealed with plastic at least 6 mils thick and taped to prevent contamination by lead dust or particles. The entrance used by workers shall have 2 layers of 6 mils thick plastic attached at the top edges of the doorway and at opposite sides to form a z-door.

b-1-c. Where lead hazard control activity is in process, interior floors shall be covered with 2 layers of 6 mil plastic. However, the use of 6 mil plastic as an engineering control may vary according to projects and its application and placement is subject to department approval prior to and during the course of a lead based control project.

b-2. Exterior site preparation. b-2-a. Exterior lead hazard control work shall be performed in a manner that will prevent leaded waste from coming into contact with the ground or from entering the interior of the dwelling unit.

b-2-b. All windows and doors of the dwelling unit shall be sealed or kept closed while lead hazard control is being conducted.

b-2-c. Six mil plastic to collect control waste shall be attached to and extend at least 6 feet from the foundation and at the base of the structure being worked on and in all cases adequate to contain any falling debris.

c. Permissible Methods. Permissible methods for the removal of lead-based coatings from all surfaces shall include the use of any of the following: wet scraping, a heat gun (less than 1,100 F), chemical strippers which do not contain methylene chloride and HEPA vacuum assisted electric planers. The affected areas can then be covered with non-lead based primer and paint, encapsulant or enclosure material such as vinyl or aluminum, to include caulking seams and edges and anchoring with mechanical fasteners.

d. Prohibited Methods. The removal of lead-based coatings by sanding, sandblasting, pressure washing, grinding, the use of an open flame torch, or strippers containing methylene chloride, vacuuming with non-HEPA-equipped household or shop vacuums, dry sweeping in areas that are not properly contained and sealed, or any method that allows leaded dust to become airborne, is

prohibited. The department may approve exceptions to these prohibitions, contingent upon the existence of adequate engineering controls to eliminate lead exposure to occupants or workers.

e. Treatment of Interior Surfaces. e-1. Unit interior structures must first be maintained or corrected to structurally sound and sanitary condition in accordance with the standards provided in ss. 275-33 and 34.

e-2. All interior surfaces that are identified as lead based paint hazards shall be treated with methods in accordance with permissible methods, described in par. c, and shall be repaired to have structurally sound and smooth surfaces. Those surfaces must be HEPA vacuumed, washed with a general purpose detergent and then coated, covered or enclosed with a non-lead-based coating, encapsulant or material approved by the commissioner.

f. Treatment of Exterior Surfaces. f-1. Dwelling exterior structures first must be maintained or corrected to a structurally sound, weatherproof and watertight condition in accordance with the standards provided in ss. 275-32 and 34.

f-2. Exterior surfaces that are identified as lead-based paint hazards shall have the deteriorated lead-based surfaces removed in accordance with permissible methods, described in par. c, and shall be repaired to be structurally sound, weatherproof, watertight and smooth surfaces. Exterior surfaces shall then be coated with non-lead-based primer and paint, aluminum, vinyl or steel siding or a covering approved by the commissioner.

g. Treatment of deteriorated window components. Lead-based paint hazards identified on window components shall be treated with standard treatments, as described in sub. 5.

h. Final Cleaning. After the entire lead hazard control process has been completed, a final HEPA vacuum, wash with a general purpose detergent and rinse with clear water of all interior surfaces in the dwelling unit shall be done.

i. Removal of Waste. At the end of the work day, all waste resulting from interior or exterior lead hazard control process shall either be collected, contained or stored in a secure area, or shall be collected, contained and removed from the control site and be disposed of as provided in s. 66-22-11.

5. Standard treatments are lead hazard control methods specified by the department in a scope of work developed by the department for a lead-based paint hazard control project. All standard treatments shall be performed using essential maintenance practices. Standard treatments include the following:

a. Floors having deteriorated lead-based surfaces shall be covered with vinyl tile, vinyl sheet goods, linoleum flooring or other approved materials. Chemical stripping of a floor shall be permissible.

a-1. Varnish or other approved sealants may also be used on floors having deteriorated lead-based surfaces, provided the floors are carpeted or covered in a manner approved of by the commissioner after they are sealed.

a-2. Wood floors having deteriorated lead-based painted surfaces from a varnish, stain, urethane or shellac finish may be treated with a sealant approved by the commissioner.

b. All deteriorated components of a double hung window, including the exterior trough (well), shall be treated as interior surfaces with the exception of exterior casings and the exterior sill. Treatment of deteriorated window components shall require paint abatement, including removal to bare wood, enclosure techniques or component replacement, excluding the exterior

casings and the exterior sill. All bare wood conditions shall be inspected and approved by an inspector prior to the application of primer and paint.

c. Deteriorated lead-based painted surfaces of wells (troughs) shall have all the lead-based surfaces removed to bare wood and then be stabilized with a non-lead-based primer and paint, be replaced with wood not covered with a lead-based surface or be enclosed with vinyl or metal. A trough insert may be used where an operational, intact and complete combination storm/screen window is present. Any exterior window well (trough) surfaces treated for lead hazard reduction shall be smooth and cleanable.

d. The deteriorated surfaces of sash tracks shall either have all lead-based painted surfaces removed to bare wood and then be stabilized with a non-lead-based primer and paint or coating or be stabilized and have vinyl or aluminum double sash track liners installed. Any remaining exposed lead-based surfaces shall be removed to bare wood and then covered with a non-lead-based primer and paint or coating.

e. The deteriorated surfaces of lower and upper sashes shall have all the lead-based painted surfaces removed to bare wood and then covered with non-lead-based primer and paint or coating.

f. Complete window units or individual window components may be replaced with materials free of lead-based surfaces.

g. All unit windows shall have intact storm windows that are in sound working condition and free of lead-based paint hazards.

h. Other interior and exterior surfaces identified with lead-based paint hazards shall be corrected as specified by the department scope of work.

6. a. Lead-based paint hazard control work defined as abatement shall be conducted by state-certified lead supervisors and lead workers approved by the department.

b. Lead-based paint hazard control work defined as interim control activities and maintenance that is conducted in a preventive manner pursuant to this subchapter may be conducted by persons who are not state-certified lead supervisors or lead workers approved by the department. Attendance by such persons at department training classes on lead safe maintenance practices is strongly recommended but not required.

7. It is strongly recommended that interim control activities conducted pursuant to a department scope of work be conducted in unoccupied units at unit turnover.

66-48. Lead-based paint Hazard Control Permit.

1.a. No person shall conduct a lead-based paint hazard control project without obtaining a lead-based paint hazard control permit.

b. A property owner who elects to personally conduct interim control work, as defined by the department scope of work, shall secure a permit prior to beginning this work. A certified lead abatement contractor shall secure a permit prior to conducting any abatement activity.

c. A permit is required for both interim control and abatement activities required to secure a certificate during the compliance period, as defined in s. 66-43-5. A permit is not required for preventive or ongoing maintenance required to maintain certification.

2. Application for a lead-based paint hazard control permit shall be made to the department on forms created and furnished by the department.

3. A project permit may be obtained only after an applicant has applied for a certificate and the department has conducted a risk assessment and developed a scope of work for the project.

4. a. An application for a permit may be denied or granted with conditions if the applicant has, on or after May 1, 1999, been convicted of any violation described in sub. 7.

b. Whenever a permit is denied or granted with conditions under par. a., the commissioner shall so notify the applicant in writing. The notice shall state that the applicant may appeal the decision under s. 66-61 and shall specify how such appeal may be made.

c. Based upon the record of a hearing conducted under s. 66-61, the commissioner shall enforce the decision of the environmental health board.

5. If essential maintenance practices and standard treatments are not followed or complied with, or conditions exist that create a hazardous environment, the commissioner may give written notice to suspend a lead-based paint hazard control 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 department may charge a fee for reissuance of a permit.

6. Whenever a permit will expire before completion of the work, a permit extension shall be applied for and approved prior to expiration of the permit. The department may charge a fee for a permit extension.

7. The following practices shall be considered lead hazard control project violations and violations of this subchapter, and may result in the issuance of a citation for each violation:

a. Conducting lead hazard control projects without a permit, before the effective date of the permit or after the expiration date of the permit.

b. Conducting lead hazard control work defined as abatement with an employe or worker who has not been approved by the department.

c. Conducting lead hazard control work defined as abatement without having a lead supervisor certified by the state on the lead hazard control site when control activities are in progress.

d. Failure to meet performance date criteria set forth on lead hazard control permits.

e. Failure to meet specifications of the standard treatments or equally protective treatments as mutually agreed upon between the owner and the department.

f. Failure to secure the lead hazard control site or post warning signs at all entrances or exits to the lead hazard control area.

g. Failure to provide department approved interior or exterior containment prior to or during lead hazard control projects.

h. Failure to properly decontaminate the areas undergoing lead hazard control by using a HEPA vacuum, washing with a general purpose detergent and rinsing with clear water.

- i. Removal, containment, storage, transport or disposal of lead containing materials in an unsafe manner.
- j. Subcontracting for an activity related to a lead hazard control project prior to final visual examination, clearance dust sampling and approval by the department.
- k. Failure to be in compliance with all applicable local, state and federal laws and regulations, including Wis. Adm. Code chs. HFS 163 and NR 600 to 685, as amended, and federal resource conservation recovery act, environmental protection agency and occupational safety and health agency regulations, as amended.

66-49. Lead Safe Maintenance Training. 1. The department shall offer a training course that instructs attendees in the proper performance of essential maintenance practices, as described in s. 66-47-4.

2. The course shall be provided without charge to the attendees.

66-51. Lead-based Paint Hazard Control During Compliance Period. 1. During the compliance period, an owner shall apply for a certificate, receive a department risk assessment and scope of work, secure a permit and ensure the performance of lead-based paint hazard control for each unit, pursuant to the requirements of this subchapter.

2. a. Lead-based paint hazard control work defined as abatement activity shall be conducted by state-certified lead supervisors and lead workers approved by the department.

b. Lead-based paint hazard control work defined as interim control activities and maintenance that is conducted in a preventive manner pursuant to this subchapter may be conducted by persons who are not state-certified lead supervisors or lead workers approved by the department. Attendance by such persons at department training classes on lead safe maintenance practices is strongly recommended but not required.

3. It is strongly recommended that interim control activities conducted pursuant to a department scope of work be conducted in unoccupied units at unit turnover.

66-52. Funding Assistance. 1. An owner who has applied for a certificate under s. 66-57 during the compliance period shall not be required to have a valid certificate of lead-based paint hazard control as provided in s. 66-45 if the department determines that the owner is eligible for funding assistance under this section but no such funding assistance is available for the owner's project.

2. The department shall provide funding assistance for lead-based paint hazard control in a unit in one of the following ways:

a. After the department determines that lead safe maintenance of all surfaces except windows has been properly performed, a state-certified lead abatement contractor shall perform standard treatments, as described in s. 66-47-5-b to h. The department shall pay the cost of the standard treatments. There shall be no cost to the owner for the standard treatments. The maintenance of non-window surfaces may be conducted by persons who are not state-certified lead supervisors or lead workers approved by the department. Attendance by such persons at department training classes on lead safe maintenance practices is strongly recommended but not required. All such work shall be performed in accordance with essential maintenance practices.

b. A state-certified lead abatement contractor shall perform the lead-based paint hazard control work according to the scope of work. The owner shall pay 50 percent of the cost after the work is completed and the department shall pay 50 percent of the cost after the owner has made

payment, except that the department's total payment for work on a property shall not exceed 15 percent of the assessed value of the property.

c. An owner who is a state-certified lead abatement supervisor or the owner's employees who are state-certified workers, shall perform the lead-based paint hazard control work according to the scope of work. After the work is completed, the department shall pay to the owner 50 percent of the actual cost of labor and material, except that the department's total payment for work on a property shall not exceed 15 percent of the assessed value of the property.

3. a. An owner is not eligible for payment under sub. 2 unless he or she has applied for a permit, the department has performed a risk assessment and prepared a scope of work for the project and the completed work has been inspected and approved by the department. All work for which payment is made under sub. 2 shall be performed under a permit issued by the department.

b. An owner is not eligible for payment under sub. 2 if the property has any of the following:

b-1. Unpaid, overdue property taxes.

b-2. An unpaid, overdue fine or forfeiture related to the property.

b-3. An order issued against the property by the department or the department of neighborhood services that has not been timely complied with.

4. a. An owner may select the contractor for work under sub. 2-a or b or may waive that right, in which case the department shall select the contractor.

b. Whenever an owner waives his or her right to select a contractor under sub. 2-b, the owner shall have the right to reject a contractor's bid. An owner who rejects a contractor's bid under sub. 2-b shall have the lead-based paint hazard control work performed under sub. 2-a or c.

c. An owner shall assist the contractor in getting access to units on which work is performed.

5. Whenever the department selects a contractor, the department shall assign and supervise the work and secure a lien waiver from the contractor.

66-53. Risk Assessments and Reinspections by the Department. 1. Subject to the provisions of s. 66-71-1 and 2, the department shall perform a risk assessment or reinspection on a unit for lead-based paint hazards whenever any of the following occur:

a. An application is made for a certificate for the unit.

b. Completion of the lead hazard control work for which a permit has been issued.

c. A unit owner requests a risk assessment or reinspection.

d. An existing certificate is about to expire.

e. The department has reason to believe or has credible information that a lead-based paint hazard may be present in a unit.

2. Each risk assessment or reinspection shall consist of the procedures specified by the department in protocols.

3. The department shall determine whether lead-based paint hazards in a unit are controlled in compliance with essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5.

4. The department shall ensure that department staff persons who are qualified to perform unit lead-based paint hazard risk assessments and reinspections are available during all ordinary office hours and at such other times as the department determines to be appropriate.

5. All department risk assessments and reinspections under this section shall be performed without cost to tenants or owners.

66-55. Lead-based Paint Hazards That Are Not Controlled. 1. Whenever the department, following a reinspection under s. 66-53, determines that lead-based paint hazards in a unit have not been controlled in compliance with essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5, the department shall notify the owner, the permit applicant, or both, that lead-based paint hazards have not been controlled and the corrective action required.

2. Whenever the department finds that lead-based paint hazards in a unit have not been controlled in compliance with essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5, the department shall suspend any certificate for that unit and shall not reinstate the certificate until the department determines, in a reinspection under s. 66-53, that lead-based paint hazards have been controlled.

3. Whenever the department finds that lead-based paint hazards in a unit have not been controlled under sub. 1 or suspends a certificate under sub. 2, the department shall send a written notice to the owner, the permit applicant, or both, specifying the action taken, the findings on which the action is based and corrective action required. The notice shall state that the owner has a right to appeal the department's action as provided in s. 66-61.

4. Whenever an owner has not remedied deficiencies described in a notice under sub. 1, the department may issue an order to the owner to reduce a lead-based paint hazard, under s. 66-22.

66-57. Certificate Application and Issuance. 1. An owner who seeks a certificate shall submit an application to the department on a form prepared by the department.

2. The department shall issue a certificate whenever the department determines, after a risk assessment or reinspection under s. 66-53, that lead-based paint hazards in a unit have been controlled in compliance with essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5. The department shall determine the contents of the certificate.

3. a. Some methods of lead-based paint hazard control deteriorate with the passage of time and eventually are no longer effective, causing a recurrence of the lead-based paint hazard. Pursuant to par. b and the schedule established under s. 66-59-1-b, the department shall set an expiration date for each certificate which is based on the length of time after hazard control when there is a scientifically significant likelihood of recurrence of the lead-based paint hazard, the length of time being dependent on the method of hazard control. When more than one method of lead-based paint hazard control has been used in a unit, the department shall set an expiration date based on the method with the shortest reinspection term in the reinspection schedule. The department may provide that no reinspection is required for a method of lead-based paint hazard control that completely abates all lead-based paint in a unit.

b. The department shall set no expiration date later than May 1, 2002, unless this subchapter is in effect after that date. If this subchapter is in effect after that date, the hazard control of any window that has had standard treatments shall be considered not to expire, because all lead-based paint has been abated on that window. There shall be no departmental requirement to reinspect such windows.

4. a. The department shall issue a renewal certificate whenever the department determines, after a reinspection under s. 66-53, that lead-based paint hazards are controlled in the unit. The department shall issue a renewal certificate in the same manner as an original certificate, but a renewal certificate may be issued for a different period of time than an original certificate or any prior renewal certificate, based on the reinspection schedule established under s. 66-59.

b. Whenever the department denies a new or renewal certificate under this section because the department finds that lead-based paint hazards in a unit have not been controlled in compliance with essential maintenance practices and standard treatments, as described in s. 66-47-4 and 5, the department shall send a written notice to the owner specifying the action taken, the findings on which the action is based and corrective action needed. The notice shall state that the owner has a right to appeal the department's action as provided in s. 66-61.

5. The department shall maintain a file of certificates in a form that is readily accessible to the public.

66-58. Liability for Lead Poisoning or Lead Exposure; Rebuttable Presumptions. 1. Except as provided in sub. 2, an owner of a unit and the owner's employees and agents are rebuttably presumed not liable for damages for lead poisoning or lead exposure of a person who resides in, frequents or has visited the unit if, at the time the lead poisoning or lead exposure occurred, a certificate was in effect for the unit and essential maintenance practices have been performed.

2. The liability restriction in sub. 1 does not apply if any of the following occurred:

a. The lead poisoning or lead exposure resulted from a lead-based paint hazard created by the owner or the owner's employees or agents.

b. The owner or the owner's employee or agent committed fraud to obtain the certificate.

c. The owner or the owner's employee or agent created a lead-based paint hazard during renovation, remodeling, maintenance or repair after receiving the certificate.

d. The owner or the owner's employee or agent failed to respond in a timely manner to notification by the department that a lead-based paint hazard has recurred.

e. The lead poisoning or lead exposure occurred because of a source in the unit other than lead-based paint.

3. If a person who has lead poisoning or lead exposure resides in or frequents a unit that, at the time the lead poisoning or lead exposure occurred, was required to have a certificate and did not have a certificate in effect for the unit, there is a rebuttable presumption that the lead poisoning or exposure occurred because of a lead-based paint hazard in the unit.

66-59. Rules and Standards. 1. The department shall establish specific, objective rules and standards necessary to implement the provisions of this subchapter. Such rules and standards may include examples and other explanatory devices to clarify applicable requirements for persons subject to, or otherwise affected by, the rules and standards. Such rules and standards shall specifically include, but not be limited to, rules and standards providing the following:

a. The standards used in a risk assessment or reinspection under s. 66-53 to identify and specify methods for control of lead-based paint hazards and to issue or renew a certificate.

b. A lead-based paint hazard control reinspection schedule under s. 66-57, which shall be based on the length of time after hazard control when there is a scientifically significant likelihood of recurrence of the lead-based paint hazard because some methods of lead-based paint hazard control deteriorate with the passage of time and eventually are no longer effective, causing a recurrence of the lead-based paint hazard. The schedule may provide that no reinspection is required for a method of lead-based paint hazard control that completely abates all lead-based paint in a unit. Standard treatments for a window is a method of lead-based paint hazard control that completely abates all lead-based paint on that window, and no reinspection shall be required for a window on which standard treatments have been performed.

2. The department shall make all rules and standards established under this section available upon request without charge at the department and shall furnish a copy of all such rules and standards to the legislative reference bureau.

66-61. Appeals to Environmental Health Board. 1. A person who is aggrieved by an action taken by the commissioner or the department under this subchapter may appeal the action to the environmental health board as provided in this section.

2. A person who seeks to appeal an action of the department or the commissioner shall file a written appeal with the commissioner within 5 working days after the owner has received written notice of the action being appealed. The appeal shall state with specificity the reason that the appellant believes the action was taken in error.

3. The board shall hold a due process hearing on each appeal within 10 working days of receipt of the written appeal.

4. The board shall serve the appellant with written notice of the hearing. The notice shall be served so that the appellant has at least 5 days' notice of the hearing. The hearing notice shall contain:

a. The date, time and place of the hearing.

b. A statement that an opportunity will be given to the appellant to challenge the action, present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c. A statement that the appellant may be represented by an attorney of the appellant's choice at the appellant's expense, if the appellant so wishes.

d. At the hearing, the board chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the appellant admits notice. The chair shall advise the appellant that the appellant has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the appellant may simply make a statement to the board.

5. A due process hearing shall be conducted in the following manner:

a. All witnesses will be sworn in.

b. The department or commissioner shall proceed first.

c. The appellant shall be permitted an opportunity to cross-examine.

d. After the conclusion of the evidence of the department or commissioner, the appellant shall be permitted to present the appellant's own witnesses, subject to cross-examination.

e. Board members may ask questions of witnesses.

f. Both the department or commissioner and the appellant shall be permitted a brief summary statement.

6. The recommendations of the board regarding the appellant must be based on evidence presented at the hearing.

7. The board may affirm, reverse or modify the original action of the department or commissioner. The board may make a decision immediately following the hearing or at a later date. The board shall provide written notice of its decision to the commissioner and the appellant.

8. The appeal provisions of this section do not apply to citations issued for violations of this subchapter or of orders issued pursuant to this subchapter which are appealable through the judicial process.

66-63. Tenant Complaint. 1. A tenant of a unit that has a valid certificate may file a written complaint with the owner or his or her designee whenever the tenant believes there is a suspected lead-based paint hazard in a unit. The tenant shall deliver the complaint to the owner or his or her designee either face to face or by first class mail, and the tenant shall provide the department with a copy of the complaint within a reasonable time after it is delivered to the owner.

2. The owner or owner's designee shall respond to a complaint as provided under s. 66-65-1.

3. A tenant may file a written complaint with the department whenever an owner fails to respond to a tenant complaint under sub. 1.

66-65. Ongoing Lead-based Paint Hazard Visual Examination and Maintenance. 1. An owner shall perform essential maintenance practices, as described in s. 66-47-4, to secure and maintain certification. At a minimum, an owner shall perform essential maintenance practices whenever there is a unit turnover and in response to tenant notification of a suspected lead-based paint hazard in a unit.

2. An owner shall promptly control any lead-based paint hazards found under sub. 1. All lead-based paint hazard control work shall be performed in conformance with s. 66-47.

66-67. Notice to Tenants. 1. The department shall prepare a printed brochure that informs a tenant how to recognize lead-based paint hazards. The brochure shall inform a tenant how to report suspected lead-based paint hazards to the owner under s. 66-63-1 and how to file a suspected lead-based paint hazard complaint with the department under s. 66-63-3. The brochure shall state that s. 66-69 prohibits retaliation by an owner against a tenant who files a suspected lead-based paint hazard complaint with an owner or the department.

2. The department shall provide brochures to owners and tenants upon request without charge.

3. An owner shall provide a tenant with the brochure described in sub. 1 when a tenant first occupies a unit.

66-69. Retaliation Prohibited. An owner shall not take any retaliatory action toward a tenant who reports a suspected lead-based paint hazard to the owner or the department under s. 66-63. It shall be a rebuttable presumption that any attempt by the owner to raise rents unreasonably, curtail services or evict a tenant within 6 months after the tenant has reported a lead hazard to the department or the owner constitutes a retaliatory action in violation of this section, except that nonpayment of rent or commission of waste upon the premises by the tenant shall be a basis for eviction.

66-71. Department Enforcement and Remediation. 1. The department may conduct a risk assessment of a unit or premises which the department has reason to believe has not complied with the lead-based paint hazard control provisions of this subchapter.

2. If the department is refused admittance to any unit or premises to conduct a risk assessment, the commissioner may apply for and obtain a special inspection warrant pursuant to ss. 66.122 and 66.123, Wis Stats., to gain access.

3. If the department determines that a lead-based paint hazard exists in a unit, the department may:

a. Notify the tenant and the owner that lead-based paint hazards are present and require correction.

b. Issue orders to reduce those lead-based paint hazards as provided in s. 66-22.

4. a. If orders are not complied with by the expiration date, the commissioner may notify the owner of the commissioner's intention to summarily reduce the lead-based paint hazard and levy a special charge against the property for the cost thereof, not to exceed 40% of the assessed market value of the property. The written notice of the commissioner's intention shall state that the owner may file with the city clerk a written appeal of the commissioner's proposed action within 5 working days after the owner has received notice of the commissioner's intended action.

b. The city clerk shall transmit each appeal to the appropriate common council committee, which shall hold a due process hearing on each appeal at least 10 working days after receipt of the written appeal by the city clerk and no later than the date of the first regularly scheduled committee meeting held not less than 10 working days after such receipt.

c. The city clerk shall serve the owner with written notice of the hearing. The notice shall be served so that the owner has at least 5 days' notice of the hearing. The hearing notice shall contain:

c-1. The date, time and place of the hearing.

c-2. A statement specifying the action that the commissioner intends to take.

c-3. A statement that an opportunity will be given to the owner to challenge the action, present witnesses under oath and to confront and cross-examine opposing witnesses under oath.

c-4. A statement that the owner may be represented by an attorney of the owner's choice at the owner's expense, if the owner so wishes.

d. At the hearing, the committee chair shall open the meeting by stating that a notice was sent and read the notice into the record unless the owner admits notice. The chair shall advise the owner that the owner has an option to proceed with a due process hearing, represented by counsel, with all testimony both direct and cross-examination under oath, or that the owner may simply make a statement to the committee.

e. A due process hearing shall be conducted in the following manner:

e-1. All witnesses will be sworn in.

e-2. The commissioner shall proceed first.

e-3. The owner shall be permitted an opportunity to cross-examine.

e-4. After the conclusion of the evidence of the commissioner, the owner shall be permitted to present the owner's own witnesses, subject to cross-examination.

e-5. Committee members may ask questions of witnesses.

e-6. Both the commissioner and the owner shall be permitted a brief summary statement.

f. The recommendations of the committee regarding the owner must be based on evidence presented at the hearing.

g. The committee may affirm, reverse or modify the original action of the commissioner. The committee may make a decision immediately following the hearing or at a later date. The committee shall provide written notice of its decision to the commissioner and the owner. The committee shall forward its recommendation in writing to the common council for vote at the next meeting at which such matter will be considered.

h. The owner may file a written objection to the committee recommendation and request the common council to not approve the committee recommendation. The owner shall have the opportunity to present arguments in writing supporting the objection to the common council. The objection shall be filed with the city clerk at least 2 days prior to the date set for hearing by the common council.

h-1. The owner shall be given 5 days' notice of the date set for hearing by the common council.

h-2. At the meeting of the common council, the chair, in his or her discretion, may allow oral argument by an owner who has presented written objections to the recommendations of the appropriate common council committee. The city attorney shall also be permitted a statement. Oral arguments shall not exceed 5 minutes on behalf of any party.

h-3. Prior to voting on the committee's recommendation, all members of the council who are present shall signify that they have read the recommendation and report of the committee and any objections that have been filed thereto. If they have not, the chair shall allocate time for the members to do so. If they have read the report and recommendation, then a roll call vote shall be taken as to whether or not the recommendation of the committee shall be accepted. The owner shall be provided with written notice of the results of the vote taken by the common council.

i. If the common council approves the commissioner's intention to summarily control the lead-based paint hazard, the commissioner shall apply for a special warrant pursuant to ss. 66.122 and 66.123, Wis. Stats., to gain access to the premises to perform lead-based paint hazard control work, unless the owner permits such access. After obtaining a warrant authorizing such entry, the commissioner shall have the lead-based paint hazard control work performed in the affected unit or units and shall assess the cost of such action, not to exceed 40% of the assessed market value of the property, as a special tax upon the property.

j. In addition to the principal remaining unpaid, interest shall be added at a rate calculated pursuant to s. 115-42-8-b-3, commencing after the billing date of the invoice. A 45-day grace period for payment will be granted from the date of billing and if not paid within such period, interest shall be charged on a restorative basis to the date of billing.

k. After being placed on the tax roll, such amounts of special charges shall be paid within the time allowed for the payment of general property taxes. If the taxpayer fails to pay a special charge within the time allowed for payment, it shall become delinquent and be treated in the same manner and subject to the same laws as a delinquent property tax.

66-73. Penalties. 1. Beginning May 1, 2000, a unit which does not have a valid certificate shall be subject to decertification for eligibility for rent assistance funds from the city for that unit.

2. A person who violates any provision of this subchapter is subject to a Class J penalty as provided in s. 61-16.

3. Non-compliance of orders issued under this subchapter may result in the issuance of citations, as provided in s. 50-25.

4. If a person continues in violation of an order, the person shall be liable for further prosecution, conviction and punishment upon the same order without the necessity of the commissioner issuing a new order.

66-74. Emergency Orders. 1. a. Inspection. The commissioner may inspect any unit which is reported or found to be unsafe or a threat to human health.

b. Order to Discontinue Occupancy or Use. The commissioner may issue an order to the owner of any unit, or on the person occupying that unit, to discontinue such occupancy or use if the unit is, in the judgment of the commissioner, in an unsafe condition or a threat to human health. An order to discontinue occupancy or use shall identify the code violation that causes the unit to be unsafe or a threat to human health.

c. Closing of Unsafe or Unfit Units. If the owner or occupant of a unit, which the commissioner finds to be unsafe or a threat to human health, fails or refuses to discontinue the occupancy or use of that unit within the time prescribed by the commissioner, the commissioner may commence and prosecute an action in circuit court for an order of the court requiring any person occupying a unit whose occupancy has been prohibited under this section to vacate the premises.

d. Order to Keep Vacant. Whenever the commissioner finds a vacant unit to be unsafe or a threat to human health, the commissioner may issue an order to the owner of the premises to keep the unit vacant, and shall only permit occupancy when the unit is in conformance with essential maintenance practices and standard treatments so as not to pose a threat to the health and safety of the occupants, and protect the occupants from the environment.

2. SERVICE OF ORDERS AND PLACARDS. a. In all cases regulated by this subsection, the commissioner shall serve the order by both mailing or delivering the order in accordance with par. b and by posting a copy of the order in a conspicuous place on the premises.

b. b-1. An order shall be served upon the owner, operator, occupant or agent of the owner. The order shall be deemed to be properly served if served either by first class mail to the person's last known address or by delivering a copy to the person. If the person cannot be located, the order shall be deemed to be properly served when a copy of it is left at the person's usual place of abode in the presence of some competent member of the family at least 14 years of age or a competent adult currently residing there and who shall be informed of the contents of the order. If the owner has not filed with the department a current address or the name and address of the person empowered to receive service of process, as required in s. 200-51.5, it shall be deemed sufficient notice to the owner if a copy of the order is sent by first class mail to the last known address of the owner as identified by the records of the commissioner of assessments or the commissioner of neighborhood services.

b-2. When service has been completed as prescribed in subd. 1, the order shall be effective as to anyone having an interest in the premises whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner of the premises as long as the violation exists and there remains a city record of the order in a public file maintained by the commissioner.

c. Placarding of Unfit Units. If a unit is a threat to human health, occupancy or use but is not in danger of structural collapse the commissioner shall post a placard on the premises containing the following words: "This Dwelling Unit Cannot Be Used For Human Habitation, Occupancy or Use." The commissioner shall prohibit the use of the unit for human habitation by requiring the owner to vacate and prohibit further occupancy or use until the necessary lead hazard control work has been conducted.

d. Placarding of Illegally Occupied or Unsafe Units. In all cases regarding illegal occupancy or use or unsafe units, the commissioner may post on the premises a notice to the effect that the unit is unsafe, a threat to human health or that the unit is illegally occupied or used and shall be vacated at once as ordered.

e. Orders and placards shall remain effective until the required lead hazard control work has been completed and the department has reinspected and approved the work. No person may remove a posted order or placard, nor occupy, use or enter a posted or placarded unit, except for the purpose of making the required repairs or alterations, without written permission from the commissioner.

66-75. Report. The department shall submit to the common council a report on the residential rental property lead-based paint hazard control pilot project by May 1, 2001. To the extent the data is available, the report shall describe compliance with the pilot project requirements including compliance achieved under the pilot project. The report shall evaluate the pilot project's effects on the lead levels of children, the cost of lead hazard control, property disposition of non-compliant units, building code violations, availability of increased lead-based paint hazard control jobs, availability of rental housing and rental occupancy rates, rent increases or decreases, rental property ownership changes, tax delinquency of rental properties, city expenditures for the pilot project and any other factors that the common council or the department determines to be significant.

Part 4. Section 200-22-1-a of the code is repealed and recreated to read:

200-22. Rent Withholding. 1. NONCOMPLIANCE. a. Deposit in Escrow. Notwithstanding any other provision of law or any agreement, whether oral or written, if an owner of real property, except rooming houses licensed under s. 275-20, or owner-occupied two-family dwellings, fails or neglects to comply with an order of the commissioner to correct a violation of this code, or an order of the commissioner of health to comply with ss. 66-20 to 73 upon the expiration of the order to correct those violations, and irrespective of any extensions granted by the commissioner, the tenant of the premises is authorized as of that date to deposit rental payments into an escrow account designated by the commissioner as provided in this section. This section is inapplicable if the damage or condition on which the order is based is caused by negligence or improper use by the tenant.

a-1. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. If the tenant justifiably moves out under this section, the tenant may deposit rental payments into an escrow account after the premises become untenable and the landlord must refund any rent paid in advance apportioned to the period after the premises become untenable.

a-2. It shall be an affirmative defense to a rent withholding under this section to show that:

a-2-a. The damage or condition on which the violation is based is caused by negligence or improper use by the tenant.

a-2-b. The amount of withheld rent has not been properly proportioned as required under subd. 1.

a-3. The tenant may commence rental deposits into the escrow account after the orders are past due, provided that payment is made prior to expiration of a 5-day quit or- pay notice or service of a 14-day termination notice given by the lessor under ch. 704, Wis. Stats. The owner shall be notified of rent withholding authorization by the commissioner by first class mail within 5 days.

Part 5. This ordinance takes effect on May 1, 1999.

Part 6. This ordinance shall be null and void after May 1, 2002.

..LRB:

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..CATT:

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

..ZDPT:

..DFTR:

97520-16
CW
2/26/99