

## Frequently Asked Questions for City of Cleveland Lead Safe Certificate Inspections and Processes

November 26, 2024

### 1. How can someone apply for a Lead Safe Certificate?

Once the owner of a rental property built prior to 1978 obtains a Lead Risk Assessment, they may apply for the Lead Safe Certificate or a 20-year exemption. Applications can be submitted through the [Accela Portal](#).

### 2. What changes have resulted from the Mayor's Executive Order related to the Lead Safe Certificate program?

Mayor Bibb signed an [Executive Order](#) 2024-03 on October 14, 2024 acknowledging that the city needs to do more to protect children from lead poisoning, recognizing that the structure of the lead safe certificate program has not resulted in a decrease in lead poisonings, and focusing administrative procedures on the Lead Safe Certificate Law standard requiring evidence that lead hazards were not identified in a unit for a certificate to be issued. It also noted that there have been 11 lead poisoned children living in properties with a recent Lead Safe Certification, where the source of the poisoning was peeling paint in the home. The executive order directs staff to make certain changes in process with the goal of reducing lead poisoning rates in Cleveland.

Related to the Lead Safe Certificate program, this means that starting October 18, 2024, the city started to require lead risk assessments instead of allowing clearance exams to initiate a lead safe certificate. The reason that lead risk assessments are necessary to initiate compliance with the Lead Safe Certificate Law is that the Law requires the City to issue a Certificate only upon a demonstration that "lead hazards were not identified in a unit." Post-abatement work clearance examinations determine "whether lead hazards have been controlled." Risk assessments determine the "existence, nature and severity" of lead hazards. Since the only method of determining whether lead hazards were properly identified in the unit is a risk assessment, and poisonings have occurred in units certified as lead safe after a clearance examination, the City may only issue certificates after an owner has both identified and remediated identified lead hazards.

A Lead Risk Assessment may result in lead hazards being identified, which then requires remediation. The Risk Assessment should include Form 5.7 of the HUD Guidelines or its

equivalent that lists “options for corrective action” for each lead hazard. A Risk Assessment that either (1) identifies lead hazards that are sufficiently controlled or (2) identifies lead hazards and necessary corrective actions should be submitted to the City’s Department of Building and Housing through either the [Accela platform](#).

After administrative and technical review, a Risk Assessment that identifies lead hazards that are sufficiently controlled will result in the issuance of a 2-year Certificate. A Risk Assessment that identifies hazards and necessary corrective actions will result in the issuance of a citation requiring the owner to demonstrate progress toward the corrective actions described in Form 5.7 (or its equivalent) every 90 days. The citation will provide a form to report on remediation progress. If the owner of the residential rental unit(s) fails to demonstrate progress on the remediation options in the risk assessment and subject to the citation every 90 days, the City may assess fines, penalties, and prosecution for failure to comply with the City’s Lead Safe Certificate Law. The City also has the authority to issue an order to vacate for failure to comply and/or based on the conditions. The resulting Risk Assessment and compliance status will be publicly available in a redacted form and provided to the tenant in unredacted form with instructions on protecting children in the home as the property is addressed for lead hazards.

### **3. What happens if the Risk Assessment recommends corrective action?**

The owner should submit administratively and technically complete Risk Assessments regardless of whether corrective action is necessary or not. Submission of an administratively and technically complete Risk Assessment is the only way to obtain time to comply with recommended corrective actions. If a Risk Assessment recommends corrective actions or a remediation plan, the Department of Building and Housing will issue a citation that requires compliance with the remediation plan within 90 days. Demonstrated progress on corrective actions recommended by the Risk Assessment will be required within 90 days to avoid penalties or any other enforcement for noncompliance with the Lead Safe Certificate Law. Depending on demonstrated progress provided on a form issued with the citation to the Department of Building and Housing, it is within the discretion of the Department to issue additional time to comply at 90-day intervals or to pursue enforcement action.

### **4. Can the 90 day compliance timeframe be used for administrative or technical deficiencies in the Risk Assessment?**

No.

### **5. What does “demonstrated progress” entail?**

While not an exhaustive list, the following are examples of demonstrated progress: applications for a grant or financing to address the corrective actions in the remediation plan; contract with an

RRP or licensed abatement contractor, as appropriate;<sup>1</sup> and documentation of completion of a corrective action(s).

## **6. Is a full lead paint examination required for each property?**

Only owners seeking a 20-year exemption from the lead safe certificate requirement need to conduct a full Lead Inspection and Risk Assessment (LIRA). For those seeking a 2-year certificate, a risk assessment that assumes the presence of lead paint on all painted surfaces is required. The lead risk assessor should follow HUD Guidelines for the [lead risk assessment](#) and can find additional information on the [City's](#) and the [Ohio Department of Health's](#) websites.

## **7. What if a Risk Assessment finds that full abatement is the necessary corrective action?**

The City is aware of the prospect of full abatement being required by a Risk Assessment. The City is also aware that full abatement is expensive. Owners are encouraged, after application to the Lead Safe Certificate program, to utilize the opportunity for demonstrating continuous progress toward the corrective actions described in the Risk Assessment of their property. The City is committed to applying its available grant funds to properties and circumstances that qualify for and achieve abatement according to the parameters of those funding sources. In addition, other grant, [tax credit](#), and financing opportunities should be pursued to achieve compliance.

## **8. What do these changes in evaluating lead hazards mean for clearance technicians?**

The circumstances in which clearance technicians may clear a property are regulated by the Ohio Department of Health. The City is now only accepting risk assessments or full clearances after remediation that only involves abatement as inspections that qualify for a Lead Safe Certificate. A risk assessor license is needed to perform risk assessments. If non-abatement activities follow a lead risk assessment, then a clearance technician may perform the subsequent clearance in accordance with FAQ #24, below.

Moving forward, a clearance technician has options to continue working in the City's Lead Safe Certificate program by:

- obtaining a risk assessor license—training is free until June of 2025 from the State of Ohio;
- providing a clearance following non-abatement activities.

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<sup>1</sup> Note that the City does not regulate or enforce licensure requirements for contractors, but an example of instances where RRP versus abatement contractors are appropriate is provided in the appendices to this FAQ document.

**9. Are Risk Assessments/Paint Inspections with an XRF still acceptable for a 20-year lead Certificate?**

Yes, this is still a requirement for a 20-year exemption from certification.

**10. Are landlords still protected while they are awaiting funding from these city/county funded programs?**

The city is committed to working with landlords to achieve compliance. We encourage landlords to communicate with city staff to update us on steps being taken to achieve compliance. Property owners who do not communicate with the city and are not actively working toward compliance will be vulnerable to enforcement action. Risk assessments that are administratively or technically deficient remain vulnerable to enforcement action.

**11. How can I obtain an XRF gun?**

They are available for rental and/or purchase through various manufacturers. Please contact the manufacturers for the most up-to-date information. There are several types.

**12. Are there any changes in the risk assessment report requirements? If so, what are those changes?**

The City is using the same risk assessment report as we used previously with the addition of the required Table identifying hazards and necessary corrective actions.

**13. One of the meetings mentioned fines/penalties for landlords not submitting a risk assessment. Do we know what those penalties would look like now to educate landlords?**

Civil tickets of \$200 will be issued as a first enforcement action for not having a valid lead safe certificate. Civil tickets can be assessed to the property tax duplicate if they are not paid. The City may also file a minor misdemeanor, or first-degree misdemeanor complaint in Housing Court.

**14. What if the property is in very good shape and no work needs to be done except for the routine cleaning? Do we complete the clearance only or do we need to still do risk assessment?**

After finding lead poisonings in units that were cleared and certified lead safe and subsequently investigated to find peeling paint as the cause of the poisoning, the City can only make a determination that "lead hazards were not identified in the unit" pursuant to Cleveland City Code

section 365.04(b) if a lead risk assessment makes a determination and report on the existence, nature, severity, and location of lead hazards in a residential unit.” A clearance examination does not determine the existence of lead hazards, but only provides a determination of whether lead hazards have been sufficiently controlled at the time of testing. A risk assessment is needed to comply with the Lead Safe Certificate Law. If the risk assessment shows no findings and passing dust samples, a two-year lead safe certificate will be issued.

**15. Is the remediation form a separate document from the risk assessment?**

There is a table, Form 5.7 in the HUD Guidelines or its equivalent, in the risk assessment report that will serve as the remediation plan.

**16. Can the risk assessor also clear the property after remediation, or does the owner have to hire a clearance tech?**

The risk assessor’s license gives them the authority to do clearances as a general matter, but pursuant to the City’s Code in section 365.04(f): “[a]ny clearance technician, lead risk assessor or lead inspector who performs a clearance examination or lead risk assessment for purposes [of obtaining a Lead Safe Certificate or exemption] shall not be:...(4) a person who has been authorized by the owner to...maintain the owner’s residential rental unit or units on the owner’s behalf or (5) a person who has a financial interest in the laboratory results of dust sampling or testing, or in the determination of whether lead hazards are identified in the owner’s residential rental unit or units.”

**17. Are paint chip samples required to identify lead hazards as a part of the new process?**

No. A full paint inspection identifying all painted surfaces as lead or not is only required for those wishing to acquire a 20-year lead safe certificate.

**18. How would we properly identify lead-based paint on surfaces?**

Currently for the 2-year certificate, the risk assessor will be looking for deteriorated paint on all painted surfaces, interior and exterior, making the assumption that lead paint is always present. Pursuant to the City’s Lead Safe Certification Law, a “lead risk assessment” is “an on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit including information gathering from the unit, current owner’s knowledge regarding the age and painting history of the unit, and occupancy by children under six (6) years of age, visual inspection, limited wipe sampling or other environmental sampling techniques, and any other activity as may be appropriate.”

We will no longer accept just clearance examinations after October 18<sup>th</sup> unless the clearance is performed after abatement activities are performed. Clearances that were performed before October 18, 2024 will be accepted and processed.

**19. If the initial inspection was done before this date, but labs have not been sent out does this still fall under the city's guidelines and is acceptable?**

If initial inspections were conducted prior to October 18, 2024, a Clearance Technician or Risk Assessor may submit a clearance examination to apply for the Lead-Safe Certificate.

**20. What if the units tested prior to October 18, 2024 need re-testing?**

Please retest using the protocols in existence prior to October 18, 2024.

**21. Will it still go by the initial clearance date?**

Yes. It will go by the date the project of the visual survey or notice to proceed by the Landlord. The lead team will be looking to the lab report for the date that the samples were collected. The collection date and the date of the report must match. Any report /collection date after 10/18/2024 will be denied. Inspections done before that date that have failed sample results, will be able to retest the property to achieve clearance. The follow-up will be accepted.

**22. What is the link to the guidance and other documents?**

Our website contains helpful information and links, including a guidance document for lead workers and a sample risk assessment. Visit: <https://www.clevelandohio.gov/city-hall/departments/building-housing/divisions/records-administration/lead-safe-certification>.

**23. Are soil samples required for every inspection?**

Bare soil shall be tested when it is noted on the property. When bare soil is noted, soil samples are required. See [ODH FAQ](#), which is posted on our website for more details.

**24. What type of repairs can be done by an RRP contractor and which require an abatement contractor?**

The Ohio Department of Health, not the City of Cleveland, regulates the type of contractor that may be used for each type of repair.

The Ohio Department of Health has provided the following information related to acceptable use of contractors related to the City of Cleveland’s lead regulation efforts:

Hazard control following a Risk Assessment	US EPA Certified Renovation Firm	ODH Licensed Abatement Contractor	Clearance
No hazards identified by risk assessor	Permitted	Permitted	Clearance Technician, Inspector, or Risk Assessor
Interim Controls only	Permitted	Permitted	Clearance Technician, Inspector, or Risk Assessor
Interim Controls followed by Lead Abatement or Lead Abatement followed by Interim Controls	See Below <sup>2</sup>	Required	Inspector or Risk Assessor
Lead Abatement	Not permitted	Required	Inspector or Risk Assessor

**Interim controls** mean a set of measures designed to temporarily reduce human exposure or likely human exposure to lead hazards. Interim controls include specialized cleaning, repairs, painting, temporary containment, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs.

**Lead abatement** means a measure or a set of measures, designed for the single purpose of permanently eliminating lead hazards. Lead abatement includes all the following:

- Removal of lead-based paint and lead-contaminated dust. This includes stripping or scraping paint from the surface and repainting.
- Permanent enclosure or encapsulation of lead-based paint. Examples of enclosure are installation of drywall over lead coated surfaces or wrapping and siding exterior lead painted surfaces. Encapsulation is the application of an ODH approved liquid coating to seal lead coated surfaces.

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<sup>2</sup> **Lead Abatement with some interim controls:** Renovation, Repair and Painting (RRP) firms are permitted to conduct Interim Controls on projects where Lead Abatement has been or will be performed. Interim Control work is not permitted by unlicensed individuals (including US EPA Certified RRP firms or renovators if it disturbs the surfaces to be abated or in an active Lead Abatement work area. Unlicensed individuals are not permitted in Lead Abatement work areas until a passing clearance has been obtained.

- Replacement of surfaces or fixtures painted with lead-based paint such as windows, door and trim work.
- Removal or permanent covering of lead-contaminated soil.
- Preparation, cleanup, and disposal activities associated with lead abatement.

**Note:** Only an ODH licensed lead abatement contractor can perform interim controls and lead hazard abatement simultaneously.

**RRP info.** <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program>

In addition, the Ohio Department of Health has a Frequently Asked Questions for the Ohio Administrative Code Chapters 3701-32 and 3701-82<sup>3</sup> from March 2023 that provides helpful information about what type of contractor is required for lead work. FAQ 9 from ODH states the following:

**“9. I know I have lead-based paint on my property. Am I required to use a licensed Lead Abatement Contractor to perform work that disturbs the lead-based paint?”**

Not necessarily. You are required to use a licensed Lead Abatement Contractor or Project Designer in these situations:

- To work on a property that has been issued a lead hazard control order (LHCO).
- To prepare specifications for lead abatement.
- For any work where lead abatement is intended – either because federal rules require lead hazards must be abated or lead abatement is preferred by the owner or other funding source.

If none of these apply, you are not required to use a Lead Abatement Contractor or Project Designer and may conduct the work yourself or hire a third party.

\* However, lead-safe methods should be used to protect your family from lead poisoning. Call the [Lead Licensure and Accreditation Program](#) at (614) 466-1450 for more information.

\* Federal law requires that contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, childcare facilities,

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<sup>3</sup> The FAQ is available at: <https://odh.ohio.gov/know-our-programs/lead-licensure-and-accreditation-program/resources/lead-licensure-faq>.



and schools built before 1978 be RRP certified and follow specific work practices to prevent lead contamination.

For more information on the federal law please refer to the [U.S. EPA Renovation, Repair and Painting](#) website or call the National Lead Information Center at **(800) 424-LEAD [5323]**.”

Notably, the ODH FAQ reference to “any work where lead abatement is intended” will include any abatement work required by a risk assessment done for the purpose of compliance with the City of Cleveland’s Lead Safe Certificate Law. The City, however, does not regulate compliance with the [Lead Hazard Abatement](#) scope of practice and standards of conduct rules in the Ohio Administrative Code. For nonprofit organizations administering grants or programs intended to remediate lead in housing, the Ohio Department of Health recommends that the practices used by the Historic South [Initiative](#) in Toledo, Ohio, are used in Cleveland.

For more specific guidance on whether the corrective actions necessary to remediate lead hazards from a rental property may rise to the level of “any work where lead abatement is intended,” rental property owners and lead workers should contact the Ohio Department of Health directly.

**25. Can a risk assessor provide a pre-assessment review to a client or property owner subject to the Lead-Safe Certificate Law without having to submit that pre-assessment review, oral or written, to the City for consideration?**

Yes, the City encourages owner education and advice from licensed risk assessors. The Lead Risk Assessment and any resulting findings, including the risk assessor’s options for corrective action for each identified lead hazard, must be submitted to the City to apply for the Lead Safe Certificate.