

Painting the Town Dread?

Updated Detroit Ordinance provides a mixture of uncertainty, relief, and increasing lead compliance requirements for landlords

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It's been just over a year now since the latest changes went into effect as of January 3, 2022. And not surprisingly, things are still moving slowly with a lot of uncertainty.

First, let's revisit how it happened. Detroit City Council updated the Rental Property Ordinance in October 2021, which included some significant changes to the lead paint testing requirements.

At the time the most recent changes were put up for a vote, time was given first for public comment. This included testimony from 13 local residents and community activists, all providing adverse comments as an eleventh-hour attempt to thwart the revisions. In response, Mr. David Bell, the Director of Buildings Safety Engineering and Environmental Department (BSEED) provided answers to many of the anticipated common objections to the changing requirements. He stated that the justification for the changes was based primarily on better aligning the ordinance with the requirements with those of other major cities. In addition, he noted that, in the history of the program, there have been no child elevated blood levels (EBLs) linked to "lead-safe" certified rental property in the City of Detroit! Therefore, there was no justification for increasing the stringency of the requirements. Further, he noted that while lead poisonings continue to decline in the City, unacceptable child lead exposures remain a persistent problem for other properties. Therefore, more enforcement priority should be given to non-registered and non-compliant rental properties.

The revised ordinance was subsequently approved by a vote of 4-1 (Ayes by Ayres, Benson, McCalister and Tate and one Nay by Sheffield with 4 members absent).

On January 11, 2022, the City announced that enforcement would begin of modified Detroit Rental Ordinance. This announcement briefly highlighted some changes:

- For those landlords showing good faith efforts at

compliance using interim controls (stabilization and repainting), the ordinance will require risk assessments every three years, as opposed to every year.

- Landlords who have abated all lead and have passed a rental inspection will be eligible for a seven-year Certificate of Compliance.
- Fines will be increased for those landlords who have been doing nothing to address their lead regulation compliance. If a child tests positive for elevated blood lead levels, the landlord could be fined up to \$2,500 and face possible misdemeanor charges if out of compliance with the Ordinance.
- BSEED shall provide an annual report to the Council of known cases of Elevated Blood Lead Levels (EBLL) in children in rental properties.
- For properties receiving federal government-assistance, the Ordinance allows for those properties to be considered compliant with the City if they have passed a federal compliance inspection that includes lead paint.

This last change is a potentially valuable loophole for some Owners. In my experience, Section 8 or other federal housing program inspections have included varying requirements such as only Lead Inspection, only a Lead Risk Assessment or merely a visual evaluation that all paint is intact. These federal requirements typically do not come close to meeting the standards in the Ordinance. Nevertheless, it seems that this provision will be liberally interpreted to mean that any federal inspection approval will satisfy this condition.

To off-set what was thought of a major concession to rental property owners by extending the compliance time frames, the City of Detroit stated it would be hiring 20 new inspectors for escalated enforcement of the Ordinance. Director Bell told the Detroit Free Press that their goal was to have the new inspectors hired by the end of 2021, but seven positions were still unfilled at that time. A check of the City of Detroit website as of this writing indicates they are still trying to hire more inspectors. However, it's noted and that their hiring is contingent on receiving federal funding from the American Rescue Plan Act.

As of this writing (early January of 2023), the City still has not posted the Revised Ordinance on its website, updated the Code revisions on MuniCode or updated its various

supporting documents to reflect these changes! However, I was able to obtain the revised Ordinance by a Freedom of Information Request to determine what other changes have been enacted. Here are highlights of the remaining elements of the Ordinance (**with my commentary following**):

- A Risk Assessment is now required after four years if hazards are corrected by abatement utilizing encapsulation or enclosure methods. If failures are noted with the integrity of any encapsulations or enclosures, the Owner must immediately schedule a Re-evaluation and take any actions necessary to remedy the LBP hazard. **(This is decreased from every five years for enclosure and increased from two years for encapsulation. The specified extended time frames do not provide much incentive to Owners to perform more costly but durable encapsulation or enclosure remedies.)**
- Upon achieving satisfactory Lead Clearance, Certificates of Compliance shall be issued for a period of three years. If two successful renewals of Certificates of Compliance occur prior to expiration, the period of expiration may be extended from three to five years. **(Note the term “may” rather than “shall.” This is only a small incentive for landlords to work diligently towards compliance with hopes of a payoff beginning in 2028.)**
- Under the newly implemented Section 8-15-84, landlords (or their staff) are now required to obtain HUD Visual Assessment Certification. Such certified personnel shall have completed a visual inspection annually, and, upon change of tenant, certify to the BSEED that a visual assessment has been completed for all units according to the HUD Visual Assessment Guidelines. If the visual inspection reveals deteriorated paint, significant dust or bite marks on a window sill, a Risk Assessment shall be performed for the property within one month. **(Surprisingly, this additional significant requirement has not been publicized. The certification is based on an online training course provided by HUD at [https:// apps.hud.gov/offices/lead/training/visualassessment/h00101.htm](https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm). The online course takes about ½ hour to 45 minutes to review and about a half hour to complete the exam. The online exam forces you to enter the correct answer prior to proceeding rather than the graded exam model. I asked the Detroit Supervising Building Inspector about if and how this would be enforced by the City and he declined to comment on it.)**
- The tenant ability to withhold rent in an escrow account established by the City due to non-compliance remains generally unchanged. **(To date, I have heard of no anecdotal reports of tenants taking advantage of this. It takes some initiative by the tenant to learn about the process and fill out the paperwork.)**
- Records of State and Federal-mandated tenant disclosures can be requested by the City Inspector. This includes the notifications pertaining to the lead testing information upon lease renewals and the applicable notification under the USEPA RRP Rule. **(I have never been contacted by a tenant asking about the lead testing results in their unit. This suggests that some landlords aren't disclosing the information and that the tenants don't care enough to ask for it or aren't well versed enough in real estate law to understand the required disclosures. I asked the Supervising Inspector about if and how this would be enforced and he declined to comment.)**
- The dates for compliance of the Risk Assessment Re-Evaluation requirement is now three years +/- 60 days. **(In my experience, the “annual” requirement was previously being enforced about every three years unless there was significant additional ordinance enforcement such as for blight. It remains to be seen what the actual enforcement time period will be.)**
- The 2017 concession to landlords was removed that allowed the Risk Assessment to be deferred until unit turnover if a Lead Inspection finds no damaged LBP. **(This wasn't surprising considering there was lack of guidance as to how this would be implemented for multi-family properties and it's a provision that could have been abused or easily misunderstood. This “loophole” was never really publicized or explained. One savvy landlord I worked with was able to defer about \$6000 in testing for several years on three apartment complexes he owned by taking advantage of this provision. I thought it was good idea because it incentivized and front-loaded proactive measures into the Lead Inspection. In my opinion, anything that makes corrective actions happen faster is a good thing. Apparently it was found to be problematic or abused.)**
- A directive by Council to BSEED was renewed to “profile” rental property owners in a five-year report starting in 2017. This consists of a survey of property owners by ZIP Code including the number and percentage of registered rental properties, the percentage of residents who are renters, the average monthly income and average household size of renters, and the number and percentage of registered rental properties that lack a Certificate of Compliance. In addition, the report shall include the median income of rental property owners who are individuals, the average percentage of individual rental-property owner's income attributable to the owner's rental-property portfolio, the average number of rental properties in each owner's rental-property portfolio, and the average yearly profit on rental properties that are one-family dwellings, two-family dwellings, and multi-family dwellings. Further, the report shall include the average costs during the preceding year

that rental-property owners expended to bring their properties into compliance. Where practicable, the report shall break down such repair costs according to the type of repair made, and according to the type of rental property. ***(As I would understand it, this is a rather bold and intensive undertaking! This first report was due to City Council by November 2018, but I could find no record of it. The Inspector could not identify the title of the report to aid my search for it. The next report would be due November 2023. This would seem to be an extraordinary effort to gathering private financial and other information from both tenants and owners. Its unclear to me if any landlords would keep track of their lead compliance costs or be willing to voluntarily offer any of this information if requested. A search of the City of Detroit Open Data Portal does not indicate this report, if completed, has been made public. This report, if ever published, would provide valuable data to inform future lead in housing policy and enforcement decisions.)***

- Zip-code based enforcement was not renewed. The 2017 Ordinance included language directing enforcement to be based on zip code. Enforcement began in 2018 based on zip code, generally prioritizing the zip codes with higher rates of child lead poisoning. In July 2021, the City of Detroit announced it was moving from rental property compliance that uses scheduled zip codes for enforcement to a citywide model. “The confusion in the courts due to the zip code scheduled enforcement, a large number of evictions, and an unprecedented amount of public assistance available to pay rent during the last sixteen months are the primary drivers for this change,” according to BSEED Director Bell. ***(I thought enforcement based on prioritizing Zip Codes with the highest rates of lead exposure made a lot of sense. It would seem to me the cited problems came up in the midst of the Covid 19 Pandemic and its implementation might not have been so chaotic if it wasn't for this major disrupter. Hopefully the City has developed some interior criteria for prioritizing enforcement so that non-compliant owners in higher-risk properties are targeted first.)***

Managing of rental property remains an important initiative for the City with estimates that 51-53% of all housing units being rentals. Most forecasts indicate a growing rental property market. Estimates of rental properties in the City range widely from over 40,000 (City records) to 130,000. A 2022 analysis by Detroit Future City indicates an estimate of 82,235 properties and 137,300 rental units.¹ A majority of properties are still believed to be non-compliant.

From a landlord perspective, Detroit is one of the fastest-growing markets for rental property, with rents up an average of 32% in 2022 indicating the high demand and

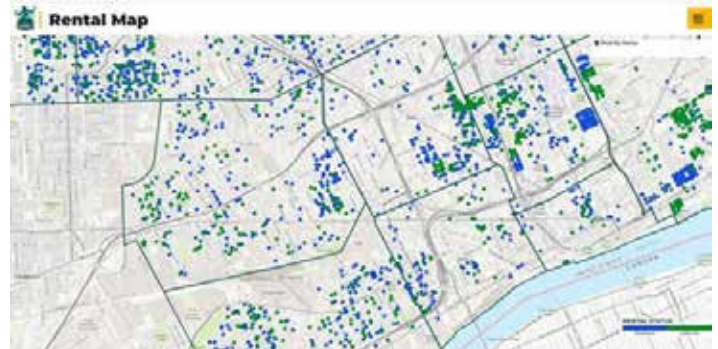
potential for profitability.²

Official statistics on the progress the City is making towards all property being compliant are hard to find and none can readily be found on their website. A Bridge Michigan article from August 2022 estimates 7,800 properties have been certified as lead safe. The Open Data Portal database of Lead Clearances received lists 5066 properties as of this writing. I randomly selected 10 properties I have personally cleared from my list of about 155 to date. Only 3 of the 10 were listed in their database of Clearances!

Eyeballing the City Open Data Portal Map suggests just under 50% compliance with Rental Property Approval, which includes requirements to certify the property as “Lead Safe”

In conclusion, it should be evident that the City has a long way to go yet to figuring out and ramping up its enforcement methods and even quantifying its progress made to date towards their goal of making all rental property “lead safe.” But in my opinion, one thing remains clear—a well-informed rental property owner who understands and proactively manages lead paint with a consultant that is experienced with these requirements can minimize their compliance headaches and maximize profitability.

If you have any questions or thoughts or if I can be of



assistance with lead paint testing, feel free to reach out to me at freelance.enviro.tech@gmail.com.

References

1. *Understanding the Rental Landscape: A Profile Analysis of Landlords to Inform Lead-Safe Housing Policy*, Detroit Future City, Edward Lynch, August 2022.
2. *Detroit Housing Market: Prices & Forecast 2022-2023*; Norada Real Estate Investments, Marco Santarelli, November 23, 2022.