ORDINANCE NO._____, SERIES 2022

AN ORDINANCE AMENDING CHAPTER 119 AND CREATING CHAPTER 167 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES REQUIRING LEAD ABATEMENT OF ALL RENTAL HOUSING UNITS IN LOUISVILLE METRO.

SPONSORED BY: COUNCIL MEMBER CHAMBERS ARMSTRONG

WHEREAS, Louisville Metro Government and Louisville Public Health and Wellness ("LMPHW") are committed to achieving health equity and improving the health and well-being of all Louisville Metro residents and visitors;

WHEREAS, lead is a neurotoxin that causes lasting damage to many biological systems including nervous, circulatory, endocrine, immune, renal, skeletal and muscular systems, according to the Centers for Disease Control and Prevention ("CDC");

WHEREAS, the World Health Organization and other experts advise that no blood-lead level is considered safe, especially among children under the age of 6;

WHEREAS, the CDC and other public health bodies warn that even low-level chronic lead exposure is known to profoundly impede a child's development of cognitive abilities, language and reading skills, impulse control, concentration, and physical growth;

WHEREAS, the CDC, National Institutes of Health, and other organizations report that early lead exposure has been shown to have life-long negative impacts, with links to lower educational attainment and income, increased rates of exposure to the carceral system, and a variety of adverse health conditions in adulthood;

WHEREAS, CDC research has shown that lead poisoning results from contact with lead contained in soil, dust, and paint;

WHEREAS, the national ban on lead-based paint in 1978 means housing built before that time poses a significantly higher risk of lead hazard exposure;

WHEREAS, of the nearly 120,000 occupied rental units in Louisville Metro, approximately 65% were built before 1980, and 24% were built before 1950, based on estimates from the U.S. Census Bureau's American Community Survey;

WHEREAS, the American Community Survey also estimates that 70% of the nearly 26,000 children under age 6 who live in rental housing in Louisville Metro occupy a unit built before 1980, and 23% occupy a unit built before 1950.

WHEREAS, from 2005 through 2021, 9,823 unique children have had elevated blood-lead levels, based on data from the LMPHW Childhood Lead Poisoning Prevention Program;

WHEREAS, discriminatory policy and inequitable historical patterns of development have limited housing options for low-income families and families of color in Louisville Metro to older and more poorly maintained rental housing stock, putting them at higher risk for lead exposure;

WHEREAS, LMPHW lead testing data show that children living in the northwest area of the county are at 9.37 times greater risk for lead poisoning than children in other areas of the county;

WHEREAS, research on lead poisoning shows that it cannot be cured, but it can be prevented through testing, identifying and remediating lead hazards;

WHEREAS, one peer-reviewed study shows that localities with proactive lead inspection policies have dramatically decreased the prevalence of children in the

community with elevated blood-lead levels and have done so at twice the average rate of nearby communities with less intensive policies;

WHEREAS, numerous studies show that public investments in keeping children safe from lead exposure also produce long-term economic benefits for the community that far exceed their costs;

WHEREAS, a robust program that includes proactive inspection of rental housing for environmental lead hazards and the abatement of these hazards would improve the health and development of children in Louisville Metro.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new chapter is hereby added to the Louisville Metro Code of Ordinances ("LMCO") to read as follows:

CHAPTER 167: LEAD ABATEMENT PROGRAM

§ 167.01 PURPOSE.

The purpose of Chapter 167 is to prevent and protect children from lead-based hazards during their occupancy of residential rental properties and to create and preserve safe and healthy rental housing in Louisville, Jefferson County, Kentucky.

§ 167.02 SCOPE.

This Chapter shall apply to any Rental Housing Unit as defined by this Chapter and which was built before 1978.

§ 167.03 DEFINITIONS.

***CERTIFIED RISK ASSESSOR*.** As defined by 902 KAR 48.020.

***THE DEPARTMENT*.** For the purposes of this Chapter, the Louisville Metro Department of Code Enforcement and the Louisville Metro Department of Public Health will be referred collectively as the Department. Both Departments shall be responsible for the administration and enforcement of this Chapter unless otherwise specified.

***LEAD-BASED HAZARD*.** Any condition of a rental housing unit that causes exposure to lead from dust-lead hazards, soil-lead hazards, lead-based paint, or any other form of ingestible or inhalable lead, including material that has become deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces.

LEAD-BASED MATERIAL – Any material containing lead equal to or greater than 0.7 milligrams per square centimeter (mg /cm2) as measured by XRF or laboratory analysis, or 0.5 percent by weight as measured by laboratory analysis.

LEAD-HAZARD ABATEMENT. As defined by KRS 211.9061.

***LEAD-HAZARD CLEARANCE*.** Affirmation by a certified risk-assessor that all Lead-Based Hazards have been abated pursuant to the requirements of 902 KAR 48.040.

***LEAD-HAZARD CLEARANCE REPORT*.** Report created pursuant to the requirements of 902 KAR 48.040-Section 11.

***LEAD-HAZARD RISK ASSESSMENT*.** As defined by 902 KAR 48.040-Section 4.

OWNER. A person, association, corporation, partnership, and/or other legal entity having a legal or equitable title in real property.

RENTAL HOUSING UNIT. Any individual housing unit, whether a standalone unit or an individual unit within a larger multi-unit complex, that is or may be available for rent or is occupied or rented by a tenant or subtenant in exchange for consideration in any form. Housing unit means a building or portion thereof, designed for occupancy for residential purposes and having cooking and sanitary facilities. Any individual housing unit located within a larger structure, such as, but not limited to, a duplex house or apartment building, shall be considered its own Rental Housing Unit.

A Rental Housing Unit shall not include any of the following:

- a short-term rental unit as defined in LMCO § 115.515;

- hotels, motels, inns, bed and breakfasts, or similar accommodations that provide lodging for transient guests;

- hospitals, hospice facilities, assisted living facilities, nursing homes, and residential care facilities meeting the definition of KRS 100.982;

- convents, monasteries, or other facilities occupied exclusively by religious order or congregation;

- transitional housing, homeless shelters, rehabilitation homes, and other emergency or temporary shelters;

- housing units owned, operated, or managed by a major educational or medical institution or by a third party for the institution;

- housing units that a governmental entity or housing authority owns, operates, or manages, or those exempted by federal, state, or local law.

§ 167.04 LEAD-SAFE HOUSING REGISTRATION.

(A) *Lead-Safe Housing Registry.* The Louisville Metro Department of Public Health shall create a Lead-Safe Housing Registry for the purpose of maintaining records on the status and compliance of Rental Housing Units pursuant to this Chapter.

(B) *Responsibility*. The Owner of any Rental Housing Unit shall in addition to the requirements of LMCO § 119, register each individual Rental Housing Unit pursuant to this Chapter. No Owner shall rent, offer to rent, or allow occupancy of a Rental Housing Unit without complying with the terms of this Chapter.

(C) *Requirements.* In addition to satisfying the requirements of Chapter 119, the Owner of a Rental Housing Unit to which this Chapter applies, shall submit the following information to the Louisville Metro Department of Public Health:

(1) The date of construction for all Rental Housing Units and, if requested, available proof of the construction date;

(2) The date of the latest change in occupancy/tenancy of the Rental Housing Unit;

(3) The Lead-Hazard Risk Assessment Report upon initial registration and thereafter, the most recent Lead-Hazard Screening Report for annual renewals along with all other reports created pursuant LMCO § 167.05;

(4) Dates and nature of treatment or abatement performed to attain or maintain lead-hazard clearance and the associated Lead-Hazard Clearance Report;

(5) Certification attesting the information provided is true and accurate to the best of their knowledge. A certification form shall be provided by the Louisville Metro Department of Public Health for such purpose.

(D) *Renewals*. The Owner of a Rental Housing Unit to which this Chapter is applicable, shall submit, after initial registration and in addition to the requirements of Chapter 119, the following information:

(6) Owners of previously registered rental housing units shall renew registration on or before December 31 of each year or according to a schedule established by the Louisville Metro Department of Public Health;

(7) Owners shall update information contained in the Lead-Safe Housing Registry within 30 days after any change in information required for registration pursuant to subsection (C);

(8) Owners who acquire a Rental Housing Unit shall update information contained in the Lead-Safe Housing Registry within 30 days after acquisition;

(9) All Rental Housing Units shall be exempt from these requirements if exempted pursuant to LMCO § 167.08**.**

(E) Applications and renewals requiring additional information for compliance will be returned to the applicant with an explanation of the missing or additional information needed. The Louisville Metro Department of Public Health shall establish a time by which such documentation must be completed before deemed a violation of this Chapter.

(F) Subject to applicable law, the results of the initial Lead-Hazard Risk Assessment, most recent Lead-Hazard Clearance Report or inspection report, and any other lead-hazard abatement work required by this Chapter shall be provided to current and subsequent tenants by the Owner and made publicly available on the Louisville Metro Department of Public Health's webpage in a manner that permits renters, parents, and other consumers to meaningfully consider this information.

(G) Unless otherwise specified, compliance with this section shall be required pursuant to a timeline to be established by the Louisville Metro Department of Public Health.

§ 167.05 LEAD-HAZARD RISK ASSESSMENT.

(A) *Responsibility.* The Owner of a Rental Housing Unit shall, along with all other requirements of this Chapter, ensure that an initial Lead-Hazard Risk Assessment is completed upon their property as established in this section.

(B) *Initial Lead Risk Assessment*. An initial Lead-Hazard Risk Assessment and Risk Assessment Report must be completed pursuant to 902 KAR 48.040-Section 4. The initial Lead-Hazard Risk Assessment and Report must be completed within the time frame established below:

(1) All Rental Housing Units built before 1950 shall have an initial Lead-Hazard Risk Assessment and Risk Assessment Report completed within 12 months of this Chapter taking effect.

(2) All Rental Housing Units built after 1950 but before 1978 shall have an initial Lead Hazard Risk Assessment and Risk Assessment Report completed within 24 months of this Chapter taking effect.

(C) *Lead Risk Assessors.* All Lead Risk Assessments, Lead-Hazard Risk Assessment Reports, Post-Abatement Lead Hazard Clearances, and Post-Abatement Lead Hazard

Clearances Reports shall be performed and completed by a Kentucky State certified Lead-Hazard Risk Assessor pursuant to 902 KAR 48:020.

§ 167.06 LEAD-HAZARD REMEDIATION.

(A) *Abatement.* Upon the finding of a Lead-Based Hazard following any inspection including those conducted pursuant to this Chapter, the Owner shall ensure the Lead-Based Hazard(s) is corrected or abated within a time period set forth by the Louisville Metro Department of Public Health, not to exceed sixty (60) days unless for good cause shown.

(B) *Lead Abatement Work.* All Lead-Hazard Abatement shall be performed in accordance with the provisions of 90 KAR 48.020 through 48:040. All Lead-Hazard Abatement shall be performed by workers certified pursuant to the provisions of 90 KAR 48.020 through 48:040.

(C) *Clearance.* Upon abatement of all Lead-Based Hazards, the Owner of a Rental Housing Unit shall be required to pass a Lead Hazard Clearance. The Department, following the finding of a Lead-Based Hazard shall set forth a date by which such Clearance shall be completed.

(D) *Lead Hazard Clearance Report.* Upon the completion of a Lead Hazard Clearance, the Owner shall provide a copy of the Lead-Hazard Clearance Report, detailing the status of remaining potential future lead-hazards at the property and any necessary future surveillance and remediation of such hazards, to the Louisville Metro Department of Public Health and to any current or future tenants.

§ 167.07 RE-INSPECTIONS.

Re-Inspections. Following the initial Lead Hazard Risk Assessment, an Owner shall have their Rental Housing Unit re-inspected according to the following schedule:

(1) On each change in occupancy/tenancy owners of a regulated property shall conduct at a minimum a Lead Hazard Screen as defined by 90 KAR 48.040-Section 3, including reviewing and visually inspecting lead-based material identified in past inspections, abatement plans and repairs.

(2) Every 3 years, absent a change in occupancy/tenancy, at a minimum, a Lead Hazard Screen as defined by 90 KAR 48.040-Section 3 shall be required, including reviewing and visually inspecting lead-based material identified in past inspections, abatement plans, and repairs.

(3) Within 14 days of identification of an occupant child that is less than 72 months of age and with an elevated blood lead level, owners of a regulated property shall conduct a Lead Hazard Assessment as defined by 90 KAR 48.040-Section 4 and this

Chapter, including reviewing and visually inspecting lead-based material identified in past inspections, abatement plans, repairs, and the Lead Safety Management Plan.

(4) On each occasion when a Rental Housing Unit undergoes treatment, repair, or remodeling that may affect a lead-based material, Owners shall conduct a Lead Hazard Clearance as defined by 902 KAR 48.040-Section 10.

§ 167.08 EXEMPTION FROM CHAPTER.

Rental Housing Units shall be exempted from the requirements of this Chapter if an Owner establishes, through credible and verifiable evidence, including a Lead-Hazard Risk Assessment and if necessary, completion of a Lead-Hazard Clearance as defined by 902 KAR 48.040, that the Rental Housing Unit contains no Lead-Based Hazards and is permanently free of Lead-Based Hazards. Such a finding shall be determined by procedures established by the Louisville Metro Department of Public Health.

§ 167.09 ENFORCEMENT AND ADMINISTRATION.

(A) Unless otherwise specified, the Louisville Metro Department of Codes & Regulations and the Louisville Metro Department of Public Health and Wellness shall have the authority to administer and enforce this Chapter. The Louisville Metro Department of Public Health and Wellness shall be responsible for the accurate maintenance of records on the status of all Rental Housing Units concerning their compliance with this Chapter.

(B) The Owner of a Rental Housing Unit that fails to obtain an Initial Lead-Hazard Risk Assessment and/or comply with LMCO § 167.04 within the time-frames set forth within this Chapter shall first receive a Notice of Non-Compliance. Upon failure to remedy the violation within 30 days, a citation shall be issued unless good cause is shown. Thereafter, citations shall be issued pursuant to LMCO § 167.13-.15.

(C) The tenants of Rental Housing Units shall be informed by the Louisville Metro Department of Public Health and Wellness of all reports and findings created pursuant to this Chapter by the Owner and thru a publicly available Louisville Metro Department of Public Health webpage.

§ 167.10 APPEALS; PROCEDURE.

Any person directly affected by a decision of the Department or a citation, notice of violation, or any other notice or order issued under this Chapter shall have the right to appeal to the Code Enforcement Board ("Board") in accordance with LMCO § 32.275 *et seq*.

§ 167.11 PENALTY.

Any violation of Chapter 167 shall be classified as a civil offense and shall be enforced through the Code Enforcement Board as provided in LMCO § 32.275 *et seq*. or as it may

be amended. For an initial citation issued pursuant to this Chapter, the fine shall be $500. Such civil penalty shall increase $500 for each new citation up to $2,000 for a fourth or greater offense. Each day that a violation continues after a citation has been issued or notice has been served shall be deemed a separate offense.

§ 167.16 FEES SCHEDULE.

(A) The Louisville Metro Department of Public Health and Wellness is authorized to maintain a fee schedule and charge lawful fees necessary to implement and enforce this Chapter. For compliance with LMCO § 167.04(C) the Owner of a Rental Housing Unit shall be required to pay an initial registration fee of $30 per individual unit. Renewal fees pursuant to LMCO § 167.04(D) may be adjusted annually based upon the requirements for the maintenance of this Chapter, but shall not exceed $50.

(B) The Louisville Metro Department of Public Health and Wellness shall create a fund and procedures for the purposes of offering relief to qualifying tenants impacted by lead and/or required lead-abatement work pursuant to this Chapter. Such relief shall be used for tenant support which may include reimbursement for temporary relocation needed during completion of abatement work. Any fees collected pursuant to this Chapter that are beyond what is necessary for the administration of this Chapter shall be utilized for the purposes of this fund.

SECTION II: LMCO Chapter 119 is hereby amended with the following section added:

§ 119.03 REGISTRATION REQUIRED.

(D) To be considered compliant with the requirements of this section, Owners shall also comply with the requirements of Chapter 167.

SECTION III: This Ordinance shall be effective 12 months after its passage and approval or otherwise becoming law.

_____	_____
Sonya Harward Metro Council Clerk	David James Metro Council President
_____	_____
Greg Fisher Mayor	Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

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