

**PART ELEVEN  
PUBLIC HEALTH CODE**

**TITLE NINE  
OTHER REGULATIONS**

- 1151 Weeds
  - 1155 Cockroach and Vermin Control
  - 1156 Adult Arcades
  - 1159 Lead Poison Control
  - 1160 Licensing and Regulation of Cigarette Vending Machines
  - 1161 Regulating the Keeping of Domestic Bees
  - 1162 Automated External Defibrillator Notification Program
  - 1170 School Sanitation Ordinance
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**ARTICLE 1159  
LEAD POISONING PREVENTION AND CONTROL ACT**

- 1159.01 Definitions
  - 1159.02 Inspections
  - 1159.03 Testing Procedures
  - 1159.04 Determination of Health Hazard
  - 1159.05 Notice to Health Hazard
  - 1159.06 Examination of Children and Others
  - 1159.07 Mandatory Reporting of Cases of Lead Poisoning
  - 1159.08 Required Compliance
  - 1159.09 Presumption of Lead Source Health Hazard
  - 1159.10 Protection of Occupants
  - 1159.95 Variances
  - 1159.96 Severability
  - 1159.97 Remedy
  - 1159.98 Enforcement and Administration
  - 1159.99 Penalty
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**1159.01 DEFINITIONS**

The following words, terms and phrases when used in this Ordinance shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1. **"Bureau"** means the Allentown Bureau of Health or any successor department or agency, or any authorized representative thereof.
2. **"City"** means the City of Allentown.
3. **"Dwelling"** means a building or structure or any part thereof occupied or designed or intended to be occupied as a place for human habitation or use, including any accessory building or structure belonging thereto or usually enjoyed therewith or any institutional structure used for the care of or frequented by children, such as a child care facility.
4. **"Dwelling Unit"** means any room or group of rooms located within a dwelling and forming a single habitable unit, with facilities which are used or intended to be used for living, or any part thereof.
5. **"Elevated Blood Lead Level"** means a serum blood lead level confirmed by venous sample which is equal to or greater than ten micrograms lead per deciliter of blood (10 µg/dL) as specified by the Centers for Disease Control and Prevention.
6. **"Emergency"** means any care where the physician examining the child deems the blood lead level of the child is high enough to require hospitalization and treatment of the child. Hospitalization of the child signals that the lead hazard in the child's home environment must be addressed with immediacy so that the child may be discharged from the hospital to a lead-safe environment.

7. **"Exposed Surface"** means all interior and exterior surfaces of a dwelling or dwelling unit which are readily accessible to children under six (6) years of age, or other persons who have demonstrated an evidence of lead poisoning. Exposed surfaces may be found on, but are not limited to windows, doors, floors, walls, ceilings, ornamental woodwork, stairs, decks, porches, railings, and siding. Any area in the vicinity of a dwelling or dwelling unit subject to contamination from flaking or peeling of lead based materials may also be considered an exposed surface.

8. **"Interim Controls"** means a set of measures designed to temporarily reduce human exposure or likely exposure to lead paint hazards, such as specialized cleaning, repairs, maintenance, temporary containment and temporary relocation of the inhabitants.

9. **"Lead Source Health Hazard"** means an item or condition where exposure to that item or condition could have the potential to create a case of lead poisoning, such as exposure to lead-based paint, lead contaminated soil, water or ceramics, etc., as determined by the Bureau of Health.

10. **"Lead-Based Coatings"** means any paint, varnish, glaze or other applied liquid surface coating and putty or plaster which contains a quantity of lead more than one-half of one (0.5%) percent by weight of its non-volatile content when measured chemically or by atomic absorption; or a quantity of lead equal to or greater than one milligram per square centimeter (1.0 mg/cm<sup>2</sup>) when measured by an x-ray fluorescence analyzer.

11. **"Lead Hazard Reduction"** means any action or actions designed to reduce exposure to lead in a dwelling, dwelling unit or any other structure.

12. **"Lead-Safe"** means that a dwelling, dwelling unit or premises either contains no lead, or contains lead in such condition and location that does not result in a lead source health hazard, as determined by the Bureau of Health.

13. **"Occupant"** means any person living, sleeping, cooking, eating in or having actual possession of a dwelling unit.

14. **"Operator"** means any person who has charge, care or control of a building or part thereof.

15. **"Owner"** means a holder of any legal or equitable estate in the premises, whether alone or jointly with others, and whether in possession or not.

16. **"Premises"** means a lot, plot or parcel of land, including all facilities and improvements thereon.

17. **"Structural Material"** means the component substrate materials, such as wood, plaster, drywall, aluminum, etc., of which the dwelling or dwelling unit is constructed.

#### 1159.02 INSPECTIONS

A. The Bureau of Health shall have the authority to enter and inspect any dwelling, dwelling unit or premises in order to protect the health, safety and welfare of the public under the provisions of this article whenever it has probable cause to conduct such an inspection. For the purpose of this article, probable cause to gain access and to inspect and to issue orders for lead hazard reduction of a dwelling, dwelling unit or premises shall include, but not be limited to, the following:

1. That the Bureau receives a report of a blood lead level equal to or greater than twenty micrograms per deciliter (20µg/dL) of any child under six (6) years of age who resides or has recently resided or frequently visits the dwelling or dwelling unit to be inspected; or

2. That such entry is for the purpose of reinspecting a dwelling or dwelling unit previously determined to be in violation of this article; or

3. That the inspection of the dwelling is part of a planned, systematic inspection program in that area of the City; or

4. That this Bureau has received a complaint concerning a violation of this article on the premises.

B. The Bureau shall notify either the occupant, operator, owner or other person in charge of the dwelling, dwelling unit or other premises of the purpose of inspection, shall display proper identification; and shall attempt to enter and inspect the premises at reasonable times.

C. If any owner, operator, occupant or other person in charge of the dwelling refuses, restricts or obstructs entry and inspection of a dwelling or dwelling unit which is authorized by this article, the Bureau shall promptly apply for a search and

inspection warrant to a court of competent jurisdiction and shall supply all necessary and reasonable affidavits and testimony to indicate that there is reasonable or probable cause to conduct the inspection. (13256 §1 5/5/94)

#### **1159.03 TESTING PROCEDURES**

A. Where there is found the presence of flaking, peeling, chipping, loose, chalking or otherwise deteriorating paint, plaster or exposed surface coating or structural material in or around any building used as a dwelling, specimens of the flaking, chipped or loose paint, plaster or exposed surface coatings or structural material may be collected to determine whether or not the materials contain lead. In lieu of taking samples, the surface may be tested with an x-ray fluorescence analyzer.

B. The chemical determination of the lead content in exposed surface coatings or structural materials may be made by the quantitative measurements of samples of materials collected for analysis. Any surface material which is analyzed and found to be a lead based coating shall be considered a violation of this article, as determined by the Bureau of Health.

C. The physical determination of the lead content of surface material may be made by using an x-ray fluorescence analyzer or other instruments approved by the Bureau. Any exposed surface which has a lead based coating which exceeds 1.0 mg/cm<sup>2</sup> when tested by x-ray fluorescence or 0.5% by weight shall be considered a violation of this article, as determined by the Bureau of Health.

#### **1159.04 DETERMINATION OF HEALTH HAZARD**

Any lead source shall be considered a lead source health hazard, as determined by the Bureau of Health, to children under six (6) years of age and pregnant women, or any other persons who have demonstrated an evidence of lead poisoning.

#### **1159.05 NOTICE TO HEALTH HAZARD**

The Bureau shall report the findings of a lead source health hazard immediately to all occupants of the affected dwelling unit(s) and to the owner and/or operator of the building as soon as possible. The Bureau shall cause to have prominently posted on all entrances to the said dwelling unit(s) a notice as follows:

**THIS DWELLING UNIT CONTAINS DANGEROUS AMOUNTS OF LEAD PAINT AND IS UNFIT FOR HABITATION BY PREGNANT WOMEN AND CHILDREN UNDER SIX (6) YEARS OF AGE. SUCH NOTICE SHALL NOT BE REMOVED WITHOUT THE APPROVAL OF THE BUREAU. A REPORT OF THE FINDINGS SHALL BE GIVEN TO OTHER PERSONS OR AGENCIES AS REQUIRED BY LAW. (13256 §1 5/5/94)**

#### **1159.06 EXAMINATION OF CHILDREN AND OTHERS**

When a lead source health hazard is found in a dwelling or dwelling unit, the Bureau may cause to have examined all children under six (6) years of age, and such other persons as it may find advisable to examine, residing or who recently resided in said dwelling. The results of such examination shall be reported to the Bureau. (13256 §1 5/5/94)

#### **1159.07 MANDATORY REPORTING OF CASES OF LEAD POISONING**

Physicians, other health care providers, and private laboratories shall report to the Bureau, in writing, all confirmed test results equal to or greater than fifteen micrograms per deciliter (15 µg/dL) of elevated blood lead levels known to them within seven (7) calendar days, 3 working days of identification, unless previously reported. Should a child suffer multiple episodes of lead poisoning, each episode shall be reported. (13256 §1 5/5/94)

#### **1159.08 REQUIRED COMPLIANCE**

A. When the Bureau determines that any lead source in or about a dwelling, dwelling unit or premises creates a health hazard to children under six (6) years of age, or other persons who have demonstrated an evidence of lead poisoning:

1. The parent(s), guardian(s) or head of the household of any children under six (6) years of age who reside at or frequent the affected dwelling unit shall initiate interim controls in order to reduce the potential exposure of the child to the lead source. In the event of an emergency, the owner of the property shall provide the necessary assistance and materials to the occupants to assure the implementation of the interim controls prior to the child's return to the dwelling.

2. A written notice of violation shall be issued to the owner of the property found to have a lead source health hazard. The order shall be sent by certified mail, unrestricted delivery, return receipt requested to the last known address of the owner. A copy of the notice shall also be posted on a conspicuous place on the premises described in the notice.

3. The property owner shall complete any and all work necessary, as determined by the Bureau of Health, to restore the affected dwelling, dwelling unit or premises to a lead safe condition in accordance with the means, methods and time frames specified in lead hazard reduction regulations established by the Director of Health in addition to those herein set forth.

B. Any person who fails to adhere to the lead hazard reduction regulations established hereunder by the Director of Health shall be found in violation of this article and any such work shall be subject to a stop work order issued by the Bureau of Health. Any person who shall continue to work in or about the affected premises after having been served with a stop work order shall also be in violation of this article. (13256 §1 5/5/94)

#### **1159.09 PRESUMPTION OF LEAD SOURCE HEALTH HAZARD**

Whenever a child under six (6) years of age or a pregnant woman resides in any residential premises in which any paint, plaster, soil or other accessible material contains dangerous levels of lead, there shall exist a presumption of a lead source health hazard. (13256 §1 5/5/94)

#### **1159.10 PROTECTION OF OCCUPANTS**

A. No owner or landlord may evict, or cause to be evicted, occupants, including children, of any dwelling or dwelling unit found to be in violation of this article, for the purpose of avoiding corrective measures which may have been ordered by the Health Bureau, the Court or any other appropriate authority.

B. In the event the dwelling, dwelling unit or premises in which a lead source health hazard exists is vacated by the occupant who occupied same at the time of the issuance of the notice of violation to the owner, such dwelling, dwelling unit or premises shall not be let to or occupied by any other person until such is determined by the Bureau of Health as being lead-safe. (13256 §1 5/5/94)

#### **1159.95 VARIANCES**

Where a lead source health hazard has been identified in a dwelling unit or other building and no evidence of lead poisoning has been found in any occupant or regular user of that dwelling unit or building, the owner or operator or occupant may request a variance through a hearing before the Allentown Board of Health within seven (7) days of the written order or posting of the property. Said Board of Health, upon finding that compliance with the provisions of this Ordinance would inflict unnecessary hardship, and that failure to make such corrections will not impose a danger of the health and welfare of occupants or regular users, may grant a variance from the provisions of this Ordinance. (13256 §1 5/5/94)

#### **1159.96 SEVERABILITY**

In the event any part or provision of this article shall be held to be illegal or void by a court of competent jurisdiction, this shall not have the effect of making void or illegal any of the other parts or provisions thereof. Any invalid part of this article shall be segregated from the remainder of the article by the court holding such part invalid, and the remainder of the article shall remain in full force and effect. (13256 §1 5/5/94)

#### **1159.97 REMEDY**

The imposition of a penalty herein prescribed shall not preclude the City from instituting appropriate action by injunction or any other legal remedy to prevent or correct any violation of this article including but not limited to the right to make corrections utilizing qualified City personnel, or to have corrections made under agreement with an independent contractor, for any property not in compliance with this article whose owner cannot be located or who does not comply with any order to make corrections. The City shall bill the property owner and place a lien against the property for any expense incurred and unpaid. (13256 §1 5/5/94)

#### **1159.98 ENFORCEMENT AND ADMINISTRATION**

The Bureau of Health is hereby authorized and directed to administer and enforce this article. The Director of Health is also hereby authorized and directed to establish, promulgate, administer and enforce reasonable regulations hereunder. (13256 §1 5/5/94)

#### **1159.99 PENALTY**

Any person who shall violate any provision of this article or shall fail to comply with any requirements therein shall, upon conviction thereof, be fined not more than One Thousand (\$1,000) Dollars or imprisoned not more than ninety (90) days or both. Each day that a violation is continued shall constitute a separate offense. (12384 §1 10/17/79; 12753 §1 2/4/87; 13256 §1 5/5/94)

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### **ARTICLE 1160**

#### **Licensing and Regulation of Cigarette Vending Machines**

##### 1160.02 Purpose

1160.04 Definition of Terms  
1160.06 License Required  
1160.08 Licensing Procedures  
1160.10 License Fees  
1160.12 Display of License  
1160.14 Prohibitions and Restrictions  
1160.90 Revocation of License  
1160.98 Severability  
1160.99 Penalty

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#### **1160.02 PURPOSE**

The evidence is irrefutable - the use of tobacco products poses a significant danger to the public's health. Because of the special dangers tobacco poses to children's health, the Commonwealth of Pennsylvania prohibits the sale of all tobacco products to anyone under the age of eighteen (18). The following rules and regulations are necessary to enforce the Commonwealth Law and thereby reduce threats to the health of minors by preventing easy access to cigarette vending machines. (12984 §1 6/20/90; 13595 §1 8/8/97)

#### **1160.04 DEFINITION OF TERMS**

As used in this ordinance, unless the context otherwise indicates:

A. The term **cigarette vending machine** shall mean any automatic vending machine used for the sale of cigarettes and matches, and controlled by the insertion of a legal tender. It shall not include machines or devices used solely for the vending of service, food or confections;

B. The terms **person, firm, corporation, or association** as used herein shall include the following: Any person, firm, corporation or association which owns any such machine; the person, firm, corporation or association in whose place of business any such machine is placed for use by the public; and the person, firm, corporation or association having control over such machine; provided, however, that the payment of enumerated herein shall be deemed in compliance with this article. (12984 §1 6/20/90; 13595 §1 8/8/97)

#### **1160.06 LICENSE REQUIRED**

Any person, firm, corporation or association displaying for public patronage or keeping for operation any cigarette vending machine as herein defined by Section 1160.04 shall be required to obtain a license from the City of Allentown, upon payment of a license fee. Application for such license shall be made to the Bureau of Health upon a form to be supplied by the Bureau of Health for that purpose. Only one machine shall be operated under one license. The applicant or licensee shall be required to secure a license for each and every machine displayed or operated. (12984 §1 6/20/90; 13595 §1 8/8/97)

#### **1160.08 LICENSING PROCEDURES**

The application for such license shall contain the following information:

- A. Name and address of the applicant, age, date and place of birth.
- B. Place where machine or device is to be displayed or operated and the business conducted at that place.
- C. Description of machine to be covered by the license, mechanical features, name of manufacturer and serial number.

No license shall be issued to any applicant unless the applicant is over twenty-one (21) years of age and a citizen of the United States. (12984 §1 6/20/90; 13595 §1 8/8/97)

#### **1160.10 LICENSE FEES**

Every applicant, before being granted a license shall pay an annual license fee determined by the City of Allentown for the privilege of operating or maintaining for operation each cigarette vending machine. The fees, as required herein, are to be established in accordance with the requirements of the Charter. (14225 §2 10/21/04)

Each license shall expire July 1<sup>st</sup> of each year. (12984 §1 6/20/90; 13595 §1 8/8/97)

#### **1160.12 DISPLAY OF LICENSE**

A. The license or licenses herein provided for shall be posted permanently and conspicuously at the location of the machine in the premises wherein the device is to be operated or maintained to be operated.

B. Such license may be transferred from one machine or device to another similar machine only upon application to the Bureau of Health by giving a description and serial number of the new machine or device to the bureau.

C. If the licensee shall move his place of business to another location within the City of Allentown, the license may be transferred to such new location upon application to the Bureau of Health, giving the street and number of the new location. The new location shall be approved by the Bureau of Health in the same manner as provided in Sections 1160.06 and 1160.08 of this ordinance.

D. A license shall not be transferrable from person to person nor place to place, and shall be usable only at the place and by the person designated in the license. (12984 §1 6/20/90)

#### **1160.14 PROHIBITIONS AND RESTRICTIONS**

A. No person, firm, corporation or association holding a license under this ordinance shall permit persons under eighteen (18) years of age to operate any cigarette vending machine as defined in Section 1160.04 of this ordinance.

B. No cigarette vending machine shall be located, displayed or operated at any location or establishment unless said establishment prohibits minors from its premises, permits minors only with adult supervision or by virtue of other characteristics excludes minors as expected personnel, i.e., industry. Said establishments will include bars, restaurants with liquor licenses, beer distributors, and those noted in the exclusionary section above.

C. Cigarette vending machines shall only be placed in locations wherein the licensee or designee of licensee can in the normal course of their employment view any person using said machine. Industrial/work locations noted in Section (b) will be exempted from this rule.

D. Cigarette vending machines shall not be placed in patron restrooms or restroom areas, foyers or vestibules, pantry or waiting rooms, or any other inconspicuous areas. Industrial/work locations noted in Section (b) will be exempted from this rule. (12984 §1 6/20/90)

#### **1160.90 REVOCATION OF LICENSE**

Every license issued under this ordinance is subject to the right, which is hereby expressly reserved, to revoke the same should the licensee, directly or indirectly, permit the operation of any cigarette vending machine contrary to the provisions of this ordinance, the ordinances of the City of Allentown, or the law of the State of Pennsylvania. Said license may be revoked by the Bureau of Health after written notice to the licensee, which notice shall specify the ordinance or law violations with which the licensee is charged, if after a hearing, the licensee is found to be guilty of such violations. Ten days' notice of the hearing shall be given the licensee. At such hearing the licensee and his attorney may present and submit evidence of witnesses in his defense.

#### **1160.98 SEVERABILITY**

It is the intention of the City Council that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable. (12984 §3 6/20/90)

#### **1160.99 PENALTY**

Any person, firm, corporation or association violating any of the provisions of this ordinance, in addition to the revocation of his or its license, shall be liable to a fine or penalty of not more than Six Hundred (\$600.00) Dollars or imprisonment of not more than ninety (90) days, or both for each offense. (12984 §1 6/20/90)

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