

**Codes and Ordinances Committee**

Councilor Alex de Geofroy, Chair  
Councilor Tim Fontneau, Vice Chair  
Councilor David Walker  
Councilor Patricia Turner  
Councilor Bryan Karolian



**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, March 7, 2024**

**31 Wakefield Street, Rochester, NH**

Council Chambers

**6:00 PM**

**Agenda**

- 1. Call to Order**
- 2. Roll Call**
- 3. Public Input**
- 4. Acceptance of the Minutes**
  - 4.1 February 15, 2024 *motion to approve* P. 3**
- 5. Continued Review of the City Council Rules of Order P. 9**
  - Amendment to Section 1.5 –C:6 “Procedures for Remote Participation” P. 31**
  - Amendment to Section 4.4 “Standing Committees” P. 33**
- 6. Continued Review of the Code of Ethics and Conduct for Elected and Appointed Officials P. 35**
- 7. Amendment to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council Designated Area Periodic Inspections P. 45 \***
- 8. Amendment to Chapter 94 of the General Ordinances of the City of Rochester Regarding Lead Paint Poisoning and Prevention Control P. 51**
- 9. Building and Licensing Services - Compliance Updates and Review**
- 10. Other**
- 11. Adjournment**

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City Clerk's Office

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**Codes and Ordinances Committee**

Councilor Alex de Geofroy, Chair  
Councilor Tim Fontneau, Vice Chair  
Councilor Bryan Karolian  
Councilor Patricia Turner  
Councilor Dave Walker

**Others Present**

Terence O'Rourke, City Attorney  
Phebe Miner, Legal Intern  
Jim Grant, Director of Building and Licensing

**CODES AND ORDINANCES COMMITTEE**  
Of the Rochester City Council  
**Thursday, February 15, 2024**  
**Council Chambers**  
**6:00 PM**

**Minutes**

**1. Call to Order**

Chair de Geofroy called the Codes and Ordinances meeting to order at 6:00 PM.

**2. Roll Call**

Deputy City Clerk Cassie Givara took the roll call attendance. All Councilors were present as follows: Councilors de Geofroy, Fontneau, Karolian, Turner, and Walker.

**3. Public Input**

There was no one present for public input.

**4. Acceptance of the Minutes**

**4.1 October 5, 2023 *motion to approve***

Councilor Walker **MOVED** to **ACCEPT** the minutes of the October 5, 2023 Codes and Ordinances Committee meeting. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

\*Chair de Geofroy requested that there be an amendment to the agenda to move item #7, the discussion regarding the Waste Management Closure Fund, to the start of the agenda. There were

no objections to the agenda revision.

## 5. **Discussion:** Resolution Pursuant to RSA 34:1-a Establishing a Waste Management Closure Reserve Fund

Mark Sullivan, Finance Director, gave an overview of the history of this resolution through the Finance Committee and City Council and the edits which have been made thus far.

Councilor Fontneau recalled that the fund would be established with annual allocations being placed into the account in anticipation of the landfill closure. He inquired if City Council could opt to expend money from the account, or dissolve the fund, prior to the date stated in the resolution if certain criteria is met. Director Sullivan confirmed that there are certain conditions outlined in the resolution that would allow City Council to expend funds; upon ceasing of landfill operations and termination of host fee revenues, or if landfill capacity starts to decrease and there is a decline in said host fees. Director Sullivan gave further details on the specific parameters which would need to be met for expenditures from the fund. Additionally, he gave details on conditions under which the fund could be dissolved. He clarified that the intent of the fund is not for other large capital expenditures, and these types of purchases would not be allowable per the current verbiage of the ordinance.

Councilor Fontneau **MOVED** to recommend the approval of the Waste Management Closure Fund to the full Council. Councilor Turner seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

## 6. Review of the City Council Rules of Order

Councilor Walker spoke about prior experiences with Boards and Committees not having the quorum required to hold a meeting. He suggested that all Councilors could be appointed as alternates for Boards and Commissions. These alternate members would not be required to attend the meetings regularly but could be available for call-ins on a temporary basis for circumstances when a quorum is not present otherwise. Attorney O'Rourke stated that he would draft some verbiage for the following meeting relevant to this suggestion.

Councilor de Geofroy directed the Committee to section 1.5 "Remote Participation During Council and Board Meetings," section B) *Permissible Reasons for Remote Participation*. Reason number 3 is listed as "unexpected lack of childcare." He suggested that the word "unexpected" be omitted due to any lack of childcare being valid regardless of whether it is anticipated. Councilor de Geofroy **MOVED** to remove the word "Unexpected" from section 1.5(b) – 3. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor de Geofroy pointed out the inconsistencies in formatting on section 1.5(b). It was stated that these were minor clerical corrections which could be made without a vote.

Councilor de Geofroy directed the Committee to Section 1.5(c) "Procedure for Remote Participation," item number 6 in regard to the script read for remote participants. He stated that when the Mayor reads this script during Council meetings, there is a reference to RSA 91-A and questioned if this verbiage should be instilled in the script outlined in the Rules of Order. Councilor de Geofroy **MOVED** to modify the script in section 1.5(c)-6 to include the references

to RSA 91-A. Councilor Walker seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Councilor Karolian spoke about section 1.9 “Public Input,” which details the guidelines for public comment. He referenced the verbiage that requires decorum from elected officials, but questioned if there could be revisions requiring the same level of decorum from the public speaking at meetings. Councilor Walker clarified that the public is not bound by the City Council Rules of Order; however, it is the purview of the Chair to maintain the decorum of meetings. Councilor de Geofroy agreed that the Mayor or Chair has the authority to maintain order within the boundaries outlined in the Rules of Order. Attorney O’Rourke spoke about section 1.9 and the work that had gone into these guidelines during the prior Council term. He did not recommend making changes to the current verbiage and spoke about First Amendment considerations. Councilor Karolian clarified that he did not intend to censor or limit the speech of the public, however he stated that when members of the public stand at the podium and address the board in with certain demeanor or tone, sometimes their point gets lost within the manner in which it is delivered. Attorney O’Rourke pointed out that section 1.9 details the criteria under which a person could be reprimanded but posited that there could be wording added to suggest how the board could best be addressed to assist a speaker in conveying their point.

Councilor Turner referenced the paragraph in section 1.9 stating that a member could raise a “point of order” and asked if this could be utilized in situations where a public speaker is perceived to be off topic or falling outside of acceptable guidelines. Attorney O’Rourke confirmed that a board member can raise a “point of privilege” in these and other circumstances. The Committee discussed first amendment rights and censorship as well as the benefit of speakers delivering a message or request in a manner which will be best received. Councilor Fontneau suggested that Matt Wyatt, Public Information Manager, include this topic in his next Civics 101 event. Councilor Karolian acknowledged a better understanding of the process and members’ ability to raise a point of order if needed.

Chair de Geofroy stated that this item will be kept in Committee while the City Attorney drafts language for the amendments suggested.

## **7. Review of the Code of Ethics and Conduct for Elected and Appointed Officials**

Attorney O’Rourke introduced Phebe Miner, legal intern, and explained that Ms. Miner had been tasked with taking an academic, neutral approach to a review of the Code of Ethics as well as the Board of Ethics ordinance adopted in January.

Ms. Miner explained that she would be continuing this review through April and would report back at upcoming Codes and Ordinances meetings. She requested that committee members reach out to her with suggestions, amendments and concerns and she would review in anticipation of her final report in April. Ms. Miner stated that she could give a presentation if requested and would be reviewing established ethics codes from neighboring communities in comparison to Rochester’s code.

Councilor Walker inquired about the sufficiency review outlined in the chapter 7-83 “Board of Ethics.” He felt that the three-member board detailed in the ordinances should not consist of elected officials and City staff, but should consist of neutral third-party officials, such as a law

firm kept on retainer. Councilor Karolian agreed that this sufficiency review should be done by an independent body. Attorney O'Rourke clarified that the "Ethics Investigations Officer" (EIO) listed in section 7-84 is an independent party separate from the City. The initial review of sufficiency referenced by Councilor Walker is done by the officials detailed in the ordinance for the purpose of determining whether a complaint is sufficient to constitute an ethics violation and whether it should then be elevated to the EIO. If the complaint is not determined to be an ethics violation, this would prevent the City having to pay for outside counsel/consultation unnecessarily. Councilor de Geofroy acknowledged that there is a mechanism in place for the involvement of outside counsel but agreed that this should not be the first step in the process prior to an internal sufficiency review. The Committee discussed the potential of baseless claims that could arise and the importance of reviewing these complaints internally prior to involving outside sources. Councilor Karolian speculated that there is the potential for investigations to be more expensive if outside counsel is not utilized early in the process; there could be pushback or perception of bias, resulting in more man hours and time spent on investigation.

Councilor Fontneau stated that because the members of boards and commissions are elected officials, he felt it was not a conflict of interest to have the referenced officials serving on a sufficiency review board (Mayor, superintendent, police chief). He explained that in his experience, the members of ethics boards typically consisted of industry peers. Councilor Walker suggested potential members of an external sufficiency board, such as HR staff from local businesses, who could be convened as the need arises. The Committee continued to discuss possible variations of a sufficiency board, whether internal or external. Attorney O'Rourke clarified the current makeup and variability of the sufficiency review board as outlined in the ordinance.

Councilor de Geofroy requested that Ms. Miner pay special attention to the sufficiency review portion of the process and how it is handled in cities with established and tested ethics codes.

## **8. Overview of Building and Licensing Services/ Compliance Updates – Director Jim Grant**

Chair de Geofroy explained that he had requested that the Director of Building and Licensing Services, or a delegate thereof, regularly attend the Codes and Ordinance meetings to weigh in on the discussions where relevant.

Jim Grant, Director of Building and Licensing Services, summarized his department's organizational structure and staff member workload and gave an overview of data related to building permits issued and the revenue generated therefrom. He gave a broad overview of the issues regularly encountered by his department.

Director Grant explained that there are two methods of code compliance enforcement; either blanket compliance where BLS staff is out looking for violations and enforcing as they encounter issues or investigating and enforcing on a per complaint basis. The department is currently enforcing on a complaint-by-complaint basis. He explained that this method can be problematic as it sometimes pits neighbors against each other and causes retaliatory complaints resulting from the original complaint. It also causes those targeted residents to question why the City is not investigating other similar issues nearby, which leads to request for more complaints to be filed

in order to investigate further.

Director Grant spoke about unsafe living conditions discovered throughout the City following complaints, unpermitted boarding houses, unauthorized Air BnBs (home occupations), and ongoing issues not discovered until new ownership.

Councilor Hamann inquired if the department had to wait for complaints prior to enforcing code compliance. Director Grant explained that it had been the department's policy, based on guidance from past City Councils, to wait for complaints. He acknowledged that the department could take more general, equitable approach to enforcement, but he anticipated it would cause multiple complaints to the City.

Councilor Fontneau referenced the presence of unauthorized AirBnBs that Director Grant had discussed and spoke about other communities who have had similar issues. He asked if these types of establishments would not be allowed in Rochester due to them being considered an in-home business and suggested the Codes and Ordinances committee take a look at the relevant codes and consider making amendments to allow these businesses in the City. Director Grant acknowledged that this could be a topic the Codes Committee and BLS could review and the potential of regulating the industry within the City.

Councilor Walker referenced the "neighborhood compliance program" that had been utilized several years prior in which the Codes department had gone out into the community looking for violations instead of investigating on a per complaint basis. He suggested a balanced approach where staff is not out looking for violations; however, if they are on a call and see other violations, they are able to address them at their discretion. Director Grant stated that if this is the approach taken, the property management codes followed by the department may need to be revised. He clarified that although the neighborhood compliance program had not been well-received, it had resulted in better compliance and increases in permits for repairs.

Councilor Karolian addressed the importance of following the law/code as it is written, but asked if it would be beneficial for BLS to be able to use their discretion when determining need and severity of violations. Director Grant stated that although being able to use discretion can be beneficial, it can also lead to problems when the codes are not being enforced with consistency and there is a perception that the process is not equitable. He cautioned against selective enforcement.

Councilor de Geofroy stated that with the growth of the City, especially in the downtown area, enforcement on a complaint by complaint basis may not be enough. He asked what the capacity was for increased enforcement with current department staffing, Director Grant stated that with the two part-time compliance officers currently on board, they would have the ability to increase enforcement.

Chair de Geofroy asked Director Grant to return to the March meeting with a more in-depth presentation with suggestions and recommendations for the Committee. He advised that there should be a regular agenda item moving forward of BLS data and statistics to inform the methods of approach that could be taken and to potentially identify amendments that could be made to the ordinances related to code compliance.

**9. Other**

There was no discussion under “other.”

**10. Adjournment**

Councilor Walker **MOVED** to **ADJOURN** the Codes and Ordinances Committee meeting at 7:09 PM. Councilor Fontneau seconded the motion. The **MOTION CARRIED** by a unanimous voice vote.

Respectfully Submitted,

Cassie Givara  
Deputy City Clerk

**ROCHESTER  
NEW HAMPSHIRE**



**2023  
CITY COUNCIL  
RULES OF ORDER**

# RULES OF ORDER OF THE CITY COUNCIL CITY OF ROCHESTER, NEW HAMPSHIRE

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**RULES OF ORDER OF THE  
CITY COUNCIL  
CITY OF ROCHESTER, NEW HAMPSHIRE**

**ARTICLE 1  
CITY COUNCIL MEETINGS**

**SECTION 1.1 REGULAR MEETINGS**

Regular meetings of the City Council shall be held in the Council Chamber in City Hall on the first Tuesday of each month, at 6:00 o'clock PM, except when a state general election or a regular municipal election is held on said first Tuesday of the month of November. The November meeting date in the year in which a regular municipal election is conducted shall be the Wednesday following said municipal election, in accordance with Section 52 of the City Charter. The November meeting date in the year in which a state general election is conducted shall be the second Tuesday of that month, unless the City Council shall otherwise direct. The inaugural meeting date following the regular municipal election shall be the first Tuesday after January 1. If any such date shall fall upon a legal holiday or upon the day on which a special state or municipal election is conducted the City Council shall vote to conduct said meeting on the day following or on the Tuesday following that holiday or Election Day.

**SECTION 1.2 SPECIAL MEETINGS**

The City Clerk shall call a special meeting of the City Council at the written request of the City Manager, the Mayor, or at the written request of a majority of City Council. Special meetings of the City Council shall be held upon written notice being delivered by the City Clerk to each City Councilor at least forty-eight (48) hours prior to said meeting, said notice stating the purpose for which the meeting is called. The Mayor shall take the chair precisely at the hour appointed for the meeting and call the members to order, and within ten minutes or sooner if a quorum be present, shall cause the roll to be called, and the names of the members present to be recorded. The Clerk shall also record the names of the members coming in after the calling of the roll.

**SECTION 1.3 NON-PUBLIC SESSIONS**

Items being considered for action in a non-public session shall be submitted and dealt with in accordance with Council Rules of Order sections 4.1, 4.2, and 4.3. Therefore, all supporting documentation, contracts, or proposals being considered during non-public session shall be submitted to council members at least five calendar days in advance of consideration. Such documentation shall be distributed in a confidential manner.

**SECTION 1.4 ABSENCE OR DISABILITY OF MAYOR, DEPUTY MAYOR**

In the absence or disability of the Mayor, the Deputy Mayor shall take the chair and preside over the meeting and shall act as Mayor during such absence or disability. In

the absence or disability of both Mayor and Deputy Mayor, the Clerk shall call the Council to order and shall preside until a chairperson shall be chosen by a roll call vote and plurality of votes, who shall preside and act as Mayor during such absence or disability.

## **SECTION 1.5 REMOTE PARTICIPATION DURING COUNCIL AND BOARD MEETINGS**

### **a) INTRODUCTION / PURPOSE**

The City Council strongly encourages board members to be physically present for all board and committee meetings. The Council recognizes, however, that extenuating circumstances may occasionally prevent a member from being physically present at a meeting. Therefore, to promote full participation of board members while ensuring access and transparency for the public as required by NH RSA 91-A:2 Access to Governmental Records and Meetings, the Council authorizes remote participation in board meetings subject to the following procedures and requirements.

### **b) PERMISSIBLE REASONS FOR REMOTE PARTICIPATION**

Remote participation is not to be used solely for a board member's convenience or to avoid attending a particular meeting in person. Any Board member who is unable to physically attend a meeting of the board may make arrangements to remotely participate in the meeting under the following conditions:

1. Personal illness or disability;
2. Out-of-town travel;
3. Unexpected lack of child-care;
4. Family member illness or emergency;
5. Weather conditions;
6. Military service;
7. Employment obligations; or
8. A scheduling conflict.
9. As determined by the Chair

### **c) PROCEDURE FOR REMOTE PARTICIPATION**

1. With the exception of an emergency, a member of the board requesting to participate in a meeting remotely shall notify the board chair (the "Chair") as soon as practicable, but in no case less than 2 business days prior to the scheduled meeting.

2. The Chair will contact the board staff liaison as soon as possible and state they have allowed board member to participate remotely (state meeting date) based on criteria laid out in this document.

3. The staff liaison will contact the Government Channel Coordinator or designee to arrange technical logistics, based on currently available technology.

4 Staff liaison, the requesting board member, and the Government Channel Coordinator will

arrange for a test prior to said meeting. While technological issues may arise that may be beyond staff control, this will ensure the best possible experience.

5. The remote participant(s) shall join the remote meeting 15 minutes prior to scheduled meeting time.

6. The Chair shall announce the remote participant *prior* to the Call to Order and follow this suggested script: “Board member (name) is participating in this meeting remotely. (name) are you there? (participant– “yes I am here”) (name) was it reasonably impractical for you to be physically present at this meeting? (participant) – yes, it was impractical for me to be physically present).”

7. The Chair may decide how to address technical difficulties that arise when utilizing remote participation, but whenever possible, the Chair should suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant’s ability to hear, or be heard clearly by all persons present at the meeting location.

8. A member participating remotely shall notify the chair if leaving the meeting before it is adjourned or rejoining the meeting after a period of absence.

9. All votes taken during such a meeting shall be by roll call.

10. Participation by remote communication will be noted in the official board minutes. Any interruption to or discontinuation of the member’s participation will also be noted in the minutes.

## **SECTION 1.6 ORDER OF BUSINESS**

a) The order of business for Regular meetings of the City Council shall be as follows:

1. Call to order
2. Pledge of Allegiance
3. Prayer
4. Roll Call
5. Approval of the minutes of the previous meeting(s)
6. Communications from the City Manager
7. Communications from the Mayor
8. Presentation of Petitions and Council Correspondence [and Disposal thereof by Reference or Otherwise]
9. Nominations, Appointments and Elections
10. Report of Committees
11. Unfinished Business
12. Consent Calendar
13. New Business

#### 14. Adjournment

- b) **New Business:** Items requiring Council action may be introduced by any member of the City Council, but may not be acted upon at the meeting in which they are introduced unless the items are properly filed in accordance with Article 4, Section 4.1 herein. The Council may act upon said items if they have not been filed in advance by suspending Council Rules by a two-third (2/3) vote of the City Council.

### **SECTION 1.7 PUBLIC HEARINGS**

**Public Hearings:** To receive citizen input and feedback on certain specific matters that have been placed on the meeting agenda for consideration and action by the City Council, Public Hearings will be scheduled and held as required by law and/or whenever referred for a public hearing by simple majority vote of Council Members present. Upon being referred by Council vote, Public Hearings will be noticed for and held during a subsequent Regular and/or Special Meeting or Committee Meeting. At the request of the presiding officer, Ordinances or Resolutions scheduled on an agenda for public hearing will be briefly introduced with appropriate explanations by staff. Citizens will then have the opportunity to address the Council speaking to the specific item(s) subject to public hearing, subject to the following guidelines: [6/4/2013]

1. All speakers shall be residents of the City of Rochester, property owners in the City of Rochester, and/or designated representatives of recognized civic organizations or businesses located and/or operating in the City of Rochester;
2. All speakers shall address their comments to the presiding officer and the Council as a body and not to any individual member;
3. Speakers shall first recite their name and address for the record, and, if applicable, the name and address of the civic organization and/or business they have been designated to represent;
4. For each public hearing item, a speaker shall be provided a single opportunity for comment;
5. Public Hearings are not intended to be utilized for a two-way dialogue between speaker(s), Council Member(s), and/or the City Manager, or administrative staff; and
6. The presiding officer shall preserve strict order and decorum for and by all speakers appearing before the Council.

### **SECTION 1.8 OPEN DOOR**

Except in circumstances when the City Council is using Council Chambers for Non-Public Sessions or Non-Meeting, the door to Council Chambers shall remain open. However, if the Chair determines that noise or other distractions emanating from the rest of City Hall are interfering with the conduct of business, the Chair may order the door to be closed. If

the Chair does order the door closed, the door shall be immediately affixed with a sign stating "Meeting in Session, Open to Public, Please Enter Quietly, Door to Remain Closed." As soon as any interference with the conduct of City Council business has terminated, the door to Council Chambers shall be ordered open by the Chair.

### **SECTION 1.9 PUBLIC INPUT (Including during Public Hearings) – Guidelines for Public Comment.**

The City Council hereby acknowledges and affirms the value of and need for public input as it conducts the City's business. Public input and comment periods during City Council and subcommittee meetings is an essential part of local government meetings. This is an opportunity for members of the public to inform the City Council of their views and offer unique insights regarding topics within the City Council's purview. However, it must be clear that these are business meetings of the City Council. The public does not participate in the decision-making process. The public's role is to provide input for the City Council's consideration in making its decisions.

The receipt of constructive input must be balanced with the City Council's need to conduct its business in an orderly and fair manner. The meeting Chair must have discretion to curtail and even cut off public input which he/ she reasonably perceives to be irrelevant to the City Council's particular purposes or public input that constitutes defamation<sup>1</sup>, fighting words<sup>2</sup>, or a criminal threat<sup>3</sup>. Determining relevancy, although sometimes challenging, is fairly clear. Determining what constitutes appropriate criticism of elected and appointed officials versus unprotected speech is more challenging.

Although the Chair has the primary responsibility to enforce the rules, all members of the City Council and subcommittees have a responsibility to raise a Point of Order when appropriate. When that happens, the Chair determines whether the rules have been violated and whether a speaker is allowed to continue. Any two Councilors can challenge the Chair's decision. In that event, by majority vote, the Council/ committee will decide whether the speaker is allowed to continue.

Citizens have a right to complain about elected officials as well as appointed officials, including City employees. These complaints are protected speech per the First Amendment to the U.S. Constitution. However, the City Council will not

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<sup>1</sup> Defamatory statements are those that a speaker (a) knows to be false and defames the object of the statements;

(b) makes with a reckless disregard for whether the statements are true or false; or (c) negligently fails to ascertain whether the statements are true. *McCarthy v. Manchester Police Dep't*, 168 N.H. 202, 210 (2015).

<sup>2</sup> "[F]ace-to-face words plainly likely to cause a breach of the peace by the" recipient. *State v. Oliveira*, 115 N.H. 559, 561 (1975).

<sup>3</sup> RSA 631:4; *State v. Hanes*, 171 N.H. 173, 179 (2018).

allow defamation, fighting words, or criminal threats. These types of utterances are not

protected by the First Amendment.

Comments identifying a specific action or a specific issue of concern are appropriate. However, accusations of wrongdoing or illegal acts without evidence are defamatory and will be not allowed.

Example of protected speech: The City Manager was wrong to eliminate parking in downtown Gonic. He failed to consider the needs of the residents who live there in the downtown that need the parking in close proximity. He incorrectly determined that the parking obstructed the view of northbound motorists -

Example of an unprotected utterance: The City Manager was wrong to eliminate parking in downtown Gonic. He did this because he took a bribe from the landowner adjacent to the parking.

Citizens who wish to submit a criticism regarding elected and/ or appointed officials are encouraged to do so in writing or to meet with appropriate officials in a non-public setting to convey their input. However, if a citizen wishes to make a public criticism, the City Council recognizes the right to do so if it is conveyed in a manner that is legitimate speech.

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<p><b>ARTICLE 2</b></p> <p><b>DUTIES AND POWERS OF PRESIDING OFFICER</b></p>
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**SECTION 2.1 PRESIDING OFFICER - DECORUM AND ORDER**

The presiding officer shall preserve decorum and order, may speak to points of order in preference to the members, and shall decide all questions of order, subject to an appeal to the Council on motion of any member. No other business shall be in order until the questions on the appeal shall have been decided.

**SECTION 2.2 PRESIDING OFFICER - DECLARING VOTES**

The presiding officer shall declare all votes, but if any member doubts the vote, the presiding officer, without further debate upon the question, shall require a division and shall declare the results.

**SECTION 2.3 PRESIDING OFFICER - ROLL CALL VOTES**

When any member shall require a question to be put in the roll call vote, the presiding officer shall so order, if the request is seconded.

**SECTION 2.4 PRESIDING OFFICER - ORDER OF QUESTIONS**

The presiding officer shall propound all questions in the order in which they are moved, unless the subsequent motion shall be previous in its nature.

**SECTION 2.5 DISPOSAL OF MOTIONS**

After a motion is made and seconded, it shall be considered, and, after it is stated by the presiding officer, it shall be disposed of by vote of the City Council, unless the mover withdraws it before a decision or amendment and the second agrees to withdrawal of the motion.

**SECTION 2.6 MOTION FOR ADJOURNMENT**

The presiding officer shall consider a motion to adjourn as always in order, the time of the next meeting having been agreed upon, unless a member has possession of the floor, or any question has been put and not decided. The motion to adjourn, or to lay on the table, or to take from the table, if seconded, shall be decided without debate.

**SECTION 2.7 PRESIDING OFFICER - RECOGNIZING MEMBERS**

When two or more members ask to be recognized at the same time, the presiding officer shall name the member who shall speak first.

## **SECTION 2.8 COMMITTEE APPOINTMENTS**

All Council committees shall be appointed and announced by the presiding officer, who shall designate the chairperson and vice-chairperson thereof. The Mayor shall be Chair of the Finance Committee and an Ex-Officio voting member of all other committees of the Council.

## **SECTION 2.9 ROBERT'S RULES OF ORDER**

When no other provision is herein made, questions of parliamentary law shall be decided as prescribed in the most recent edition of Robert's Rules of Order.

<p><b>ARTICLE 3</b></p> <p><b>RIGHTS AND DUTIES OF MEMBERS</b></p>
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**SECTION 3.1 COUNCIL MEMBER SPEAKING**

When any member is about to speak in debate, or deliver any matter to the Council, the member shall use a raised hand to be recognized, shall remain seated, respectfully address the presiding officer, shall be confined to the question under debate, and shall avoid personalities. The presiding officer shall attempt to allow a particular stream of discussion to be completed prior to allowing a member to change the direction of the debate at hand.

**SECTION 3.2 COUNCIL MEMBER IN DEBATE**

Members in debate shall address each other as Councilor or may use a description by the ward represented, or such other designation as may be intelligible and respectful.

**SECTION 3.3 INTERRUPTION OF COUNCIL MEMBER**

No member speaking shall be interrupted by another, except to call to order or to correct a mistake. But if any member, in speaking or otherwise, transgresses the Rules of the Council, the member so called to order shall immediately cease speaking unless permitted to explain, and the Chair shall decide the question of order. The City Council, if appealed to, shall decide the question with limited debate.

**SECTION 3.4 COUNCIL MEMBER SPEAKING, LIMITATIONS**

Upon a motion and a two-thirds (2/3) vote by the council to limit debate, the Chair shall limit discussions on any motion before the council. After such vote and if no time limit is set as part of the motion, no member shall speak more than twice on the same question, or more than five minutes at one time, nor more than once, until all other members choosing to speak shall have spoken.

**SECTION 3.5 PRECEDENCE OF MOTIONS**

The following motions shall have precedence in the order in which they are arranged:

1. **TO ADJOURN:** A privileged motion to be voted on at once if seconded; not debatable.
2. **TO LAY ON THE TABLE/TO TAKE FROM THE TABLE:**  
Requires a second, not debatable.
3. **TO CALL FOR THE PREVIOUS QUESTION/TO MOVE THE QUESTION (TO CLOSE DEBATE):**  
Requires a second, not debatable.
4. **TO POSTPONE TO A TIME CERTAIN:**  
Requires a second, debatable.

5. **TO REFER:** Requires a second; debatable.
6. **TO AMEND:** Requires a second; debatable.
7. **TO POSTPONE INDEFINITELY:** Requires a second: debatable.
8. **MAIN MOTION:** Requires a second; debatable.

### **SECTION 3.6 MOTION REDUCED TO WRITING**

Every motion shall be reduced to writing, if the presiding officer directs, or if a member of the Council requests it.

### **SECTION 3.7 VOTING ON MOTIONS, ABSTENTIONS**

Every member who shall be in the Council Chamber when a question is put shall vote, except that no member may vote on any question in which the member has a direct interest to a degree that may significantly impair the independent and impartial exercise of that member's judgment as a Councilor. If a member takes this rule for purposes of not voting, the member shall inform the City Council before a vote be taken on the motion under consideration.

### **SECTION 3.8 MAYORAL VETO - EXERCISE AND VOTE TO OVERRIDE**

To be effective, the right of veto accorded to the Mayor under the provisions of Section 10-A of the Rochester City Charter, must be exercised, and notice of such exercise must be communicated in writing to the City Clerk, within one hundred forty-four (144) hours after action by the Council. As soon as practicable after receipt of the Mayor's written notice of exercise of the veto power, and in no event later than seventy-two (72) hours after receipt of such notice, the City Clerk shall inform the Council in writing of the Mayor's exercise of such veto. The Council may override said veto by a two-thirds (2/3) vote of all Councilors (Mayor excluded) serving in office, as provided for in Section 10-A of the Rochester City Charter, no later than the close of the next Regular meeting of Council.

### **SECTION 3.9 DIVISION OF A QUESTION**

The division of a question may be called for when the sense will admit it.

### **SECTION 3.10 READING OF A PAPER, OBJECTIONS**

When the reading of a paper is called for, and the same is objected to by any Member, it shall be determined by a vote of the Council.

### **SECTION 3.11 SUSPENSION, AMENDMENT, AND REPEAL OF RULES**

No standing Rule of Order of the Council shall be suspended unless two-thirds (2/3) of the members present shall consent thereto. Nor shall any Rule of Order be repealed or

amended without a motion therefore, made at a previous meeting, nor unless a majority of the whole City Council concur therein. The Rules of Order of the City Council shall be reaffirmed by the new Council following each municipal election. The Rules of the former Council shall not be binding.

### **SECTION 3.12 ATTENDANCE OF MEMBERS**

Every member shall take notice of the day and hour to which the Council may stand adjourned, and shall give his punctual attendance accordingly.

<b>ARTICLE 4</b> <b>AGENDAS, COMMUNICATIONS, COMMITTEES,</b> <b>REPORTS, RESOLUTIONS</b>
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### **SECTION 4.1 AGENDA PREPARATION**

The agenda for each Council meeting shall be prepared by the Mayor, the Deputy Mayor and the City Manager in conjunction with the City Clerk. Any Councilor may place an item on the agenda provided that the items be submitted in writing or email to the City Clerk, the Mayor, the Deputy Mayor or the City Manager eleven (11) calendar days prior to the meeting of Council. The City Clerk shall provide Council members with copies of the agenda at least five (5) calendar days prior to the meeting of the Council.

### **SECTION 4.2 MEMORIALS AND DOCUMENTS, PRESENTATION**

All memorials and other documents addressed to the City Council shall be presented by the presiding officer or by a member in the presiding officer's place, who shall explain the subject thereof; and they shall lie on the table to be taken up in order in which they are presented, unless the Council shall otherwise direct.

### **SECTION 4.3 REPORTS AND PAPERS, LEGIBLY WRITTEN OR TYPED**

All reports and other papers submitted to the City Council shall be written in fair hand or typewritten. The Clerk shall make copies on any papers to be reported by the committees, at the request of the chairs thereof. At the request of any councilor a digital copy may be provided in place of printed page.

### **SECTION 4.4 STANDING COMMITTEES**

At the commencement of the new year following the regular municipal election, the following committees shall be appointed by the Mayor:

**Finance:**

Shall consist of seven (7) members including the Mayor who shall serve as chair.

**Public Works and Buildings:**

Shall consist of five (5) members.

**Public Safety:**

Shall consist of five (5) members.

**Codes and Ordinances:**

Shall consist of five (5) members.

**Community Development:**

Shall consist of five (5) members.

**Appointments Review Committee:**

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee.
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.

**SECTION 4.5 SPECIAL COMMITTEES**

Special committees shall consist of three (3) members unless a different number be ordered by the Mayor.

**SECTION 4.6 REMOVAL OF A COMMITTEE MEMBER**

A member of any committee may be removed by a two-thirds (2/3) vote of the entire Council.

**SECTION 4.7 PUBLIC INPUT AT WORKSHOP OR COMMITTEE MEETINGS**

The chair shall call the committee together and no committee shall act by separate consultations, and no report shall be received from any committee unless agreed to in committee actually assembled, and voted upon by a majority of the members thereof.

Public input on any subject appropriate to be brought before the Council shall be allowed at the beginning of every committee meeting or council workshop and shall be placed as the first item of business on the agenda of said meeting. When possible, the chair shall allow for reasonable input from the public during the meeting, to allow citizens to comment on any item appearing on the agenda, except for any items discussed in any non-public session. The chair may limit any public input to insure that the committee is able to complete its work and to provide for the decorum of the meeting.

1. Speakers shall be residents of the City of Rochester, property owners in the City of Rochester, and/or designated representatives of recognized civic organizations or businesses located and/or operating in the City of Rochester;
2. Speakers shall address their comments to the presiding officer and the Council as a body and not to any individual member;
3. Speakers shall first recite their name and address for the record, and, if applicable, the name and address of the civic organization and/or business they have been designated to represent;

4. Each speaker shall be provided a single opportunity for comment, limited to five (5) minutes with the five (5) minutes beginning after the obligatory statement of named and address by the speaker;
5. Public Input shall not be a two-way dialogue between speaker(s), Council Member(s), and/or the City Manager, or administrative staff; with the exception of Committee meetings when allowed by the Chair; and
6. The presiding officer shall preserve strict order and decorum for and by all speakers appearing before the Council.

#### **SECTION 4.8 SITTING OF COMMITTEE DURING COUNCIL MEETINGS**

No committee shall sit during the meetings of the City Council without special leave.

#### **SECTION 4.9 COMMITTEE REPORTS**

It shall be the duty of every committee of the Council to which any subject may be specially referred to report thereon at the next meeting of the City Council, or to ask for further time.

#### **SECTION 4.10 COMMITTEE OF THE WHOLE, COUNCIL RULES**

The rules of proceedings in Council shall be observed in a committee of the whole so far as they may be applicable, excepting the rules limiting the time speaking.

#### **SECTION 4.11 AUTHORIZATION OF EXPENDITURES, CITY DEBT**

After the annual appropriations shall have been passed, no subsequent expenditure shall be authorized for any object, unless provisions for the same shall be made by a specific transfer from some of the annual appropriations or money in the treasury unappropriated or by expressly creating therefore a City debt; and no City debt shall be created except by a majority vote of the Council in the affirmative.

#### **SECTION 4.12 ORDINANCES AND RESOLUTIONS**

Every Resolution, including those which propose to change the Ordinance, shall be placed on the City Council Agenda in accordance with Section 4.1. Any Resolution shall receive a First Reading during the first meeting in which it appears on the Agenda. Following the First Reading, the Council shall take one of the following actions:

1. Vote to disapprove the Resolution.
2. Refer to a Public Hearing if required by law.
3. Refer to an appropriate standing committee, or to the City Council sitting as a Committee of the Whole, for further review. Any Resolution proposing a change to the Ordinance, which did not originate in the Codes and Ordinances Committee, must be referred to said committee prior to a vote of approval. Resolutions referred to Public Hearing per action #2 may also be referred to committee.
4. If actions #2 and #3 do not apply to the Resolution, the Council may proceed to a

vote of approval.

For a Resolution which is not subject to action #1 or #4, it shall receive a Second Reading at the next meeting during which it appears on the City Council Agenda. Following the Second Reading, for any Resolution referred to a standing committee, the chairperson of said committee shall deliver a report detailing the review of the Resolution. After the committee report is delivered, the City Council shall entertain any motions to amend. Following disposition of the motions to amend, the City Council shall vote on final approval or disapproval of the Resolution.

All Resolutions shall be read by title only for the First and Second Reading. Any Councilor desiring a Resolution to be read in its entirety shall Motion as such and said Motion shall require a second. In order to be successful, said Motion must receive a two-thirds (2/3) vote of approval from the entire City Council.

### **SECTION 4.13 ELECTIONS BY BALLOT**

In all elections on the part of the City Council, the members of the City Council shall vote publicly by roll call. To be elected any person seeking election must receive a majority of the votes of those members present and voting.

Single candidates upon nominations ceasing will be elected by City Council voice vote that the City Clerk cast one ballot for that candidate.

### **SECTION 4.14 RECORD OF VOTES AND PROCEEDINGS**

The Clerk shall keep a record of the votes and proceedings of the City Council, entering thereon all orders and resolutions, except such as it is necessary to engross; reports, memorials, and other papers submitted to the Council shall be noted only by their titles or a brief description of their purpose, but any accepted reports may be entered at length on said record.

### **SECTION 4.15 FUNCTIONS OF FINANCE COMMITTEE**

Functions shall include: Purchasing, Trust Funds, Operating Budget, Final Capital Budget, Taxes, City Reports, Legal Affairs, Insurance, Audits, Claims, Accounts, Bids, Review of Expenditures, Receipts, Contract Change Orders, Welfare and Grants. The Finance Committee shall present a monthly report of the City accounts to the Council.

### **SECTION 4.16 FUNCTIONS OF CODES AND ORDINANCES COMMITTEE**

Functions shall include: Municipal Elections and Returns, Charter and Ordinances, Council By-Laws, Enrolled Bills, Planning, Zoning, and such other matters as may be directed by the City Council.

### **SECTION 4.17 FUNCTIONS OF PUBLIC WORKS AND BUILDING COMMITTEE**

Functions shall include: Roads, Sewer Systems, Water Systems, Engineering, Public Buildings, Recycling and Solid Waste, Pollution, Water Resources, Space Allocations.

#### **SECTION 4.18 FUNCTIONS OF PUBLIC SAFETY COMMITTEE**

Functions shall include: Police, Fire, Parking, Traffic, Street Signs, Street Lights, Animal Control, Public Health Services and Ambulance Services.

#### **SECTION 4.19 FUNCTIONS OF COMMUNITY DEVELOPMENT COMMITTEE**

Functions shall include: Economic Development, Industrial Development, Land Use Policy, Technology Issues, Chamber of Commerce, Rochester Main Street, Arts and Cultural, Recreation, Parks, Adult & Youth Services, Promotional Activities and Festivals, Public Relations, COAST, CDBG and Human Services Agencies.

#### **SECTION 4.20 FUNCTIONS OF THE APPOINTMENTS REVIEW COMMITTEE**

Functions shall include: Interviewing of candidates for Council appointed positions on various boards of the City, including but not exclusive of Planning Board, Zoning Board of Adjustment, Trustees of the Trust Fund, Library Trustees, Arena Commission, Recreation, Parks and Youth Services, Welfare Appeals Board, Utility Advisory Board.

Incumbents of any Committee who have submitted Statements of Interest for reappointment and are running unopposed: the Appointments Committee reserves the right to waive the presence of the candidate.

#### **SECTION 4.21 INAUGURAL MEETING, ORDER EXERCISES**

The order of exercises at the meeting held on the first Tuesday after January 1, or Wednesday, January 2, following the regular municipal election shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Prayer
4. Roll Call of Councilors-Elect and Mayor-Elect
5. Mayor takes Oath of Office
6. Councilors-Elect take Oath of Office
7. Roll Call of School Board Members-Elect
8. School Board Members-Elect take Oath of Office
9. Roll Call of Police Commissioners-Elect
10. Police Commissioner-Elect takes Oath of Office
11. Election of Deputy Mayor

12. Inaugural Address
13. Recess to Time Certain
14. Committee of the Whole: Review of Code of Ethics and Conduct
15. Old and/or New Business

#### **SECTION 4.22 COUNCIL COMMUNICATIONS**

- (a) No member shall cause to be mailed, electronically transferred, delivered, or left at City Hall any documents or correspondence for any other member or the City Manager which does not clearly identify the name of the member sending such information and, if possible, the source of such information.
- (b) No anonymous correspondence shall be placed in any member's Council mailbox. All mail, electronic media or other correspondence shall clearly identify the sender, source and date it was received.

#### **SECTION 4.23 MINUTES**

All meetings of the City Council including all standing and special committees of the Council shall take roll call at all committee meetings and record their proceedings and provide minutes of any meeting to the City Clerk's Office in a manner prescribed under NH RSA 91-A (NH Right To Know Law).

#### **SECTION 4.24 CANCELLATION OR POSTPONEMENT OF MEETING(S)**

- (a) The Mayor, Deputy Mayor, and City Manager shall confer and determine if insufficient business or other non-urgent matter warrants postponement or cancellation of a scheduled Council meeting.
- (b) The Mayor, Deputy Mayor, and City Manager shall confer and determine if inclement weather or other emergency warrants postponement or cancellation of a scheduled Council meeting.
- (c) All such decisions regarding postponement or cancellation shall be made no later than 3:00 PM on the date of the scheduled meeting.
- (d) The City Clerk will notify Council members by both email and telephone upon determination of a meeting cancellation or postponement.
- (e) The City Clerk shall ensure that notification of any such cancellation or postponement shall immediately post on the City's website and Face book page.

**APPENDIX**

REVISED AND ADOPTED BY CITY COUNCIL FEBRUARY 6, 1990 [1]  
 AMENDED AND REAFFIRMED BY CITY COUNCIL JANUARY 14, 1992 [2]  
 REAFFIRMED BY CITY COUNCIL JANUARY 11, 1994 [3]  
 AMENDED BY CITY COUNCIL MARCH 1, 1994 [4]  
 AMENDED AND REAFFIRMED BY CITY COUNCIL JANUARY 9, 1996 [5]  
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 3, 1998 [6]  
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 5, 2002 [7]  
 AMENDED AND ADOPTED BY CITY COUNCIL MARCH 5, 2002 [8]  
 AMENDED AND ADOPTED BY CITY COUNCIL FEBRUARY 3, 2004 [9]  
 AMENDED AND ADOPTED BY CITY COUNCIL JANUARY 10, 2006 [10]  
 AMENDED AND ADOPTED BY CITY COUNCIL JANUARY 15, 2008 [11]  
 AMENDED AND ADOPTED BY CITY COUNCIL February 2, 2010 [12]  
 AMENDED AND ADOPTED BY CITY COUNCIL February 7, 2012 (1.4) (3.1) (3.5) and (4.1) [13]  
 AMENDED AND ADOPTED BY CITY COUNCIL June 4, 2013 (1.3) (1.5) and (4.7) [14]  
 AMENDED AND ADOPTED BY CITY COUNCIL March 4, 2014 (4.21) and (4.14) [15]  
 AMENDED AND ADOPTED BY CITY COUNCIL March 1, 2016 (1.4) (3.8) (4.1) and (4.7) [16]  
 AMENDED AND ADOPTED BY CITY COUNCIL March 6, 2018 (1.4 12&13), (4.25) [17]  
 AMENDED AND ADOPTED BY CITY COUNCIL October 2, 2018 (Added 1.4, which moved the order of 1.5 & 1.6) [18]  
 AMENDED AND ADOPTED BY CITY COUNCIL: April 7, 2020 (Amended 1.1 7pm to 6:30pm) (Replaced Section 4.12)  
 AMENDED AND ADOPTED BY CITY COUNCIL: March 1, 2022 (Amended 1.1 6:30pm to 6:00pm) (addition of new section 1.3) (Amended (1.4)(4.1)( 4.12)( 4.13) (4.19)  
 AMENDED AND ADOPTED BY CITY COUNCIL: May 3, 2022 (4.13)  
 AMENDED AND ADOPTED BY CITY COUNCIL: June 7, 2022 (1.8)  
 AMENDED AND ADOPTED BY CITY COUNCIL – April 4, 2023 (1.9) & (4.21)  
 AMENDED AND ADOPTED BY CITY COUNCIL – May 4, 2023 (1.6) & (4.21)

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City Clerk's Office

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6. The Chair shall announce the remote participant *prior* to the Call to Order and follow this suggested script: “Board member (name) is participating in this meeting remotely. (name) are you there? (participant– “yes I am here”) In accordance with RSA 91-A:2, III (a) (name) was it reasonably impractical for you to be physically present at this meeting? (participant) – yes, it was impractical for me to be physically present), (Chair), I find that it is not reasonably practical for (participant) to be physically present for this meeting. (Name), can you identify all other persons physically present in your current location? (participant names others).”

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## **SECTION 4.4 STANDING COMMITTEES**

At the commencement of the new year following the regular municipal election, the following committees shall be appointed by the Mayor:

### **Finance:**

Shall consist of seven (7) members including the Mayor who shall serve as chair.

### **Public Works and Buildings:**

Shall consist of five (5) members.

### **Public Safety:**

Shall consist of five (5) members.

### **Codes and Ordinances:**

Shall consist of five (5) members.

### **Community Development:**

Shall consist of five (5) members.

### **Appointments Review Committee:**

Shall consist of five (5) members.

- A. No Council Member shall serve on more than three (3) standing committees, excluding the Finance Committee.
- B. All vacancies occurring in any standing committee shall be filled by the Mayor.
- C. The Mayor shall appoint two (2) alternate members to each standing committee. Alternates are not required to attend regularly scheduled meetings, but may be called upon by a Chairperson to attend a meeting in order to form a quorum in the absence of appointed regular members.

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**City of Rochester, NH**

**Code of Ethics and Conduct  
For  
Elected and Appointed Officials**

Adopted March 7, 2023

## A. ETHICS

The citizens and businesses of the City of Rochester are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government.
- Are independent, impartial, and fair in their judgment and actions.
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, unless required by law to be confidential, in an atmosphere of respect and civility.

Therefore, members of the City Council, all Boards, and Committees and Commissions shall conduct themselves in accordance with the following ethical standards:

1. **Act in the Public Interest.** Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Rochester and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before them.
2. **Comply with both the spirit and the letter of the Law and City Policy.** Members shall comply with the laws of the nation, the State of New Hampshire, and the City of Rochester in the performance of their public duties.
3. **Conduct of Members.** The professional and personal conduct of members while exercising their office must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, Boards, Committees and Commissions, the staff or public.
4. **Respect for Process.** Members shall perform their duties in accordance with the processes and rules of order established by the City Council.
5. **Conduct at Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand.
6. **Decisions Based on Merit.** Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations. When making adjudicative decisions (those decisions where the member is called upon to determine and apply facts particular to an individual case), members shall maintain an open mind until the conclusion of the hearing on the matter and shall base their decisions on the facts presented at the hearing and on the personal knowledge of a Member on the issue presented to the rest of the City Council at said hearing.
7. **Communication.** Council Members shall avoid posting to social media in regards to any adjudicative matters pending before the body. Outside of adjudicative matters pending before the body, members of the Council/Commission/Board/Committee are advised not to participate in discrimination or harassment, even if the identified behaviors are not targeting a protected class, consisting of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes, but is not limited to: slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and displays or circulation of graphic material that degrades or shows hostility; and physical touching. Members are also advised to never demean or personally attack an employee regarding the employee's job performance in public.

8. **Conflict of Interest.** See Rochester City Charter, Section 72
9. **Gifts and Favors.** Members shall not engage in quid pro quo by taking any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
10. **Confidential Information.** Members must maintain the confidentiality of all written materials and verbal information provided to members which is confidential or privileged. Members shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial, or other private interests.
11. **Use of Public Resources.** Members shall not use public resources which are not available to the public in general (e.g., City staff time, equipment, supplies or facilities) for private gain or for personal purposes not otherwise authorized by law.
12. **Representation of Private Interests.** In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any Board, Committee, Commission or proceeding of the City, nor shall members of Boards, Committees and Commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
13. **Advocacy.** Members shall represent the official policies or positions of the City Council, Board, Committee or Commission to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Rochester, nor will they allow the inference that they do. Councilmembers and Board, Committee and Commission members have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to mention or display endorsements during Council meetings, or Board, Committee and Commission meetings, or other official City meetings.
14. **Policy Role of Members.** Members shall respect and adhere to the council-manager structure of the Rochester City government. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by City staff, Boards, Committees and Commissions, and the public. Except as provided by the City Charter and Code, members shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.
15. **Independence of Boards, Committees and Commissions.** Because of the value of the independent advice of Boards, Committees and Commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of Board, Committee and Commission proceedings.
16. **Positive Workplace Environment.** Members shall support the maintenance of a positive and constructive workplace environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

## **B. CONDUCT GUIDELINES**

The Conduct Guidelines are designed to describe the manner in which elected and appointed officials should

treat one another, City staff, constituents, and others they come into contact with while representing the City of Rochester.

## **1. Elected and Appointed Officials' Conduct with Each Other in Public Meetings**

Elected and appointed officials are individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even though individuals may not agree on every issue.

- a) *Honor the role of the chair in maintaining order*  
It is the responsibility of the Mayor, as chair to keep the comments of members on track during public meetings. Members should honor efforts by the chair to focus discussion on current agenda items. If there is disagreement about the agenda or the chair's actions, those objections should be voiced politely and with reason, following procedures outlined in parliamentary procedure.
- b) *Practice civility and decorum in discussions and debate*  
Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of debate by a free democracy in action. Free debate does not require nor justify, however, public officials to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments.
- c) *Avoid personal comments that could offend other members*  
If a member is personally offended by the remarks of another member, the offended member should make notes of the actual words used and call for a "point of personal privilege" that challenges the other member to justify or apologize for the language used. The chair will maintain control of this discussion.
- d) *Demonstrate effective problem-solving approaches*  
Members have a public stage and have the responsibility to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

## **2. Elected and Appointed Officials' Conduct with the Public in Public Meetings**

Making the public feel welcome is an important part of the democratic process. No signs of partiality, prejudice or disrespect should be evident on the part of individual members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- a) *Be welcoming to speakers and treat them with care and gentleness.*  
While questions of clarification may be asked, the official's primary role during public testimony is to listen.
- b) *Be fair and equitable in allocating public hearing time to individual speakers.*  
The chair will determine and announce limits on speakers at the start of the public hearing process.
- c) *Practice active listening*  
It is disconcerting to speakers to have members not look at them when they are speaking. It is fine to look down at documents or to make notes but reading for a long period of time or gazing around the room gives the appearance of disinterest. While you cannot be required to listen to public speakers in a certain way, it is advised that all members remain conscious of their actions during such time as member of the public might be speaking. To the best of your ability, remain focused on the speaker and avoid noise and

distractions.

Members shall be cognizant of non-verbal body language and facial expressions that could be interpreted as disbelief, anger, or boredom.

Members shall make attempts to listen actively and respectfully to City staff, members of the public and other Members whenever possible.

*d) Maintain an open mind*

Members of the public deserve an opportunity to influence the thinking of elected and appointed officials.

*e) Ask for clarification, but avoid debate and argument with the public*

Only the chair – not individual members – can interrupt a speaker during a presentation. However, a member can ask the chair for a point of order if the speaker is off the topic or exhibiting behavior or language the member finds disturbing.

### **3. Elected and Appointed Officials' Conduct with City Staff**

Governance of a City relies on the cooperative efforts of elected officials, who set policy, appointed officials who advise the elected, and City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by everyone for the good of the community. The council is committed to providing an environment that is free from discrimination and harassment, even if the identified behavior is not targeting a protected class.

*Harassment consists of unwelcome conduct, sexual or otherwise, whether verbal, physical, or visual. Harassing conduct includes, but is not limited to slurs or negative stereotyping; bullying, threatening, intimidating or other hostile acts; degrading jokes and display or circulation of graphic material that degrades or shows hostility; and physical touching*

*a) Treat all staff as professionals*

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior towards staff is not acceptable.

*b) Do not disrupt City staff from their jobs*

Elected and appointed officials should not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met. Do not attend City staff meetings unless requested by staff – even if the elected or appointed official does not say anything, his or her presence implies support, shows partiality, may intimidate staff, and hampers staff's ability to do their job objectively.

*c) Never publicly criticize an individual employee*

Elected and appointed officials should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's manager. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Appointed officials should make their comments regarding staff to the City Manager or the Mayor.

*d) Do not get involved in administrative functions*

Elected and appointed officials acting in their individual capacity must not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits.

e) *Do not solicit political support from staff*

Elected and appointed officials should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from City staff. City staff may, as private citizens with constitutional rights, support political candidates but all such activities must be done away from the workplace.

f) *No Attorney-Client Relationship*

Members shall not seek to establish an attorney-client relationship with the City Attorney, including his or her staff and attorneys contracted to work on behalf of the City. The City Attorney represents the City and not individual members. Members who consult with the City Attorney cannot enjoy or establish an attorney-client relationship with the attorney.

#### 4. **Council Conduct with Boards, Committees and Commissions**

The City has established several Boards, Committees and Commissions as a means of gathering more community input. Citizens who serve on Boards, Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with appreciation and respect.

a) *If attending a Board, Committee or Commission meeting, be careful to only express personal opinions*

Councilmembers may attend any Board, Committee or Commission meeting, which are always open to any member of the public. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Councilmember at a Board, Committee or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

b) *Limit contact with Board, Committee and Commission members to questions of clarification*

It is inappropriate for a Councilmember to contact a Board, Committee or Commission member to lobby on behalf of an individual, business, or developer, and vice versa. It is acceptable for Councilmembers to contact Board, Committee or Commission members in order to clarify a position taken by the Board, Committee or Commission.

c) *Respect that Boards, Committees and Commissions serve the community, not individual Councilmembers*

The City Council appoints individuals to serve on Boards, Committees and Commissions, and it is the responsibility of Boards, Committees and Commissions to follow policy established by the Council. But Board, Committee and Commission members do not report to individual Councilmembers, nor should Councilmembers feel they have the power or right to threaten Board, Committee and Commission members with removal if they disagree about an issue.

Appointment and re-appointment to a Board, Committee or Commission should be based on such criteria as expertise, ability to work with staff and the public, and commitment to fulfilling official duties. A Board, Committee or Commission appointment should not be used as a political "reward."

d) *Be respectful of diverse opinions*

A primary role of Boards, Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Boards, Committees and Commissions, but must be fair and respectful of all citizens serving on Boards, Committees and Commissions.

e) *Keep political support away from public forums*

Board, Committee and Commission members may offer political support to a Councilmember, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Board, Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmember.

### C. SANCTIONS

a) **Acknowledgement of Code of Ethics and Conduct**

Councilmembers who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct shall not be assigned intergovernmental assignments or Council subcommittees by the Mayor. Members of committees appointed by the Mayor and/or the City Council who do not sign an acknowledgement that they have read and understand the Code of Ethics and Conduct are not eligible to hold appointed positions.<sup>1</sup>

b) *Ethics Training for Local Officials*

Councilmembers, Board, Committee and Commission Members who are out of compliance with State or City mandated requirements for ethics training as determined by City Council shall not represent the City on intergovernmental assignments or Council subcommittees, and may be subject to sanctions.

c) *Behavior and Conduct*

The City of Rochester's Code of Ethics and Conduct expresses standards of ethical conduct expected for members of the City of Rochester Council, Boards, Committees and Commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. The chairs of Boards, Committees and Commissions and the Mayor and Council have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics and Conduct are brought to their attention.

d) *Councilmembers*

Councilmembers who intentionally and repeatedly do not follow proper conduct may be reprimanded by the Mayor or formally censured by the Council, lose committee assignments (both within the City of Rochester and with intergovernmental agencies) or other privileges afforded by the Council.

Further, any Councilmember found in violation of this Code or any other misconduct in office may also be subject to the following sanctions imposed by the Council:

1. Required to attend and successfully complete training related to the nature of the violation.
2. Required to issue a formal, sincere apology.
3. Removed from office in accordance with Section 70 of the City Charter.

Failure to comply with any sanctions imposed by the Council will be considered a violation of this Code and an act of misconduct in office.

Individual Councilmembers should point out to the offending Councilmember perceived infractions of the Code of Ethics and Conduct. If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being questioned, then the matter should be referred to the Deputy Mayor. It is the responsibility of the Mayor (Deputy Mayor) to initiate action if a Councilmember's behavior may warrant sanction. If no action is taken by the Mayor (or Deputy Mayor), then the alleged violation(s) can be brought up with the full Council.

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<sup>1</sup> This section does not apply to Council members or Committee members currently serving at the time of adoption.

e) *Board, Committee and Commission Members:*

Counseling, verbal reprimands and written warnings may be administered by the Mayor to Board, Committee and Commission members failing to comply with City policy. These lower levels of sanctions shall be kept private to the degree allowed by law. Copies of all written reprimands administered by the Mayor shall be distributed in memo format to the chair of the respective Board, Committee or Commission, the City Clerk, the City Attorney, the City Manager, and the City Council.

The City Council may impose sanctions on Board, Committee and Commission members whose conduct does not comply with the City's policies, up to and including removal from office. Any form of discipline, short of removal imposed by Council shall be determined by a majority vote of elected members of the Council at a noticed public meeting and such action shall be preceded by a Report to Council with supporting documentation.

When deemed warranted, the Mayor or majority of Council may call for an investigation of Board, Committee or Commission member conduct. Also, should the City Manager or City Attorney believe an investigation is warranted, they shall confer with the Mayor or Council. The Mayor or Council shall ask the City Manager or the City Attorney to investigate the allegation and report the findings.

These sanctions are in addition to any other remedy that might otherwise be available to remedy conduct that violates this code or state or federal law. In order to protect and preserve good government, any individual including the City Manager and the City Attorney after complying with the State of New Hampshire Bar Rules of Professional Conduct, who knows or reasonably believes a member acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, may report the violation to the appropriate governmental authorities.

#### **D. IMPLEMENTATION**

The Code of Ethics and Conduct is intended to be self-enforcing and is an expression of the standards of conduct for members expected by the City. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, this document shall be included in the regular orientations for candidates for City Council, applicants to Board, Committee and Commissions, and newly elected and appointed officials. Members entering office shall sign the below acknowledging they have read and understand the Code of Ethics and Conduct. In addition, the Code of Ethics and Conduct shall be periodically reviewed by the City Council, Boards, Committees and Commissions, and updated it, as necessary.

***I affirm that I have read and understand the City of Rochester Code of Ethics and Conduct for Elected and Appointed Officials***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Amendment to Chapter 7 of the General Ordinances of the City of Rochester Regarding the Code of Ethics and Conduct for Elected and Appointed Officials**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 7 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**ARTICLE XI**

**Code of Ethics and Conduct for Elected and Appointed Officials**

**§ 7-83 Board of Ethics.**

- A. A Board of Ethics (“BOE”) is hereby created. This BOE shall consist of three (3) persons: one member shall be appointed by the Mayor from the City Council, one member shall be appointed by the Chair of the School Board from the School Board, and one member shall be appointed by the Chair of the Police Commission from the Police Commission.
- B. Each BOE Member selected is required to serve unless the BOE Member is the subject of the Complaint, has a conflict of interest, or is excused due to unavailability or exceptional causes (such as a health issue).
- C. The BOE Members shall elect a chairperson and the BOE may adopt such rules for the conduct of its business as it sees fit. The BOE shall have the power to draw upon City departments for reports and information and stenographic and clerical help.

**§ 7-84 Ethics Investigation Officer.**

- A. The position of Ethics Investigation Officer (“EIO”) is hereby created. The City Manager shall have the power to identify and retain an EIO, with approval from the BOE, to assist with the investigation and prosecution of any Complaint which has been referred for investigation. The EIO, with approval of the BOE, shall have sufficient experience and training to conduct the investigation.

**§ 7-85 Complaints, Investigations, and Hearing.**

- A. Complaint Requirements. Any City official may submit a written complaint alleging one or more violations of the Code of Ethics and Conduct for Elected and Appointed Officials (“Ethics Code”). Such complaint must be based on personal knowledge, and set forth facts with enough specificity and detail for a determination of sufficiency for investigation. The Written Complaint must be signed under oath. The Complaint shall be delivered to the City Attorney with a copy to the Mayor and City Clerk. The City Attorney shall promptly provide a copy of the Complaint to the Charged Party.
- B. Review for Sufficiency.
  1. A Review for Sufficiency of the Complaint will be completed within thirty (30) days of receipt. This review will be based on the allegations contained in the Complaint and the immediately available public meetings or records referenced in the Complaint.

2. The City Attorney, Mayor, and Superintendent in the case of a City Board, the City Attorney, Mayor, and Police Chief in the case of the School Board, or the City Attorney, Mayor, and City Manager in the case of the Police Commission shall conduct the Review of Sufficiency. Complaints

against the Mayor, School Board Chair, or Police Commission Chair shall be reviewed by the City Attorney and the Deputy Mayor, School Board Vice Chair, or Police Commission Vice Chair, respectively.

3. If the Complaint is deemed insufficient, the Complainant will be notified in writing of that decision with a copy provided to the Charged Party. A Complaint will be deemed sufficient if it is determined that the Complaint establishes on its own that it is more probable than not that a violation of the Ethics Code may have occurred.

4. If the Complaint is deemed sufficient for further investigation, it shall be referred to the EIO for further action and all parties will be notified of this step through communication in writing.

- C. Investigation Phase. The EIO shall be provided the full cooperation of the City government to conduct such investigation as may be necessary to determine whether any violation may have occurred and next steps. The Charged Party shall have an opportunity to provide a response to the Complaint.

The EIO's investigation shall be completed within forty-five (45) days of the date of referral unless the Charged party and the Chair of the BOE mutually agree to a longer period.

The EIO shall provide a written report with the conclusions reached in the completed investigation to the BOE. The EIO shall provide a non-binding recommendation as to the disposition of the Complaint to the BOE. Thereafter, all action with regard to the Complaint shall be taken by the BOE.

- D. Board of Ethics Hearing.

1. The BOE shall take no further evidence on any Complaint, but shall make its determination based upon the report received by the EIO. However, the BOE shall hold at least one (1) public hearing at which the EIO, the Complainant, and the Charged Party shall be afforded an opportunity to present oral and written argument to the BOE. The BOE may hear from such other and further parties as it determines appropriate.

2. Any party may be represented by legal counsel at his or her own expense at any stage of proceedings related to the Ethics Code.

3. The BOE shall issue a written decision within thirty (30) days of the final public hearing with findings and a disposition, dismissal, or referral for further action if a violation found. If a violation has been found, the BOE shall recommend a sanction or penalty and refer the matter to the City Council, School Board, or Police Commission for disposition, sanction, or other action as set forth in the Ethics Code.

**§ 7-86 Conflict Between Ethics Code and this Article.** To the extent a conflict arises between the Ethics Code and this Article, this Article shall prevail.

**Amendments are effective on January 1, 2024.**

**Amendments to Chapter 40 of the General Ordinances of the City of Rochester Regarding Council**  
**Designated Area Periodic Inspections**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 40 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**§ 40-19 Council Designated Area Periodic Inspections.**

- a. The City hereby requires periodic inspections of residential rental buildings or structures as part of a targeted effort within geographic areas specified by the City Council. The map of said geographic areas shall be maintained by the Department of Building and Licensing Services.
- b. The City Manager, in consultation with the Director of Building and Licensing Services, shall establish a program that implements this section.

**Amendments effective upon passage.**

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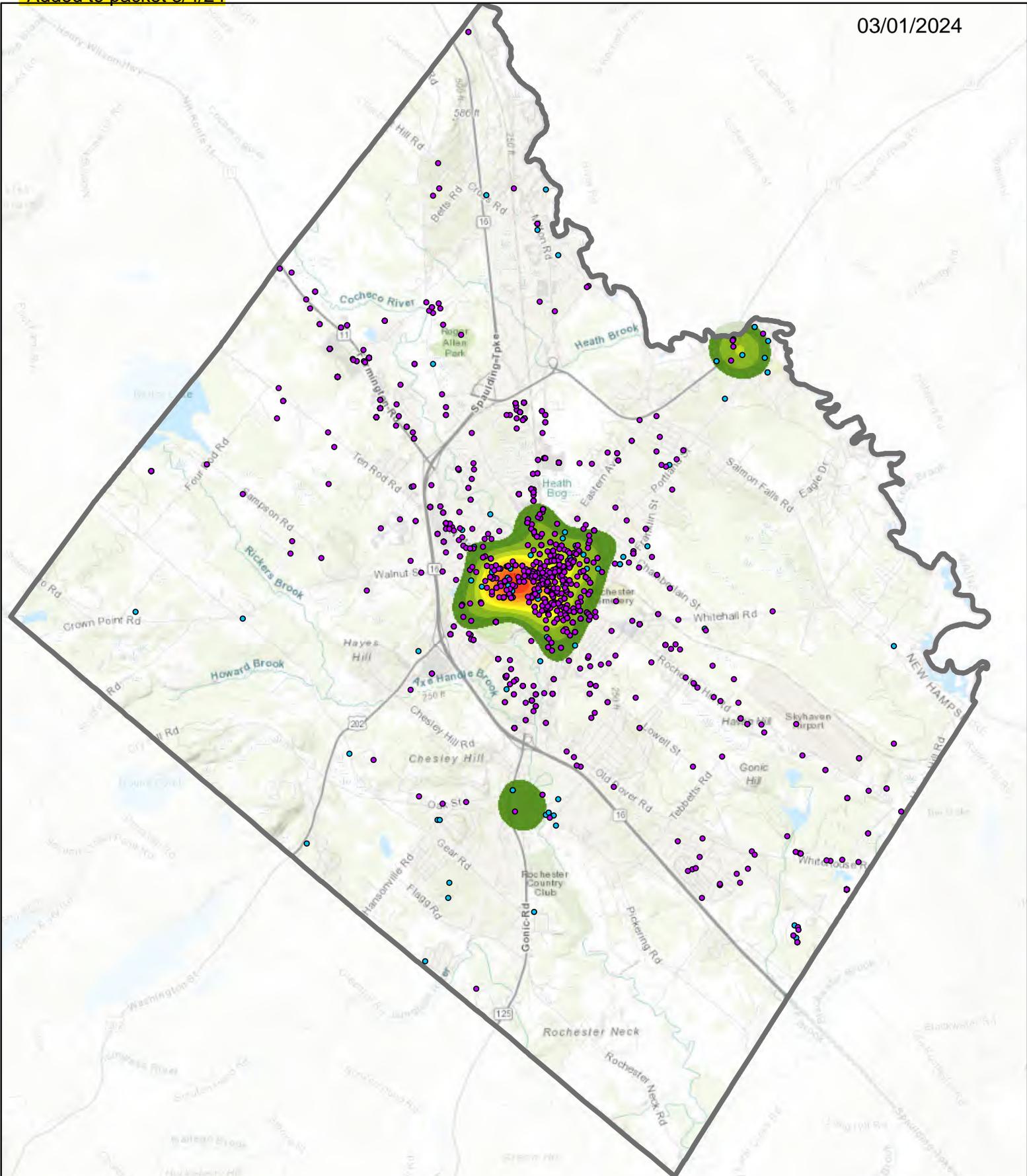
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City Clerk's Office

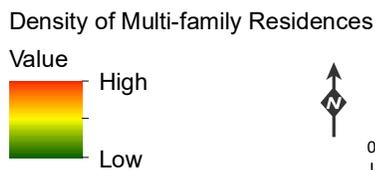
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**Legend**

- Property Crimes 2022-2023
- Residential Code Complaints 2020-2023



Data Sources:  
Rochester, NH  
Esri

1 in = 6,000 ft



0 0.25 0.5 0.75 1 Miles



This map is intended for planning purposes only.  
All features shown should be considered approximate.  
Map created by: DC, City of Rochester, NH  
Date: 3/4/2024

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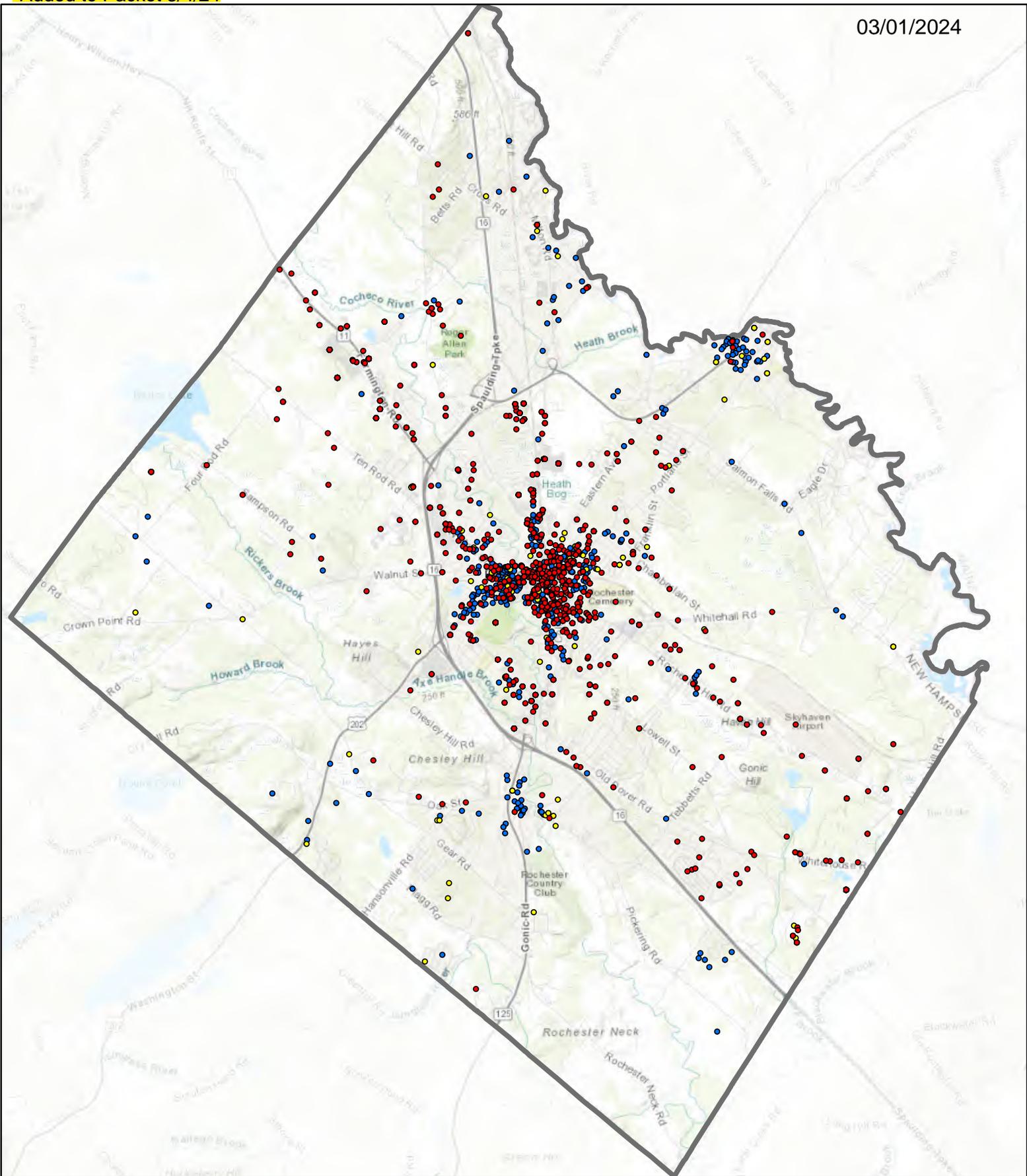
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City Clerk's Office

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**Legend**

- Property Crimes 2022-2023
- Residential Code Complaints 2020-2023
- Non Owner Occupied Multi Families

Data Sources:  
Rochester, NH  
Esri

1 in = 6,000 ft

0 0.25 0.5 0.75 1 Miles



This map is intended for planning purposes only.  
All features shown should be considered approximate.  
Map created by: DC, City of Rochester, NH  
Date: 3/4/2024

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Amendments to Chapter 94 of the General Ordinances of the City of Rochester Regarding Lead PaintPoisoning and Prevention Control

THE CITY OF ROCHESTER ORDAINS:

That Chapter 40 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

ARTICLE III

§ 94-14 Enforcement of the Lead Paint Poisoning and Prevention Control Act.

- a. In accordance with RSA 130-A:11, II, the City assumes full and sole legal authority to enforce the provisions of the Lead Paint Poisoning and Prevention Contral Act, Chapter 130-A of the Revised Statutes Annotated.
- b. The authority granted to the City by adoption of this section, in accordance with RSA 130-A:11, II, does not extend to matters pertaining to licensure and certification under RSA 130-A:12, said authority shall rest solely with the New Hampshire Department of Health and Human Services.

**Amendments effective upon passage.**

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City Clerk's Office

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## [RSA 130-A:1](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:1. Definitions.**

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As used in this chapter:

- I. “Child” or “children” means a person or persons 72 months of age or less.
- II. “Child care facility” means a facility required to be licensed under the provisions of [RSA 170-E:4](#).
- III. “Commissioner” means the commissioner of the department of health and human services.
- IV. “Department” means the department of health and human services.
- V. “Dwelling” means a structure used or intended for human habitation, including interior and exterior surfaces, and may include common areas and all other property, including land and other structures, located within the same lot.
- VI. “Dwelling unit” means any room, group of rooms or other interior area of a dwelling or other structure, all or part of which is offered or made available for human habitation, and may include all common areas of the unit and exterior surfaces.
- VII. “Encapsulation” means resurfacing or covering surfaces with such substances, including paints as are approved as encapsulants, and sealing or caulking with durable materials, to prevent or control the creation of lead exposure hazards. Approved encapsulants under this chapter are:
  - (a) Paints or other substances approved under section 402(a) of Title IV of the Toxic Substances Control Act, [15 U.S.C. section 2601](#), et seq.;
  - (b) Paints or other substances approved as encapsulants by public health authorities in any other state, and approved by the commissioner;
  - (c) Paints or other substances set forth in rules adopted by the commissioner pursuant to [RSA 130-A:10](#), XIV.
- VIII. “Health authority” means any health officer appointed under [RSA 47:12](#) and [RSA 128:1](#).
- VIII-a. “Health care provider” means any person, corporation, facility, or institution either licensed by this state or otherwise lawfully providing health care services, and any officer, employee or agent of such provider acting in the course and scope of employment or agency related to or supportive of health care services.
- IX. “Interim controls” means a set of measures designed to reduce temporarily human exposure or likely exposure to lead exposure hazards, including regular cleaning, repairs, maintenance, painting, or temporary containment, and the establishment and operation of management and resident education programs. “Interim controls” may include in-place management.
- X. “Lead abatement worker” means an employee of a lead abatement contractor or of the owner or manager of a leased or rented dwelling or dwelling unit, or of a child care facility, engaged in lead base substance abatement or who supervises such abatement.
- XI. “Lead base substance” means:

## 130-A:1. Definitions.

- (a) When present in a dried film of paint or other coating on walls, woodwork or other surfaces, or in plaster, putty or other substances:
- (1) The presence of lead equal to or greater than 1.0 milligram of lead per square centimeter of surface area as measured on site by a portable x-ray fluorescence analyzer; or
  - (2) The presence of lead equal to or greater than 0.5 percent lead by weight as determined by laboratory analysis.
- (b) When present in soil, the presence of lead equal to or greater than 400 parts per million of lead in bare soil in children's play areas or 1,200 parts per million average for bare soil in the rest of the yard.
- (c) When present in surface dust and quantified as an area or mass concentration:
- (1) The presence of lead on floors, equal to or greater than 40 micrograms of lead per square foot;
  - (2) The presence of lead on windowsills, equal to or greater than 250 micrograms of lead per square foot;
  - (3) The presence of lead in window wells, equal to or greater than 400 micrograms of lead per square foot; or
- XII.** "In-place management" means the use of maintenance or administrative controls, including specialized cleaning and periodic monitoring, to prevent lead base substances from becoming lead exposure hazards.
- XIII.** "Lead base substance abatement" means any set of measures designed to permanently eliminate a lead exposure hazard, including removal, containment, encapsulation, or replacement of surfaces or fixtures that present a lead exposure hazard and all preparation, cleanup, and post abatement clearance testing associated with such measures.
- XIV.** "Lead abatement contractor" means any person or entity engaged in lead base substance abatement.
- XV.** "Lead inspector" means any person or entity engaged in inspections for the presence of lead base substances.
- XVI.** "Lead exposure hazard" means:
- (a) The presence of lead base substances on chewable, accessible, horizontal surfaces that protrude more than ½ inch and are located more than 6 inches but less than 4 feet from the floor or ground;
  - (b) Lead base substances which are peeling, chipping, chalking, or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated and is likely to become accessible to a child;
  - (c) Lead base substances on interior or exterior surfaces that are subject to abrasion or friction or subject to damage by repeated impact; or
  - (d) Bare soil in play areas or the rest of the yard that contains lead in concentrations equal to or greater than the limits defined in [RSA 130-A:1](#), XI(b).
- XVI-a.** "Lead hazard reduction" means a set of measures designed to reduce a lead exposure hazard, including abatement, interim controls, or a combination of them.
- XVI-b.** "Lead risk assessor" means an individual who conducts risk assessments, as defined in HE-P 1602.44, develops lead hazard reduction plans, as defined in paragraph XVI-a, and issues final risk assessment reports.
- XVI-c.** "Lead clearance testing technician" means an individual who conducts tests for the presence of surface dust, as defined in subparagraph XI(c), or lead in soil, as defined in subparagraph XI(b).
- XVII.** "Occupant" means any person who legally resides in a dwelling or dwelling unit.
- XVIII.** "Owner" means any person who, alone or jointly or severally with others, has legal title to any dwelling, dwelling unit, or child care facility, or a person who has charge, care or control of a dwelling,

## 130-A:1. Definitions.

dwelling unit, or child care facility as an agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. An agent of the owner excludes real estate, property management, and other entities which do not have authority to fund capital or major property rehabilitation on behalf of the owner. The term “owner” does not include a person who holds indicia of ownership primarily to protect a mortgage interest or security interest in real or personal property on or at a dwelling, dwelling unit or child care facility and who does not participate in the management of a dwelling, dwelling unit or child care facility. For the purpose of this definition, the owner of publicly owned dwellings, dwelling units or child care facilities shall be the chief administrative officer of the responsible town, city, county or state agency.

**XIX.** “Participating” or “participate” “in the management of a dwelling, dwelling unit or child care facility” means the actual participation by a holder in the management or operational affairs of a dwelling, dwelling unit or child care facility, including without limitation where a holder exercises control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decision-making with respect to all or substantially all of the operations (as opposed to financial or administrative) aspects of the dwelling, dwelling unit or child care facility. The following types of activities, in and of themselves, shall not constitute participation in the management of a dwelling, dwelling unit or child care facility:

- (a) Taking title to a dwelling, dwelling unit or child care facility by foreclosure, by accepting a deed to such dwelling, dwelling unit or child care facility in lieu of foreclosure, by taking title to such dwelling, dwelling unit or child care facility by other similar means or the transfer or sale of such dwelling, dwelling unit or child care facility.
- (b) Conducting, or requiring the borrower to conduct, an environmental assessment or audit of the dwelling, dwelling unit or child care facility.
- (c) Withholding funds under an existing obligation or restructuring or renegotiating the terms of a borrower's obligations, including, but not limited to, requiring the payment of interest, the extension of payment periods or the issuance of additional funds.
- (d) Providing financial advice to the borrower.
- (e) Requiring or advising the borrower to comply with federal, state and local laws, rules, regulations, orders and permits.
- (f) Collecting rents, maintaining utility services and securing the dwelling, dwelling unit or child care facility from unauthorized entry.
- (g) Undertaking a lead base substance abatement.

**XX.** “Person” means any individual, corporation, company, association, partnership or other entity and includes town, city, county and state governmental agencies.

**XXI.** “Primarily to protect a mortgage interest or security interest” means that the holder's indicia of ownership are held primarily for the purpose of securing the payment or performance of the loan or other obligation.

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 213:1](#), eff. Aug. 11, 1995; [310:175, 181–183](#), eff. Nov. 1, 1995; [1997, 165:1, 19](#), eff. Aug. 8, 1997; [2000, 96:1, 2](#), eff. June 26, 2000; [2002, 63:1, 2](#), eff. Jan. 1, 2003.

Annotations

## Notes

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**Amendment Notes****—1983.**

Paragraph III: Substituted “department of health and human services” for “department of health and welfare”.

**—1987.**

Paragraph I: Added the second sentence.

Paragraph II: Substituted “6 years of age or less” for “under the age of 6” following “children”.

**—1995.**

Paragraph III: Rewritten by ch. 310 to the extent that a detailed comparison would be impracticable.

Paragraph IV: Rewritten by ch. 310 to the extent that a detailed comparison would be impracticable.

Paragraph VII: Rewritten by ch. 213 to the extent that a detailed comparison would be impracticable.

Chapter 310 substituted “commissioner” for “director” in subpars. (b) and (c).

**—1997.**

Paragraphs XVI-a and VIII-a: Added.

**—2000.**

Paragraph XV: Deleted the second sentence.

Paragraphs XVI-b and XVI-c: Added.

**—2002.**

Paragraph XI(b): Substituted “400 parts per million of lead in bare soil in children’s play areas or 1,200 parts per million average for bare soil in the rest of the yard” for “1,000 parts per million of lead, unless otherwise established by the United States Environmental Protection Agency, in which case the United States Environmental Protection Agency standard shall prevail”.

Paragraph XI(c)(1): Substituted “40” for “200”.

Paragraph XI(c)(2): Substituted “250” for “500”.

Paragraph XI(c)(3): Substituted “400” for “800”.

Paragraph XVI(d): Substituted “in play areas or the rest of the yard that contains lead in concentrations equal to” for “within 100 feet of a dwelling or dwelling unit that contains lead in concentrations at”.

**Research References & Practice Aids**

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**Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

## [RSA 130-A:2](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:2. Duties of the Commissioner.**

I. The commissioner shall:

- (a) License in accordance with [RSA 130-A:12](#), I, or deny or revoke the licensure of, any lead inspector, lead risk assessor, or lead abatement contractor advertising, offering or otherwise making available services in the state of New Hampshire, whether or not the inspector, contractor, or lead risk assessor is incorporated in the state.
- (b) Certify employees of owners or managers of dwellings, dwelling units, or child care facilities, and of lead abatement contractors, who are engaged in lead base substance abatement, or refuse to provide or revoke such certification. Separate certificates shall be issued to workers who supervise other certified workers and to lead clearance testing technicians.
- (c) Collect fees for the issuance of licenses and certificates under [RSA 130-A:2](#), I(a), (b), and (h).
- (d) Adopt rules required under this chapter.
- (e) Implement public education programs for the general public, for owners, managers and occupants of dwelling and dwelling units, for owners and operators of child care facilities, and for physicians and other health care workers providing services to children concerning the prevention and treatment of lead poisoning and relative to the provisions of this chapter and the reporting of lead poisoning under RSA 141-A.
- (f) Implement comprehensive case management for cases of lead poisoning when a child's blood lead level meets or exceeds 10 micrograms per deciliter. Case management shall include the coordination of medical services appropriate for the treatment of the reported lead poisoning.
- (g) Provide training for and maintain an active program of coordination with health authorities relative to the control of lead base substances in owner-occupied and renter-occupied housing, with specific regard to the conduct of inspections, lead base substance abatement, in-place management, and enforcement activities carried out under this chapter. The commissioner shall make reasonable efforts to ensure that such training programs are held in areas with high incidence of lead exposure hazards, and that property owners are educated about methods to prevent lead exposure hazards before they arise and how hazards can be addressed once identified.
- (h) Certify training programs for lead abatement contractors, lead inspectors, lead risk assessors, lead clearance testing technicians, and lead abatement workers.
- (i) Develop and implement, in accordance with [RSA 130-A:7](#), an investigation and enforcement program for lead base substances and the reduction of lead exposure hazards.
- (j) Develop and maintain a data base on the incidence of lead poisoning in children. This data base shall be established using data supplied under [RSA 130-A:3](#).
- (k) [Repealed.]
- (l) Develop educational materials in accordance with [RSA 130-A:5](#).

## 130-A:2. Duties of the Commissioner.

II. The commissioner may establish, in accordance with rules adopted under RSA 541-A, a notification program relative to lead base substance inspection and abatement activities.

III. The commissioner shall establish, in accordance with rules adopted under RSA 541-A, a window replacement program. The program shall be made available to owners of dwellings and dwelling units and funded by the lead poisoning prevention fund, established in [RSA 130-A:15](#), and other available moneys, when the commissioner determines there are enough moneys in such fund to sustain such a program. Pilot projects may begin as soon as funds are available. The commissioner shall make a report on the parameters of the program, funding acquired and sought, and program expenditures to the health and human services oversight committee, established in [RSA 126-A:13](#), and to the chairperson of the house ways and means committee on or before September 1, 2010.

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [1997, 165:2, 3](#), eff. Aug. 8, 1997; [2000, 96:3, 4](#), eff. June 26, 2000; [2002, 63:3](#), eff. Jan. 1, 2003; [2006, 314:1, 6](#), eff. January 1, 2007; [2009, 256:1](#), eff. September 14, 2009; [276:1](#), eff. January 1, 2010.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Substituted “commissioner” for “director” in the section catchline, the introductory sentence of par. I, preceding “shall make” in the second sentence of subpar. I(g) and preceding “may establish” in par. II.

#### —1997.

Paragraph I(c): Inserted “(h)” preceding “and (k)”.

Paragraph I(i): Substituted “reduction” for “abatement” preceding “of lead exposure”.

#### —2000.

Paragraph I(a): Inserted “lead risk assessor” following “lead inspector”, deleted “or” preceding “contractor” and inserted “or lead risk assessor” thereafter.

Paragraph I(b): Substituted “separate certificates shall” for “a separate certificate shall” and “other certified workers and to lead clearance testing technicians” for “or design lead base substance abatement projects” following “supervise” in the second sentence.

Paragraph I(h): Inserted “lead risk assessors, lead clearance testing technicians”.

#### —2002.

Paragraph I( /): Added.

#### —2006.

## 130-A:2. Duties of the Commissioner.

Paragraph I(c): Substituted “and (h)” for “and (k)”.

Paragraph I(k): Repealed.

—2009.

The 2009 amendment by Chapter 256 added III.

The 2009 amendment by Chapter 276 substituted “10 micrograms” for “15 micrograms” in the first sentence of I(f).

## Research References & Practice Aids

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### Research References and Practice Aids

#### Cross References.

Rulemaking authority of commissioner generally, see [RSA 130-A:10](#).

#### Hierarchy Notes:

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:3](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:3. Laboratory Reporting.**

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- I. Any laboratory performing blood lead analysis on adults or children residing in New Hampshire shall report, in accordance with rules adopted under [RSA 130-A:10, test](#) results of such analysis.
- II. Using the data provided under paragraph I, the department shall annually determine the percentage of children 6 years of age or younger, who are being screened with blood lead level tests in accordance with the department's childhood lead poisoning screening and management guidelines and shall make an annual report, commencing on November 1, 2015, to the president of the senate, the speaker of the house of representatives, the chairpersons of the senate and house committees having jurisdiction over health and human services issues, the senate clerk, the house clerk, and the state library.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [2015, 250:1](#), effective September 11, 2015.

Annotations

### **Notes**

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#### **Amendment Notes**

—2015.

The 2015 amendment added the I designation; and added paragraph II.

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:3-a](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:3-a. Capillary Blood Test Screening.**

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Any health care provider or organization conducting capillary blood tests, including, but not limited to community action programs, shall inform the department of such fact and shall provide a fact sheet prepared by the department to the parent or guardian of any child whose test indicates any presence of lead. Such fact sheet shall, at a minimum, describe the health effects of childhood lead poisoning, the advisability of obtaining a venous blood test, and the benefits of identifying and addressing lead hazards. It shall include a statement that, in the case of rental properties, it is advisable to inform the property owner of the capillary blood test result and venous blood test result, that measures to identify and address lead hazards shall not be conducted without the property owner's knowledge and opportunity to take such measures, and that a property owner cannot evict a tenant based on the presence in the dwelling or dwelling unit of a child whose capillary blood test or venous blood test indicates a blood lead level.

### **History**

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[2015, 250:2](#), effective September 11, 2015.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:4](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:4. Prohibited Use of Lead Paint.**

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It shall be unlawful for any person to use or apply, or cause to be used or applied, in any child care facility, dwelling or dwelling unit any paint containing more than 0.06 percent lead.

### **History**

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[1993, 325:2](#), eff. July 1, 1994.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:5](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:5. Investigations.**

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I. The commissioner shall investigate cases of lead poisoning in children reported under RSA 141-A whose blood lead level meets or exceeds 5 micrograms per deciliter of whole venous blood. The commissioner may also conduct investigations when there is reason to believe that a lead exposure hazard, as defined in [RSA 130-A:1](#), XVI(b) and (d), for a child exists. Such investigations shall include, but not be limited to:

(a) Requiring additional information and periodic reports from the child's health care provider, the owner or owner's agent of a leased or rented dwelling or dwelling unit occupied by a child, the owner or operator of any child care facility attended by the child, and any lead inspector, lead risk assessor, or lead abatement contractor involved in lead hazard reduction at the child's dwelling, dwelling unit, or child care facility.

(b) Inspections of dwellings or dwelling units or of any child care facility, and testing environmental samples.

(c) Issuing orders requiring the reduction of lead exposure hazards from a leased or rented dwelling or dwelling unit and from a child care facility, or issuing a notice to the owner of a dwelling or dwelling unit.

II. [Repealed.]

III. The commissioner may request health authorities to assist in such investigations.

IV. The commissioner may obtain an administrative inspection warrant under RSA 595-B if consent of the property owner or the owner's agent for an investigation or inspection is denied.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [1997, 165:4](#), eff. Aug. 8, 1997; [2000, 96:5](#), eff. June 26, 2000; [2002, 63:4](#), eff. Jan. 1, 2003; [2007, 293:1, 15](#), I, eff. Jan. 1, 2008; [2009, 276:2](#), eff. January 1, 2010; [2018, 4:5](#), effective July 1, 2019; [2018, 4:6](#), effective July 1, 2021; [2022, 272:29](#), effective August 23, 2022.

Annotations

### **Notes**

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#### **Amendment Notes**

—1995.

Substituted “commissioner” for “director” preceding “may investigate” in the first sentence and preceding “may also” in the second sentence of par. I and preceding “may request” in par. II.

**—1997.**

Paragraph I: Rewrote the first sentence of the introductory paragraph, substituted “hazard reduction” for “base substance abatement” following “involved in lead” in subpar. (a) and “reduction” for “abatement” preceding “of lead exposure” in subpar. (c).

**—2000.**

Paragraph I(a): Inserted “lead risk assessor” following “lead inspector”.

**—2002.**

Added new par. II and redesignated former par. II as par. III.

**—2007.**

Paragraph I: Substituted “10” for “20” preceding “micrograms” in two places in the first sentence of the introductory paragraph.

Paragraph II: Repealed.

**—2009.**

The 2009 amendment added IV.

**The 2022 amendments to this section by Ch. 272** in the introductory language of I, deleted “as reported on 2 separate tests except that a blood lead level may be designated as elevated by the health care provider when the level reported meets or exceeds 5 micrograms per deciliter on the first venous test” following “blood” in the first sentence, and deleted the former second sentence, which read: “With such a declaration, a second test shall not be required”.

## Research References & Practice Aids

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### Research References and Practice Aids

#### New Hampshire Practice.

8-4 N.H.P. Personal Injury-Tort & Insurance Practice § 4.21.

#### Hierarchy Notes:

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:5-a](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:5-a. Universal Testing; Health Care Providers; Not Liable.**

---

All health care providers who provide primary medical care shall conduct blood testing of all one and 2-year old patients to determine a blood lead level. A health care provider shall not be liable for not performing a test for blood lead level when a parent or guardian has been informed of the blood test requirement and has refused to consent or has failed to follow through in response to a referral for a test. Nothing in this section shall prevent a health care provider from recommending blood testing for children younger than one year or older than 2 years should circumstances, including potential lead hazard exposures, warrant such testing.

### **History**

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[2015, 250:3](#), effective September 11, 2015; [2018, 4:3](#), effective April 9, 2018.

Annotations

### **Notes**

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#### **Amendment Notes**

—2018.

**The 2018 amendments to this section by Ch. 4** added “Universal Testing” in the section heading; substituted “shall conduct blood testing of all one and 2-year old patients to determine a blood lead level” for “shall ensure that parents and guardians of children 6 years of age or younger are advised of the availability and advisability of screening and testing their children for lead in accordance with this chapter” in the first sentence; in the second sentence, deleted “screening or confirmation” following “not performing a” and “a referral for a”, and substituted “the blood test requirement” for “the availability and advisability of screening”; and added the last sentence.

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

130-A:5-a. Universal Testing; Health Care Providers; Not Liable.

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## [RSA 130-A:5-b](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:5-b. Child Screenings.**

---

If by 2017 fewer than 85 percent of one-year olds and 2-year olds in the following categories of children are receiving blood lead level tests, the department shall adopt rules, pursuant to RSA 541-A, to require that all health care providers who provide primary medical care to young children shall ensure that their patients in such categories are screened and educated according to the department's childhood lead poisoning screening and management guidelines:

- I. Children who live in high-risk communities designated by the department.
- II. Children who are in Medicaid.
- III. Children who are receiving benefits under the Women, Infants, and Children Program (WIC).
- IV. Children who are enrolled in Head Start.

### **History**

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[2015, 250:3](#), effective September 11, 2015.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:5-c](#)

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:5-c. Blood Lead Testing.**

---

All parents or legal guardians shall have their children who are residing in this state tested for blood lead level at the ages of one and 2. A child shall be exempt from this required blood lead level testing if a parent or legal guardian objects to such testing and provides a statement to such effect or if a physician licensed under RSA 329, or a physician exempted under [RSA 329:21, III](#), certifies that blood lead level testing may be detrimental to the child's health. The latter exemption shall exist only for the length of time that, in the opinion of the physician, testing would be detrimental to the child. The commissioner shall develop an opt out form for the purposes of this section and shall make such form available to health care facilities. The form shall include simple opt out language in a font and size easily readable by the average adult reader.

### **History**

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[2018, 4:4](#), effective April 9, 2018.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:5-d](#)

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:5-d. Sale and Rental of Property.**

---

After July 1, 2024, the following shall require certification of lead safety pursuant to this chapter prior to being used as either a residential rental unit or as a day care facility:

- I. Newly-constructed rental units within buildings erected prior to January 1, 1978. For the purposes of this section “newly-constructed rental units” means rental units being converted from a use other than residential rental housing.
- II. Newly-licensed day care facilities within buildings erected prior to January 1, 1978.

### **History**

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[2018, 4:4](#), effective April 9, 2018.

Annotations

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:6](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:6. Inspections.**

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I. The commissioner may, as part of an investigation conducted under [RSA 130-A:5, conduct](#) an inspection of any leased or rented dwelling or dwelling unit during business hours, or at a time mutually agreed upon with the owner or the owner's agent, for the purposes of identifying the presence of lead base substances. The commissioner shall provide the findings of the inspection to the occupant and to the owner or the owner's agent. If the leased or rented dwelling has multiple units, and if a lead exposure hazard is determined to exist during an investigation conducted under [RSA 130-A:5, the](#) commissioner may conduct inspections of all other dwelling units of the leased or rented dwelling occupied by a child or pregnant woman with the owner or owner's agent for the purposes of identifying the presence of lead base substances. The commissioner shall provide the findings of the inspection to the occupant and the owner or the owner's agent. When a lead exposure hazard is determined to exist per [RSA 130-A:1, XVI](#)(a), (b), or (c), the commissioner shall issue an order in accordance with [RSA 130-A:7](#) requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. When a lead exposure hazard is determined to exist per [RSA 130-A:1, XVI](#)(d), the commissioner may issue an order in accordance with [RSA 130-A:7](#) requiring lead hazard reduction to the owner and, if appropriate, to the owner's agent. The commissioner shall provide a copy of the order to the owner or owner's agent and to the occupant of the dwelling unit. The commissioner shall notify all tenants of the dwelling of lead exposure hazard findings in common areas. Upon request, the owner or owner's agent shall provide a copy of the order to the occupants of any dwellings or dwelling units located within the same lot at no charge.

II. The commissioner may, as part of an investigation conducted under [RSA 130-A:5](#), if the lead-poisoned child spends 10 hours or more a week at the facility, and after making reasonable efforts to notify the owner of a child care facility and the license holder, conduct an inspection of a child care facility constructed prior to 1978, during business hours or at a time mutually agreed to, for the purposes of identifying the presence of lead base substances. The findings of the inspection shall be provided to the owner, to the license holder, and to the health authority. When a lead exposure hazard is determined to exist per [RSA 130-A:1, XVI](#)(a), (b), or (c), the commissioner shall issue an order in accordance with [RSA 130-A:7](#) requiring lead hazard reduction to the owner and to the license holder. When a lead exposure hazard is determined to exist per [RSA 130-A:1, XVI](#)(d), the commissioner may issue an order in accordance with [RSA 130-A:7](#) requiring lead hazard reduction to the owner and to the license holder. The commissioner shall provide a copy of the order to the owner and to the license holder and a notice of findings, to the state child care licensing unit, and to the health authority. The owner or license holder shall provide notice of the findings of lead hazard exposure, provided by the commissioner, to the parents or guardians of children who use the child care facility.

III. The commissioner may, as part of an investigation conducted under [RSA 130-A:5](#) and when the child reported under RSA 141-A resides in a dwelling or dwelling unit owned by the child's parents or guardians, conduct an inspection with the consent of the owner at a time convenient to the owner and provide to the owner the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall provide a notice to the owner and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

## 130-A:6. Inspections.

IV. The commissioner may, as part of an investigation carried out under [RSA 130-A:5](#), conduct an inspection of structures other than the dwelling or dwelling unit of the child and child care facilities used by the child. The inspection shall be conducted with the consent of the owner, manager, or other person in charge of the facility or structure at a time convenient to the owner, manager or other person in charge. Such inspections shall be made only when there are reasonable grounds to suspect that a lead exposure hazard may exist. The commissioner shall provide to the owner, manager or other person in charge the result of the inspection. When a lead exposure hazard is determined to exist, the commissioner shall provide to the owner, manager or other person in charge, the child's health care provider and the health authority a notice and shall also provide information on the health consequences of lead poisoning and procedures for lead hazard reduction.

V. The commissioner, or designee, may conduct inspections during lead hazard reduction activity to assure that the activity is conducted in accordance with rules adopted under this chapter.

VI. Inspections shall be carried out in accordance with rules adopted under [RSA 130-A:10](#).

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 213:4](#), eff. Aug. 11, 1995; [310:183](#), eff. Nov. 1, 1995; [1997, 165:5, 6](#), eff. Aug. 8, 1997; [2007, 293:2](#), eff. January 1, 2008; [2009, 276:3](#), eff. January 1, 2010; [2018, 4:8](#), effective April 9, 2018.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Chapter 213 inserted “per RSA 130-A:1, XVI(a), (b), or (c)” following “exist” in the third sentence and added the fourth sentence in pars. I and II.

Chapter 310 substituted “commissioner” for “director” in three places in par. I, in three places in par. II, in two places in par. III, in three places in par. IV and preceding “or designee” in par. V.

#### —1997.

Paragraph I: Substituted “may” for “shall” following “commissioner” in the beginning of the first sentence and “hazard reduction” for “base substance abatement” following “requiring lead” in the third and fourth sentences.

Paragraph II: Substituted “hazard reduction” for “base substance abatement” following “requiring lead” in the third and fourth sentences.

Paragraph V: Substituted “hazard reduction activity” for “base substance abatement” preceding “to assure” and “activity” for “abatement” preceding “is conducted”.

#### —2007.

Paragraph I: Deleted “and after making reasonable efforts to notify the owner or the owner’s agent” following “RSA 130-A:5”, substituted “upon with the owner or the owner’s agent” for “to” following “agreed” in the first sentence and added the third and fourth sentences.

**—2009.**

The 2009 amendment rewrote I and II to the extent that a detailed comparison would be impracticable.

**—2018.**

**The 2018 amendments to this section by Ch. 4**, in the third sentence of I, substituted “commissioner may conduct” for “commissioner shall conduct”, and added “occupied by a child or pregnant woman” following “leased or rented dwelling.”

## **Research References & Practice Aids**

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### **Research References and Practice Aids**

#### **New Hampshire Practice.**

8-4 N.H.P. Personal Injury-Tort & Insurance Practice § 4.21.

#### **References in text.**

The reference to “RSA 13-A:1” in par. II appears to be incorrect and should probably be “[RSA 130-A:1](#)”.

#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:6-a](#)

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:6-a. Property Owner Notification.**

---

I. The department shall notify in writing the owner or registered agent of an owner of a dwelling or dwelling unit where the child resides if a blood lead level of 3 to 9.9 micrograms per deciliter is found in the child's blood. Such notice to the property owner shall specify that it is neither a finding that a lead exposure hazard exists in the property nor is it an order for lead hazard reduction. Such notice shall include information about the health hazards of lead poisoning, standards for identifying and eliminating lead hazards, and the federal Renovation, Repair, and Painting Program.

II.

(a) Eviction of a tenant based on the presence in the dwelling or dwelling unit of a child who has tested positive for the presence of lead in his or her bloodstream shall be unlawful. There shall be a rebuttable presumption that any eviction action, instituted by the owner within 6 months of receipt of notice of a child's elevated blood lead level by the department, the child's physician, or the child's parent or guardian, is based on the child's elevated blood level; provided that:

(1) If the notice came from a parent or guardian only, such parent or guardian shall provide the owner with a copy of the child's blood test prior to the expiration of the eviction notice for the rebuttable presumption in this subparagraph to apply; and

(2) This subparagraph shall not be construed to alter any cause for eviction under [RSA 540:2](#).

(b) If a court finds that an eviction is based on the child's elevated blood lead level, it shall deny the eviction and award damages to the tenant pursuant to [RSA 540:14, II](#). However, if an owner in response to the notice from the department, the child's physician, or the child's parent or guardian discovers a lead exposure hazard in the dwelling or dwelling unit, the owner may proceed with relocation of the tenants, provided that the owner meets the requirements of [RSA 130-A:8-a, I](#) or II.

III. In circumstances where the presence of a lead exposure hazard is unsuspected, and becomes known only after the dwelling or dwelling unit has been rented to a family with a child, the owner may withdraw the unit from the residential rental market in lieu of undertaking reduction of the lead exposure hazard. In such case the owner may bring an action to evict the family but only if the owner fulfills all of the conditions set forth in [RSA 130-A:8-a, II](#). The dwelling unit shall not be subsequently rented for residential purposes without reduction of all lead exposure hazards associated with the unit.

IV. Refusal of a tenant to permit the owner to have access to the dwelling or dwelling unit in order to inspect for lead exposure hazards shall be good cause for eviction pursuant to [RSA 540:2, II\(e\)](#); provided, however, that the owner gives the tenant at least 48 hours' prior written notice, and that the inspection is to be conducted at a reasonable time.

### **History**

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[1995, 145:2](#), eff. July 23, 1995; [310:175](#), eff. Nov. 1, 1995; [1997, 165:7](#), eff. Aug. 8, 1997; [2002, 63:5](#), eff. Jan. 1,

## 130-A:6-a. Property Owner Notification.

2003; [2007, 293:3](#), eff. January 1, 2008; [2009, 256:2](#), eff. September 14, 2009; [2015, 250:4](#), effective September 11, 2015; [2018, 4:2](#), effective April 9, 2018.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Chapter 310 substituted “department” for “division” preceding “shall make” in the first sentence of par. I, following “sent by the” in the second sentence and following “notice from the” in the fourth sentence of par. II.

#### —1997.

Paragraph I: Inserted “hazard” following “lead exposure” and substituted “for lead hazard reduction” for “to abate” following “an order” in the second sentence.

#### —2002.

Paragraph I: Substituted “lead levels of 10” for “lead levels of 15” in the first sentence.

Paragraph II: Substituted “blood level of 10” for “blood level of 15” in the first sentence.

#### —2007.

Substituted “7.5 to 9.9” for “10 to 19.9” preceding “micrograms” in the first sentence of pars. I and II.

#### —2009.

The 2009 amendment substituted “6 to 9.9 micrograms per deciliter” for “7.5 to 9.9 micrograms per deciliter” in the first sentence of I and II and added “provided that this shall not be construed to alter any cause for eviction under RSA 540:2” at the end of the second sentence of II.

#### —2015.

The 2015 amendment, in paragraph I, in the first sentence, substituted “notify in writing the owner or registered agent of an owner” for “make reasonable efforts to notify in writing the owner” and “if a venous blood test lead level of 5 to 9.9 micrograms per deciliter is found” for “if lead levels of 6 to 9.9 micrograms per deciliter are found”; rewrote paragraph II; added paragraph III; and redesignated former paragraph III as paragraph IV.

#### —2018.

The 2018 amendments to this section by Ch. 4 substituted “a blood lead level of 3” for “a venous blood test lead level of 5” in I.

## Research References & Practice Aids

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### Hierarchy Notes:

[RSA Title X, Ch. 130-A](#)

## [RSA 130-A:6-b](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:6-b. Parent Notification.**

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The department shall send materials to the parents of any child with a blood lead level of 3 micrograms per deciliter or higher. Such materials shall inform parents who are tenants to work with the property owner and advise against engaging in renovation, repair, or painting activities themselves. Such materials shall inform parents who own and occupy the house in which the child resides of resources for identifying and eliminating lead hazards, including the Renovation, Repair and Painting Program.

### **History**

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[2015, 250:5](#), effective September 11, 2015; [2018, 4:1](#), effective April 9, 2018.

Annotations

### **Notes**

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#### **Amendment Notes**

—2018.

The 2018 amendments to this section by Ch. 4 substituted “3 micrograms” for “5 micrograms.”

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:7](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:7. Enforcement.**

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- I. Whenever the commissioner has reason to believe that the provisions of [RSA 130-A:9](#), or any rule adopted by the commissioner under this chapter has been violated, the commissioner shall issue a notice of violation. The commissioner may also impose administrative fines under [RSA 130-A:14](#) and may also request injunctive relief under [RSA 130-A:17](#), I.
- II. The commissioner, in requiring lead hazard reduction under [RSA 130-A:6](#), I or II, shall do so by written order. The order shall include, as appropriate, the following information:
- (a) The findings of the inspection, including the specific locations determined to constitute a lead exposure hazard.
  - (b) The methods appropriate for lead hazard reduction and copies of rules pertaining to lead hazard reduction adopted under the provisions of this chapter.
  - (c) The period of time within which lead hazard reduction shall be completed. The time period for lead hazard reduction of an occupied dwelling or dwelling unit shall not exceed 90 days except that the period may be extended at the discretion of the commissioner for the period of time determined to be reasonable by the commissioner under the circumstances of the case.
  - (d) The standards for reoccupancy of a dwelling or dwelling unit by a child, or the resumption of operations of a child care facility, after the conduct of lead hazard reduction.
  - (e) Responsibility for verification by a lead inspector or lead risk assessor of lead hazard reduction to the commissioner.
- III. Any person subject to an order issued under this section may petition the superior court to review such order. The commissioner may also impose administrative fines under [RSA 130-A:14](#) and may request injunctive relief under [RSA 130-A:17](#), I in the event that an order, served by the commissioner, is not followed or a fine imposed by the commissioner is not paid.
- IV. Any order issued by the commissioner that requires lead hazard reduction shall be binding upon and enforceable against the person to whom the order was issued and any other individual or entity that may acquire ownership of, or an interest in, the property that is subject to the order.
- V. Interim controls, as defined in this chapter, may be used as an acceptable alternative to lead hazard abatement only with the prior written approval of the commissioner and if a lead exposure hazard reduction plan or any other subsequent plan is adopted and in place at the department to address compliance with the intent of this section. When interim controls are approved and maintained in response to an order, the person to whom the order was issued, and any other individual or entity that may acquire ownership of the property that is subject to the order, shall submit to the commissioner a certificate of compliance for interim controls from a licensed risk assessor annually prior to the expiration of the current certificate. When a certificate of compliance for interim controls is not issued by a licensed risk assessor prior to expiration of the current certificate or when an inspection by the commissioner, or designee, reveals that the property no longer meets the requirements of interim controls, the commissioner shall require submission of a certificate of compliance for abatement. The commissioner shall adopt rules, under RSA 541-A, for the procedures for interim controls.

VI. Any order issued by the commissioner shall be recorded in the registry of deeds for the county in which the property is situated and, upon recordation, the order shall run with the property.

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [1997, 165:8](#), eff. Aug. 8, 1997; [2000, 96:6](#), eff. June 26, 2000; [2006, 314:2-4](#), eff. Jan. 1, 2007; [2007, 293:4](#), eff. January 1, 2008; [2009, 276:4](#), eff. July 29, 2009; [276:4](#), eff. January 1, 2010.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Substituted “commissioner” for “director” in four places in par. I, preceding “in requiring” in the first sentence of the introductory paragraph of par. II, following “extended by the” in the second sentence of par. II(c), following “abatement to the” in par. II(e) and preceding “shall also” in the second sentence of par. III.

#### —1997.

Paragraph I: Deleted “ RSA 130-A:8 or” preceding “ RSA 130-A:9” in the first sentence and substituted “may” for “shall” following “commissioner” in the second sentence.

Paragraph II: Rewritten to the extent that a detailed comparison would be impracticable.

#### —2000.

Paragraph II(e): Inserted “or lead risk assessor” following “lead inspector”.

#### —2006.

Paragraph II(c): Substituted the end of the sentence following “period may” for “upon request of the person to whom the order is issued, be extended by the commissioner for a time period not to exceed 60 days when sufficient reason is presented for not being able to meet the conditions of the order within the 90 day period”.

Paragraph III: In the second sentence, substituted “may also impose” for “shall also impose”, deleted “also” following “and may” and substituted “event that an” for “event that the” preceding “order” and inserted “served by the commissioner” thereafter, and added the end of the sentence following “is not followed”.

Paragraphs IV, V: Added.

#### —2007.

Paragraph V: Added the third and fourth sentences.

#### —2009.

The 2009 amendment by Chapter 276:4, effective January 1, 2010, substituted “ RSA 130-A:17, I” for “ RSA 130-A:17” at the end of I and in the second sentence of III; rewrote V.

## 130-A:7. Enforcement.

The 2009 amendment by Chapter 276:4, effective July 29, 2009, added VI.

## Research References & Practice Aids

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### Hierarchy Notes:

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:8-a](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:8-a. Relocation of Tenants.**

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I. In circumstances where the presence of a lead exposure hazard is unsuspected and becomes known when the dwelling or dwelling unit is already rented to a family with a child, the owner may temporarily relocate the family during the lead hazard reduction activity. The temporary relocation shall meet all of the following conditions:

(a) The tenant must be offered an available replacement dwelling which is safe, sanitary, and does not contain an interior lead exposure hazard defined in [RSA 130-A:1](#), XVI(b). If a child in the tenant family has been found to have a blood lead level which exceeds 30 micrograms per deciliter, the dwelling shall not contain any lead exposure hazard.

(b) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

(c) The rent for the replacement unit shall not exceed the rent for the unit from which the family is being displaced. The tenant has the duty to pay rent for the replacement dwelling unit provided, however, that any rent paid by the tenant for the unit from which the tenant has been displaced which covers the time period that the tenant occupies the replacement dwelling shall be paid to the owner of the replacement dwelling by the owner of the original unit. The owner may relocate the family to a dwelling unit that is more expensive than the original unit, provided that the owner pays the difference in rent between the 2 units.

(d) The owner shall agree in writing to permit the family to reoccupy the original dwelling unit as soon as the lead exposure hazard has been reduced.

(e) The owner shall pay the reasonable and actual costs of relocation from and back to the original dwelling unit. The owner may, at such owner's sole option, personally move the tenant's household furnishings and personal property or move them by using agents or employees, rather than pay the tenant to have such tenant's possessions moved. The payment of moving expenses authorized under this subparagraph shall not exceed the amount of the tenant's security deposit plus the prepaid rent.

II. Eviction of a family based on the presence of a lead exposure hazard shall not be permitted when the method of lead hazard reduction chosen by the owner is interim controls or encapsulation. When the owner has been given a written order for lead hazard reduction by the commissioner pursuant to [RSA 130-A:7](#), the owner may bring an action to evict the family when all of the following conditions have been met:

(a) The method of lead hazard reduction can reasonably be expected to require more than 30 days to perform.

(b) The tenant shall be offered an available replacement dwelling which is safe, sanitary, and does not contain a lead exposure hazard.

(c) The replacement unit shall be comparable in size to the unit from which the family is being relocated.

(d) The owner shall make reasonable efforts to locate a replacement dwelling in the same elementary school district as the unit from which the family is being relocated.

## 130-A:8-a. Relocation of Tenants.

- (e) The rent shall be comparable to the rent for the unit from which the family is being displaced.
- (f) The owner shall agree in writing to permit the tenant to reoccupy the original dwelling unit when the lead exposure hazard has been reduced, provided that:
- (1) The lead hazard reduction occurs within 6 months of the date the tenant moved out of the original dwelling.
  - (2) The tenant provides the owner with written notice of the address where such tenant can be contacted when the lead exposure hazard has been reduced.
  - (3) Within 10 days of receiving the offer to reoccupy the original unit, the tenant agrees to do so.
  - (4) The tenant agrees to resume the tenancy within 30 days of accepting the owner's offer.
- (g) Prior to the time the family vacates the unit, the owner shall return the tenant's security deposit, regardless of any rental arrears owed by the tenant or the condition of the unit, plus all prepaid rent. Prior to the reoccupancy of the unit under the provisions set forth in [RSA 130-A:8-a](#), II(f), the tenant shall pay any rental arrears which shall have been demanded under [RSA 540:4](#), prior to the relocation of the tenant. The rental arrears shall be paid at least 10 days prior to reoccupancy. The tenant shall return the security deposit to the owner within 45 days after reoccupancy pursuant to [RSA 540-A:6](#).
- (h) The landlord provides the tenant with a 30-day eviction notice pursuant to [RSA 540:2](#), II(f). Such notice shall inform the tenant of the tenant's right to the return of the security deposit and prepaid rent and the right to reoccupy the premises as set forth in [RSA 540:2](#), II(f).

III. When an owner has been given a written order for lead hazard reduction by the commissioner, pursuant to [RSA 130-A:7](#), the owner may withdraw the dwelling unit from the residential rental market in lieu of undertaking reduction of the lead exposure hazard. In such a case, the owner may bring an action to evict the family if the owner fulfills all of the conditions set forth under paragraph II. The dwelling unit shall not be subsequently rented for residential purposes without the reduction of all of the lead exposure hazards associated with the unit.

IV. Any owner who violates paragraph III by re-renting the dwelling unit for residential purposes without first reducing the lead exposure hazard shall be subject to the remedies set forth in [RSA 130-A:14](#) and 16, and liable to the family who was evicted due to the lead exposure hazard in the amount of \$1,000 plus costs and reasonable attorney's fees. Each dwelling unit re-rented without reduction of lead exposure hazards shall constitute a separate violation.

V. Any owner who conveys, sells, or transfers an interest in a dwelling unit which has been withdrawn from the residential rental market pursuant to paragraph IV without disclosing in writing the existence of the commissioner's order shall be subject to the penalties set forth in [RSA 130-A:14](#) and 16. The conveyance of each dwelling unit so transferred shall constitute a separate violation. No buyer or transferee who has notice of the commissioner's order may rent the dwelling unit without first reducing the lead exposure hazards referenced in the order.

VI. Any owner who fails to comply with subparagraph II(f) shall be liable to the displaced tenant in the amount of \$500 plus costs and reasonable attorney's fees.

VII. The refusal of a family to temporarily relocate after the owner has met all of the requirements of paragraph I shall constitute grounds for eviction pursuant to [RSA 540:2](#), II(d).

VIII. Any tenant who is party to a written lease and who is forced to relocate due to a lead exposure hazard may, at his sole option, terminate the lease as of the day the tenant relocates from the dwelling unit. The tenant wishing to terminate shall provide written notice to the owner or the owner's agent within 7 days of the date of relocation. Once the tenant provides such notice, the owner shall no longer be liable for a rent supplement, if any, paid pursuant to subparagraph I(c).

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 306:6](#), eff. Aug. 20, 1995; [310:183](#), eff. Nov. 1, 1995; [1997, 165:9](#), eff. Aug. 8, 1997; [2006, 192:1](#), eff. Jan. 1, 2007.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Paragraph II: Chapter 310 substituted “commissioner” for “director” following “abate by the” in the second sentence of the introductory paragraph.

Chapter 306 added the second, third, and fourth sentences in subpar. (g).

Paragraph III: Chapter 310 substituted “commissioner” for “director” following “abate by the” in the first sentence.

Paragraph V: Chapter 310 substituted “commissioner’s” for “director’s” following “existence of the” in the first sentence and following “notice of the” in the third sentence.

#### —1997.

Paragraph I: Substituted “lead hazard reduction activity” for “abatement” in the first sentence of the introductory paragraph, “reduced” for “abated” at the end of subpar. (d) and “property or more than personally by” for “property himself or by” following “and personal” in the second sentence of subpar. (e).

Paragraph II: Substituted “lead hazard reduction” for “abatement” following “method of” in the first sentence of the introductory paragraph and subpars. (a) and (f)(1), “for lead hazard reduction” for “to abate” following “written order” in the second sentence of the introductory paragraph and “reduced” for “abated” following “has been” in the introductory paragraph of subpar. (f) and in subpar. (f)(2).

Paragraph III: Substituted “for lead hazard reduction” for “to abate” following “written order” and “reduction” for “abatement” following “undertaking” in the first sentence and following “purposes without the” in the second sentence.

Paragraph IV: Substituted “reducing” for “abating” preceding “the lead exposure” in the first sentence and “reduction of lead exposure hazards” for “abatement” preceding “shall constitute” in the second sentence.

Paragraph V: Substituted “reducing” for “abating” preceding “the lead exposure hazards” and “referenced” for “identified” thereafter in the third sentence.

#### —2006.

Paragraph II(h): Substituted “eviction notice” for “notice-to-quit” in the first sentence.

## Research References & Practice Aids

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Hierarchy Notes:

## [RSA 130-A:9](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:9. Prohibitions.**

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- I. No person shall perform or cause to be performed lead base substance abatement, in-place management, or interim controls in a dwelling or dwelling unit, or in any child care facility, in any manner other than as provided for in rules adopted under [RSA 130-A:10](#).
- II. No person shall perform or cause to be performed a lead inspection or lead risk assessment, as defined in HE-P 1600, in a dwelling or dwelling unit or in a child care facility in any manner other than as provided for in rules adopted under [RSA 130-A:10](#).
- III. No child or pregnant woman shall be present in a leased or rented dwelling or dwelling unit, or in a child care facility, during the period of lead hazard reduction when the method of reduction causes the release of lead base substances which may be inhaled or ingested. The dwelling or dwelling unit or the child care facility shall not be reoccupied until an inspection is performed which indicates the lead exposure hazard has been reduced. The commissioner shall include this prohibition in any order issued under [RSA 130-A:7](#).
- IV. No person performing inspections or lead risk assessments, as defined in HE-P 1600, for the presence of lead base substances as a lead inspector or lead risk assessor after lead hazard reduction shall perform or have performed the lead hazard reduction.
- V. No person shall advertise or otherwise offer or make available services as a lead inspector, lead risk assessor, or lead abatement contractor without being licensed under [RSA 130-A:12](#).
- VI. No person shall engage any individual for lead base substance abatement who has not been tested and certified under [RSA 130-A:12](#). However, individuals not certified under [RSA 130-A:12](#), II, may engage in activities related to a lead exposure hazard reduction plan, such as, but not limited to, installation of exterior siding, carpet or paving, or application of encapsulants, provided that the individual does not engage directly in lead based substance abatement and the plan is reviewed and approved by a contractor licensed under [RSA 130-A:12](#), I.
- VII. No training program shall be offered in this state for the purposes of training lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers that has not been certified under [RSA 130-A:12](#).

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [1997, 165:10, 11](#), eff. Aug. 8, 1997; [2000, 96:7](#), eff. June 26, 2000; [2007, 293:5](#), eff. January 1, 2008.

Annotations

### **Notes**

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**Amendment Notes****—1995.**

Substituted “commissioner” for “director” preceding “shall include” in the third sentence of par. III.

**—1997.**

Paragraph III: Substituted “lead hazard reduction” for “abatement” following “period of” and “reduction” for “abatement” following “method of” in the first sentence and “reduced” for “eliminated” following “has been” at the end of the second sentence.

Paragraph IV: Substituted “hazard reduction” for “base substance abatement” preceding “shall perform” and “lead hazard reduction” for “abatement” following “performed the”.

Paragraph VI: Added the second sentence.

**—2000.**

Inserted “or lead risk assessment, as defined in HE-P 1602.44” in pars. II and IV, “or lead risk assessor” following “lead inspector” in pars. IV and V, and “lead risk assessors” following “lead inspectors” and “lead clearance testing technicians” following “abatement contractors” in par. VII.

**—2007.**

Substituted “HE-P 1600” for “HE-P 1602.44” throughout section.

**Research References & Practice Aids**

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**Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:10](#)

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:10. Rulemaking.**

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The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- I. Qualifications and procedures for licensure of lead inspectors, lead risk assessors, and lead abatement contractors, in accordance with [RSA 130-A:12](#). The rules shall provide for reciprocity with other states having similar standards.
- II. Standards and procedures for the testing and certification of lead abatement workers and lead clearance testing technicians, in accordance with [RSA 130-A:12](#). The rules shall provide for reciprocity with other states having similar standards.
- III. The conduct of inspections and inspection standards for lead inspectors and lead risk assessors, including procedures for issuing certificates of inspection and certifications of compliance and for the review and validation of such certificates or certifications by the department for any person who so requests.
- IV. Fees to be collected for the issuance of licenses to lead inspectors, lead risk assessors, lead abatement contractors, for certification of lead abatement workers and lead clearance testing technicians, for testing resulting from investigations, for certifications of training programs, exam and training fees, for notifications under RSA 130-A, and other environmental fees. Property owners who own more than 4 but fewer than 7 dwelling units shall pay a fee for licensure which is  $\frac{1}{2}$  of that paid by other lead abatement contractor licensees. Such reduced fee license shall only be valid for work on dwellings or dwelling units owned by such license holder.
- V. Procedures for the conduct of investigations carried out under [RSA 130-A:5](#), including the conduct of inspections and establishment of a blood lead level requiring an inspection.
- VI. Procedures for issuing orders under [RSA 130-A:7](#), including procedures for extending the time available for lead hazard reduction and interim controls for leased or rented dwellings where no child resides or frequents regularly at the time of inspection and issuance of the order.
- VII. Procedures for notification activities carried out under [RSA 130-A:14](#).
- VIII. Procedures for lead hazard reduction, in-place management, and interim controls for interior and exterior surfaces. The procedures shall include methods of abatement and the measures necessary to protect the health and safety of lead abatement workers and to control the release of lead base substances to the environment. The commissioner shall allow for the use of alternate procedures that result in the same level of protection as otherwise provided by the rules adopted under this chapter.
- IX. A schedule of administrative fines which may be imposed under [RSA 130-A:14](#) for a violation of this chapter or the rules adopted pursuant to it.
- X. Procedures for notice and opportunity for a hearing prior to the imposition of an administrative fine imposed under [RSA 130-A:14](#).
- XI. Standards for training programs for lead inspectors, lead risk assessors, lead abatement contractors, lead clearance testing technicians, or lead abatement workers.
- XII. Procedures for reporting of laboratory test results under [RSA 130-A:3](#).

**XIII.** Standards and procedures for certifying laboratories performing tests to detect or measure lead in human body fluids or tissues.

**XIV.** Paints and other substances which may be approved as encapsulants.

**XV.** Standards and procedures for granting a variance from compliance with one or more provisions of RSA 130-A.

## History

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[1993, 325:2](#), eff. July 1, 1994; [1995, 213:2, 3](#), eff. Aug. 11, 1995; [310:175, 183](#), eff. Nov. 1, 1995; [1997, 165:12–15](#), eff. Aug. 8, 1997; [2000, 96:8](#), eff. June 26, 2000; [2007, 293:6, 7](#), eff. January 1, 2008; [2009, 276:5, 6](#), eff. January 1, 2010; 2010S, 1:7, eff. June 10, 2010.

Annotations

## Notes

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### Amendment Notes

#### —1995.

Chapter 213 inserted “certifications when a dwelling unit is found to be lead safe” following “free” in par. III and added par. XIV.

Chapter 310 substituted “commissioner” for “director” preceding “shall adopt” in the introductory paragraph and “department” for “division” following “certifications by the” in par. III.

#### —1997.

Paragraph IV: Inserted “for certifications of training programs” following “laboratories” in the first sentence.

Paragraph VI: Substituted “hazard reduction” for “base substance abatement” following “lead”.

Paragraph VIII: Substituted “hazard reduction” for “base substance abatement” following “lead” in the first sentence and added the third sentence.

Paragraph XV: Added.

#### —2000.

Inserted “lead risk assessors” following “lead inspectors” in pars. I, III, and XI; “and lead clearance testing technicians” in pars. II and IV; and “lead clearance testing technicians” in par. XI.

#### —2007.

Paragraph IV: Deleted “for certification of laboratories” following “investigations” in the first sentence.

Paragraph VI: Added “and interim controls for leased or rented dwellings where no child resides or frequents regularly at the time of inspection and issuance of the order”.

#### —2009.

## 130-A:10. Rulemaking.

The 2009 amendment deleted “and certifications when a dwelling or dwelling unit is found to be lead free, certifications when a dwelling unit is found to be lead safe” following “certifications of compliance” in III; added “opportunity for a” in X; and made a related change.

**—2010.**

The 2010 amendment (Spec. Sess.), in the first sentence of IV, added “exam and training fees” and “and other environmental fees” and made a related change.

## Research References & Practice Aids

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**Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:11](#)

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> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:11. Application.**

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- I. The department shall implement and enforce the provisions of this chapter throughout the state.
- II. Notwithstanding the provisions of paragraph I, any municipality which adopts this chapter by a majority vote of its local governing body, as defined in [RSA 672:6](#), may assume full and sole legal authority to enforce the provisions of this chapter by any means lawfully delegated to the municipality by any statute, except for matters pertaining to licensure and certification under [RSA 130-A:12](#) which shall rest solely with the department.
- III. Health authorities in municipalities other than those adopting this chapter under [RSA 130-A:11](#), II, may, upon request to and approval by the commissioner, carry out investigations under [RSA 130-A:5](#). The issuance of orders shall remain the sole responsibility of the commissioner.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:175, 183](#), eff. Nov. 1, 1995.

Annotations

### **Notes**

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#### **Amendment Notes**

—1995.

Substituted “department” for “division” in par. I, following “rest solely with the” in par. II and “commissioner” for “director” in the first and second sentences of par. III.

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:12](#)

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**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:12. Licensure; Certification.**

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**I.**

**(a)** A license to perform as a lead abatement contractor, lead inspector, or lead risk assessor, shall be issued in writing by the department in accordance with rules adopted under [RSA 130-A:10](#), I. The license shall be valid for 12 months from the date of issuance, shall contain the expiration date, and shall contain the official signature of the commissioner or designee. The license or a certified copy of the license shall be available for inspection at any worksite during the period of work of the lead abatement contractor, lead inspector, or lead risk assessor.

**(b)** Any owner who owns 4 or fewer dwelling units shall not be required to obtain a lead abatement contractor license to perform lead abatement on such owner's dwellings or dwelling units, provided that such owner shall comply with all rules adopted under [RSA 130-A:10](#), I.

**II.** Lead abatement workers and lead clearance testing technicians shall first obtain a certification from the department. The certification shall be issued in accordance with rules adopted under [RSA 130-A:10](#), II. The certificate shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certificate or a certified copy of the certificate shall be available for inspection at any worksite where the individual is performing lead base substance abatement or conducting clearance testing.

**III.** Training programs offered in New Hampshire for lead abatement contractors, lead inspectors, lead risk assessors, and individuals seeking certification as lead abatement workers or lead clearance testing technicians shall first be certified by the department in accordance with rules adopted under [RSA 130-A:10](#), XI. Such certification shall be in writing, shall be valid for a period of 12 months from the date of issuance, and shall contain the official signature of the commissioner or designee. The certification or a certified copy of the certificate shall be available for inspection during any period of training.

**IV.** [Repealed.]

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:175, 183](#), eff. Nov. 1, 1995; [1997, 165:16](#), eff. Aug. 8, 1997; [2000, 96:9](#), eff. June 26, 2000; [2007, 293:15](#), II, eff. January 1, 2008.

Annotations

### **Notes**

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Amendment Notes

**—1995.**

Substituted “department” for “division” following “writing by the” in the first sentence in par. I(a), following “certification from the” in the first sentence in par. II, following “certified by the” in the first sentence in par. III and following “certified by the” in the first sentence of par. IV, and “commissioner” for “director” preceding “or designee” in the second sentence of par. I(a), in the third sentence in par. II and in the second sentence of pars. III and IV.

**—1997.**

Substituted “contain the official signature of” for “be signed by” in the second sentence of pars. I(a), II and III, and in par. IV.

**—2000.**

Paragraph I(a): Deleted “or” preceding “lead inspector” and inserted “or lead risk assessor” thereafter in the first and third sentences.

Paragraph II: Inserted “and lead clearance testing technicians” in the first sentence and “or conducting clearance testing” in the fourth sentence.

Paragraph III: Inserted “lead risk assessors” following “lead inspectors” and “or lead clearance testing technicians” following “lead abatement workers” in the first sentence.

**—2007.**

Paragraph IV: Repealed.

## Research References & Practice Aids

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**Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:13](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:13. Notification Program.**

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The commissioner may, if necessary, institute a program requiring the notification to the department of all inspections for lead base substances carried out by lead inspectors, risk assessments carried out by lead risk assessors, and of all lead hazard reduction activities conducted on child care facilities and on leased or rented dwelling and dwelling units, carried out by lead abatement contractors or by lead abatement workers. The program shall be conducted in accordance with rules adopted under [RSA130-A:10](#), VII, and the commissioner shall collect fees for notifications. The commissioner may conduct inspections of such activities as necessary to assure that the provisions of this chapter and rules adopted under it are carried out.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:175, 183](#), eff. Nov. 1, 1995; [1997, 165:17](#), eff. Aug. 8, 1997; [2000, 96:10](#), eff. June 26, 2000.

Annotations

### **Notes**

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#### **Amendment Notes**

##### **—1995.**

Substituted “commissioner” for “director” in the first sentence, preceding “shall collect” in the second sentence and in the third sentence, and “department” for “division” following “notification to the” in the first sentence.

##### **—1997.**

Substituted “hazard reduction” for “base substance abatement” preceding “activities” in the first sentence.

##### **—2000.**

Inserted “risk assessments carried out by lead risk assessors” following “lead inspectors” in the first sentence.

### **Research References & Practice Aids**

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## [RSA 130-A:14](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:14. Administrative Fines.**

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The commissioner, after notice and opportunity for a hearing, and pursuant to rules adopted under RSA 541-A, may impose an administrative fine not to exceed \$5,000 for each offense upon any person who violates any provision of this chapter or rules adopted under this chapter. Rehearings and appeals from a decision of the commissioner shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the lead poisoning prevention fund established in [RSA 130-A:15](#).

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [2007, 293:8](#), eff. January 1, 2008; [2009, 276:7](#), eff. January 1, 2010; [2014, 157:1](#), effective January 1, 2015.

Annotations

### **Notes**

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#### **Amendment Notes**

##### **—1995.**

Substituted “commissioner” for “director” in the first sentence, following “decision of the” in the second sentence, and in the fourth sentence.

##### **—2007.**

Substituted “lead poisoning prevention fund established in RSA 130-A:15” for “general fund” following “deposited into the” in the fifth sentence.

##### **—2009.**

The 2009 amendment added “opportunity for a” preceding “hearing” in the first sentence and made a stylistic change.

##### **—2014.**

## 130-A:14. Administrative Fines.

The 2014 amendment substituted "\$5,000" for "\$2,000" in the first sentence.

## Research References & Practice Aids

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### Hierarchy Notes:

[RSA Title X, Ch. 130-A](#)

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## [RSA 130-A:15](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:15. Lead Poisoning Prevention Fund.**

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There is hereby established the lead poisoning prevention fund to be used to carry out the provisions of this chapter. The fund shall be composed of fees, fines, gifts, grants, donations, bequests, or other moneys from any public or private source and shall be used to implement and encourage lead paint removal and education, and to support program staff and administrative costs. The fund shall be nonlapsing and shall be continually appropriated to the commissioner of the department of health and human services for the purposes of this chapter.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:182](#), eff. Nov. 1, 1995; [2007, 293:9](#), eff. January 1, 2008; 2010S, 1:8, eff. June 10, 2010.

Annotations

### **Notes**

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#### **Amendment Notes**

##### **—1995.**

Substituted “commissioner of the department of health and human services” for “director, division of public health services” in the third sentence.

##### **—2007.**

Rewrote the second sentence.

##### **—2010.**

The 2010 amendment (Spec. Sess.) added “and to support program staff and administrative costs” in the second sentence.

### **Research References & Practice Aids**

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**Hierarchy Notes:**

## [RSA 130-A:16](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:16. Penalty.**

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Any person who violates any provision of this chapter shall be guilty of a misdemeanor for each day that a violation exists. When lead hazard reduction has been ordered, the period of violation shall be calculated from the last date for reduction stated in the order issued under [RSA 130-A:7](#) or in any extension of the order.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1997, 165:18](#), eff. Aug. 8, 1997.

Annotations

### **Notes**

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#### **Amendment Notes**

—1997.

Substituted “hazard reduction” for “base substance abatement” preceding “has been ordered” and “reduction” for “correction” preceding “stated” in the second sentence.

### **Research References & Practice Aids**

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#### **Research References and Practice Aids**

##### **Cross References.**

Classification of crimes, see [RSA 625:9](#).

Sentences, see RSA 651.

##### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)

## [RSA 130-A:17](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:17. Injunctive Relief.**

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- I. Either the attorney general or the commissioner may bring a civil action in superior court for appropriate relief, including a temporary or permanent injunction or both, to enforce any provision of this chapter, rules adopted under this chapter, or orders issued pursuant to this chapter, including but not limited to, orders of lead hazard abatement and orders imposing administrative fines.
- II. The court hearing shall be held on an expedited basis and as soon as the court's docket permits.
- III. Either party may request that the court hold a consolidated hearing for both temporary and permanent injunctive relief.

### **History**

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[1993, 325:2](#), eff. July 1, 1994; [1995, 310:183](#), eff. Nov. 1, 1995; [2006, 314:5](#), eff. January 1, 2007; [2009, 276:8](#), eff. January 1, 2010.

Annotations

### **Notes**

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#### **Amendment Notes**

##### **—1995.**

Substituted “commissioner” for “director” preceding “may request”.

##### **—2006.**

Added “either the attorney general or” preceding “the commissioner may” and deleted “request the attorney general to” thereafter, substituted “orders” for “order”, and added the end of the sentence following “this chapter”.

##### **—2009.**

The 2009 amendment added the I designation and added II and III.

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

## [RSA 130-A:18](#)

Statutes current through Chapter 243 of the 2023 Regular Session.

**LEXIS™ New Hampshire Revised Statutes Annotated > Title X Public Health (Chs. 125 — 149-R)  
> Chapter 130-A Lead Paint Poisoning Prevention and Control (§§ 130-A:1 — 130-A:19)**

### **130-A:18. Civil Suits.**

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Owners of pre-1978 rental housing and childcare facilities shall take reasonable care to prevent exposure to, and the creation of, lead hazards. Notwithstanding any provision of law to the contrary, the mere presence of a lead base substance shall not constitute negligence on the part of an owner of any dwelling. To establish negligence on the part of an owner, the plaintiff in a civil suit shall demonstrate actual injury caused by the lead base substance. Evidence of actions taken or not taken by the owner of a pre-1978 rental property or childcare facility in compliance with applicable public health laws and regulations concerning lead may be admissible evidence of reasonable care or negligence. Remedial actions taken by a property owner after a lead exposure has occurred shall not be admissible evidence for purposes of establishing liability. Evidence of a tenant's disturbance of painted surfaces containing lead paint also shall be admissible evidence. In addition, the mere presence of a lead base substance in a dwelling shall not by itself violate any warranty of habitability.

### **History**

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[1995, 169:1](#), eff. Jan. 1, 1996; [2015, 250:7](#), effective September 11, 2015.

Annotations

### **Notes**

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#### **Amendment Notes**

—2015.

The 2015 amendment added the first, fourth, fifth, and sixth sentences.

### **Research References & Practice Aids**

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#### **Hierarchy Notes:**

[RSA Title X, Ch. 130-A](#)