

April 19, 2005

The Board of Supervisors of Shelby County, Iowa, met pursuant to law and rules of said board in regular session at 9:00 a.m. in the Supervisors Chambers of the Shelby County Courthouse with the following members present: Roger Schmitz, Chairman; Richard Ferry, Vice-Chairman; LaVon Christensen; and Marsha J. Carter, Clerk.

It was moved by Ferry, seconded by Christensen, to approve the agenda with the following addition: (1) Claims AND the following items contained in the Consent Agenda:

- A. Minutes of April 5, 2005
- B. Office Reports – IT, Sheriff, Recorder
- C. Committee Reports

AYES: Schmitz, Ferry, Christensen

NAYES: None

It was moved by Ferry, seconded by Christensen, to approve the Claims of April 19, 2005, as listed in the Claims Register. AYES: Schmitz, Ferry, Christensen NAYES: None

Randy Arnold, Arnold Insurance Agency, appeared before the Board to review the County's health insurance plan and renewal for FY2006. It was moved by Christensen, seconded by Ferry, to renew our current health insurance plan with Principal through Arnold Insurance Agency with a 14% premium increase. AYES: Schmitz, Ferry, Christensen NAYES: None

The following Ordinance was approved at the April 5, 2005, meeting:

**SHELBY COUNTY ORDINANCE NO. 2005-2  
LOCAL OPTION SALES AND SERVICES TAX  
(ORIGINAL ORDINANCE NO. 1997-7)  
(AMENDED BY ORDINANCE NO. 1998-2—ADDS KIRKMAN)  
(AMENDED BY ORDINANCE NO. 1999-1—DELETES PANAMA)  
(AMENDED BY ORDINANCE NO. 2005-2—ADDS HARLAN, PANAMA, AND  
UNINCORPORATED AREA, EFFECTIVE JULY 1, 2005)**

AN ORDINANCE ESTABLISHING A LOCAL OPTION SALES AND SERVICES TAX APPLICABLE TO TRANSACTIONS WITHIN THE INCORPORATED AREAS OF THE CITIES OF IRWIN, DEFIANCE, PANAMA, EARLING, WESTPHALIA, KIRKMAN PORTSMOUTH, SHELBY, TENNANT, ELK HORN AND HARLAN AND THE UNINCORPORATED AREA IN THE COUNTY OF SHELBY, STATE OF IOWA.

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF SHELBY COUNTY, IOWA:

**Section 1. Local Option Sales and Services Tax.** There is imposed a Local Option Sales and Services Tax applicable to transactions within the Incorporated Areas of the Cities of Irwin, Defiance, Panama, Earling, Westphalia, Kirkman, Portsmouth, Shelby, Tennant, Elk Horn, and Harlan AND the Unincorporated Area of Shelby County.

The rate of the tax shall be one (1) percent upon the gross receipts taxed under Iowa Code Chapter 423, Division IV and 423B-Local Option Tax.

The Local Sales and Services Tax is imposed on transactions occurring on or after January 1, 1998, within the Incorporated Areas of the Cities of Irwin, Defiance, Earling, Westphalia, Portsmouth, Shelby, Tennant, and Elk Horn AND on or after January 1, 1999, within the Incorporated Area of the City of Kirkman AND on or after July 1, 2005, within the Incorporated Areas of the Cities of Panama and Harlan and the Unincorporated Area of Shelby County. All persons required to collect state gross receipts taxes shall collect the tax pursuant to Iowa Code section 423B.8 for Local Option Sales and Services tax.

All applicable provisions of the appropriate sections of Iowa Code Chapter 423, Division IV, are adopted by reference.

**Section 2. Effective Date.** This ordinance shall be in effect after its final passage, approval and publication as provided by law.

Passed by the Board of Supervisors on this 5<sup>th</sup> day of April, 2005.

Now being the time for the First Reading of Shelby County Ordinance No. 2005-3, COUNTY LEAD ORDINANCE, the Chairman did open the hearing. Calla Poldberg from Public Health Department appeared to explain the changes to the existing ordinance. There were no oral or written comments. It was moved by Ferry, seconded by Christensen, to suspend future readings of this Ordinance, to close the hearing and to adopt Shelby County Ordinance No. 2005-3 as set out below. AYES: Schmitz, Ferry, Christensen NAYES: None

**SHELBY COUNTY ORDINANCE NO. 2005-3**  
**COUNTY LEAD ORDINANCE**  
**(TO REPLACE ORDINANCE NO. 1998-1)**

CHAPTER 68  
CONTROL OF LEAD-BASED PAINT HAZARDS.

**Applicability 641—68.1(135).** The provisions of this chapter are applicable in jurisdictions in which a local board has adopted this chapter for the purpose of requiring control of lead-based paint hazards where a child has been identified with an elevated blood lead level. Nothing in this chapter shall be construed as requiring a local board to adopt this chapter as a model regulation.

Section 1: **Definitions 641—68.2(135)**

- A. The following words shall have the following meaning for the purpose of this regulation.
1. “Certified elevated blood lead (EBL) inspector/risk assessor” means a person who has met the requirements of Iowa Administrative Code 641—70.5(135) for certification or interim certification and who has been certified by the department.
  2. “Chewable surface” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.
  3. “Child-occupied facility” means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years on at least two different days within any week (Sunday through Saturday period, provided that each day’s visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms.
  4. “Clearance testing” means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.
  5. “Department” means the Iowa department of public health.
  6. “Deteriorated paint” means any interior or exterior paint or other coating that is cracking, flaking, chipping, peeling, or chalking, or any paint or coating located on an interior or exterior surface that is otherwise damaged or separated from the substrate of a building component.
  7. “Dripline” means the area within three feet surrounding the perimeter of a building.
  8. “Dust-lead hazard” means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on widow troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dustlead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property. If dust samples are not taken, it may be assumed that surfaces in rooms with hazardous lead-based paint or where renovation, remodeling, or repainting has occurred recently are dust-lead hazards.  
Ch 68, p.2 Public Health[641] IAC 8/4/04
  9. “Elevated blood lead (EBL) child” means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.
  10. “Elevated blood lead (EBL) inspection” means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigation to the property owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) child. A certified elevated blood lead (EBL) inspector/risk assessor shall not determine that a residential dwelling is free of lead-based paint as a result of an elevated blood lead (EBL) inspection.
  11. “Friction surface” means an interior or exterior surface that is subject to abrasion or friction including, but not limited to, certain window, floor, and stair surfaces.
  12. “Hazardous lead-based paint” means lead-based paint that is present on a friction surface where

there is evidence of abrasion or where the dust-lead level on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) is equal to or greater than the dust-lead hazard level, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of a residential building or child-occupied facility.

13. “*Impact surface*” means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.
14. “*Lead-based paint*” means any paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram of lead per square centimeter or more than 0.5 percent by weight. Lead-based paint is present on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight and on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.
15. “*Lead-based paint hazard*” means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard.
16. “*Local board*” means the local board of health as authorized by Iowa Code chapter 137.
17. “*Mid-yard*” means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.
18. “*Occupant*” means any person living, sleeping, cooking or eating in, or having any actual possession of, a dwelling or dwelling unit.
19. “*Owner*” means any person who, alone or jointly with others: (1) has legal title to any dwelling, with or without accompanying actual possession thereof, or (2) has charge, care or control of any dwelling by acting as the agent of the owner or as the executor, administrator, trustee, or guardian of the estate of the owner.
20. “*Paint-lead hazard*” means the presence of hazardous lead-based paint in a residential dwelling or a child-occupied facility.
21. “*Play area*” means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, factors including the following: the presence of play equipment (sandboxes, swing sets, and sliding boards), toys, or other children’s possessions; observations of play patterns; or information provided by parents, residents, caregivers, or property owners.
22. “*Residential building*” means a building containing one or more residential dwellings.  
Ch 68, p.3 Public Health[641] IAC 8/4/04
23. “*Residential dwelling*” means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.
24. “*Retaliation*” means harassment, termination of the tenancy, discontinuation of utilities or other services, and any other action taken against the lessee.
25. “*Soil-lead hazard*” means bare soil on residential real property or on the property of a child occupied facility that contains total lead greater than or equal to 400 parts per million for the dripline, mid-yard, and play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is greater than or equal to 400 parts per million. If soil samples are not taken, it may be assumed that bare soil within three feet of the foundation of a garage or other structure built prior to 1978 is a soil-lead hazard.

## Section 2: **Elevated blood lead (EBL) inspections required 641—68.3(135).**

The local board shall appoint a certified elevated blood lead (EBL) inspector/risk assessor to conduct elevated blood lead (EBL) inspections in residential dwellings and child-occupied facilities where an elevated blood lead (EBL) child lives, visits, or has recently lived. All owners and occupants shall allow access to the residential dwellings and child-occupied facilities that the certified elevated blood lead (EBL) inspector/risk assessor desires to inspect.

## Section 3: **Refusal of admittance 641—68.4(135).**

If the certified elevated blood lead (EBL) inspector/risk assessor appointed by the local board is refused entry to a property, then the certified elevated blood lead (EBL) inspector/risk assessor may make a complaint under oath to any magistrate of the county. The magistrate may issue a warrant directing the owner or occupant to allow the certified elevated blood lead (EBL) inspector/risk assessor to conduct an elevated blood lead (EBL) inspection and directing a peace officer to accompany the certified elevated blood lead (EBL) inspector/risk assessor during the elevated blood lead (EBL) inspection/risk assessment.

## Section 4: **Lead hazard reduction required 641—68.5(135).**

### **68.5(1)**

When the certified elevated blood lead (EBL) inspector/risk assessor appointed by the local board determines that hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard is present in a residential dwelling unit or child-occupied facility where an elevated blood lead (EBL) child lives, frequently visits, or has recently resided, the certified elevated blood lead inspector/risk assessor shall issue a written notice to the owner within two weeks of the inspection and receipt of any laboratory results. The written notice shall require the owner to complete lead hazard reduction in a time period determined by the certified elevated blood lead (EBL) inspector/risk assessor. If the occupant who occupies the residential dwelling at the time that this written notice is issued vacates the residential dwelling, the residential dwelling shall not be leased or occupied by any other person until the certified elevated blood lead (EBL) inspector/risk assessor issues a written notice that the lead hazard reduction has been completed  
Ch 68, p.4 Public Health[641] IAC 8/4/04

### **68.5(2)**

The owner of any residential dwelling or child-occupied facility which has been determined to contain hazardous lead-based paint, a soil-lead hazard, or a dust-lead hazard shall correct these hazards within the time period allowed by the certified elevated blood lead (EBL) inspector/risk assessor in the written notice. The following methods shall be used for lead hazard reduction. These methods shall not require the services of a lead abatement contractor certified in accordance with Iowa Administrative Code 641—70.5(135). However, other local, state, or federal regulations may require the use of a contractor who has completed an eight-hour lead-safe work practices course or a lead abatement contractor or lead abatement worker certified in accordance with Iowa Administrative Code 641—70.5(135).*a.* On a surface that contains hazardous lead-based paint, but is not chewable and does not have evidence of impact or friction, the lead-based paint hazard shall be reduced by removing all loose and deteriorated paint from the surface, preparing the surface for repainting, and repainting the surface with a lead-free coating. *b.* On a surface that contains hazardous lead-based paint and is chewable or has evidence of impact or friction, the lead-based paint hazard shall be reduced by treating the surface one inch back from the edge or corner through one of the following methods: (1) All lead-based paint on the treatment area shall be removed to the bare substrate. The surface shall be prepared for repainting and repainted with a lead-free coating. (2) The treatment area shall be covered with a permanently affixed lead-free material such as plastic, wood, or vinyl. Carpet may be used on floors and stair treads. *c.* Dust-lead hazards shall be reduced by thoroughly cleaning the affected surface. *d.* Soil-lead hazards shall be reduced by planting grass or groundcover, applying sod, or covering the affected area with six inches of bark, gravel, or other material. *e.* Lead hazard reduction shall be conducted using lead-safe work practices to protect the safety of the occupants and workers. Occupants shall not enter the work area while work is underway. The following are prohibited methods of lead hazard reduction: (1) Open-flame burning or torching of lead-based paint. (2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with high-efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency. (3) Uncontained water blasting of lead-based paint. (4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets. (5) Operating a heat gun at a temperature above 1100 degrees Fahrenheit.

### **68.5(3)**

The certified elevated blood lead (EBL) inspector/risk assessor shall inspect all areas identified as hazards after lead hazard reduction is complete. The certified elevated blood lead (EBL) inspector/risk assessor may conduct clearance testing pursuant to Iowa Administrative Code 641—Chapter 70 to ensure that no dust-lead hazards exist after the work is complete. Within two weeks of verifying that all lead hazard reduction has been completed as required, the certified elevated blood lead (EBL) inspector/risk assessor shall issue a written notice to the owner and occupant stating that the lead hazard reduction has been completed and that the repaired surfaces must be maintained in good condition. Ch 68, p.5 Public Health[641] IAC 8/4/04

## **Section 5: Retaliation prohibited 641—68.6(135).**

### **68.6(1)**

The lessor of a dwelling, the employees of the lessor, and agents or persons acting on behalf of the lessor shall not retaliate against lessees of residential dwellings and child-occupied facilities whose occupants or visitors have been tested for lead poisoning and shall not discourage the occupants or visitors from being tested for lead poisoning.

**68.6(2)** An action taken against the lessee shall not be considered retaliation if it is supported by reasonable cause unrelated to the testing of an occupant for lead poisoning or if it is shown to have occurred as a result of an accident or mistake and not to be the intentional act of the lessor of a dwelling, the employees of the lessor, or agents or persons acting on behalf of the lessor.

## **Section 6: Enforcement 641—68.7(135).**

The certified elevated blood lead (EBL) inspector/risk assessor appointed by the local board shall have the duty and responsibility of enforcing this chapter.

### **68.7(1)**

Penalties shall be as provided in Iowa Code section 137.21.

### **68.7(2)**

Upon failure of any person to correct a hazard identified through this chapter in the time specified by the certified elevated blood lead (EBL) inspector/risk assessor appointed by the local board, the local board may direct or cause the correction of said hazards. All expenses incurred thereby may be recovered by suit in the name of the local board, or the local board may certify the amount of said expenses, together with a description of the property, to the county treasurer, who shall enter the same upon the tax books as costs for removing a lead hazard, and said amounts shall be collected as other taxes.

Any person violating this ordinance or any provision thereof, shall be guilty of a simple misdemeanor and upon conviction thereof, shall be fined not more than one-hundred dollars (\$100.00) or imprisoned in jail for a period not to exceed thirty (30) days. Each day that a violation occurs constitutes a separate offense.

## **Section 7: Hearings 641—68.8(135).**

In the event any person is aggrieved by any order of the certified elevated blood lead (EBL) inspector/risk assessor, the person may appeal to the local board in writing within ten days of the date of such order. The appeal shall state the reasons for requesting such order to be rescinded or modified. The local board shall review the action of the certified elevated blood lead (EBL) inspector/risk assessor. The local board shall order compliance with said order or may, with cause, modify or withdraw said order. Any order of the local board may be appealed within ten days to the district court for the county in which the local board is located.

Section 8: **Variances 641—68.9(135).**

The elevated blood lead (EBL) inspector/risk assessor may determine that a chewable surface that would otherwise be identified as a hazard by this chapter is not causing or does not have reasonable potential to cause lead exposure and is not required to be corrected through lead hazard reduction. The elevated blood lead (EBL) inspector/risk assessor shall document the reason for this determination in the inspection report. However, the elevated blood lead (EBL) inspector/ risk assessor shall not, under any circumstances, determine that any other surface meeting the definition of hazardous lead-based paint does not need to be corrected through lead hazard reduction.

Section 9: **Injunction 641—68.10(135).**

Nothing in this chapter shall prohibit a local board from pursuing injunctive relief or other relief as allowed by law.

Section 10: **Effective date 641—68.11(135).**

These rules are intended to implement Iowa Code section 135.102. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

Passed by the Board of Supervisors on this 19<sup>th</sup> day of April, 2005.

Now being the time for the First Reading of Shelby County Ordinance No. 2005-4, AN ORDINANCE TO REPRECINCT SHELBY COUNTY AND ADJUST PRECINCT BOUNDARIES, the Chairman did open the hearing. Carter reported that a letter of objection had been received from Urban Henscheid of Harlan. Carol Doran of Corley had called & asked if the polling place was moved from the Corley Community Club, would the building lose its tax exempt status. Carter referred her to the County Assessor. Donna Mahlberg of Panama also called voicing objections to the additional transportation costs being shifted to the voter. Delores Stessman of Panama appeared at the meeting to voice the same objection and a concern regarding the affect on voter turnout. It was moved by Ferry, seconded by Christensen, to close the hearing and set the date and time for the second reading of Ordinance No. 2005-4 as May 3, 2005, at 9 a.m. AYES: Schmitz, Ferry, Christensen NAYES: None

It was moved by Christensen, seconded by Ferry, to set the date and time for the Public Hearing to amend Shelby County Ordinance No. 1997-5, CLASS “C” ROADS, as May 17, 2005, at 9:30 a.m. AYES: Schmitz, Ferry, Christensen NAYES: None

Andy Nielsen, Deputy Auditor of State, appeared before the Board to review the FY2004 County Audit and to present a contract for future audits. No action was taken.

It was moved by Christensen, seconded by Ferry, to approve the Supplemental Consulting Engineer Contract with Sunquist Engineering, Denison, to do the construction survey for Project No. BROS-CO83(35)—5F-83, “Lee Bridge”, at a cost of \$9800, to be taken from Farm to Market Funds. AYES: Schmitz, Ferry, Christensen NAYES: None

The County Engineer reviewed Ordinance No. 1999-7, PROPER USE OF ROAD RIGHT OF WAY.

The County Engineer gave a secondary road project update.

There being no further business appearing, the Chairman declared the meeting adjourned at 11:06 a.m.

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Roger Schmitz, Chairman

ATTEST:

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Marsha J. Carter  
Clerk to the Board of Supervisors

NOTE: These minutes are as recorded by the Clerk to the Board of Supervisors and are subject to Board approval at the next regular meeting.