



DATE ISSUED: March 7, 2012

ATTENTION: Honorable Councilmembers and City Attorney Jan Goldsmith

SUBJECT: Proposed Amendment to the Children's Right to Lead-Safe Housing Ordinance

REFERENCE: San Diego Municipal Code Chapter 5: Public Safety, Morals & Welfare, Article 4: Public Hazards & Public Nuisances, Division 10: Lead Hazard Prevention & Control Ordinance SS54.1001-54.1015

REQUESTED ACTION: Direct the City Attorney's office to provide a legal opinion within 90 days on the submitted draft language addressing lead hazards as a nuisance in pre-1979 multi-family rental properties whose ownership is being transferred

SUMMARY:

On May 13, 2009, Environmental Health Coalition (EHC) made a presentation to the PS&NS Committee seeking to strengthen the Lead Hazard Prevention & Control Ordinance with a point-of-sale clause to protect children from the dangers of deteriorated lead-based paint. EHC presented two Options. Option A included the point-of-safe language as drafted by the City of San Diego Lead Poisoning Prevention Citizen's Advisory Taskforce and Option B included the same language as proposed by the Taskforce but limited to multi-family buildings.

The PS&NS Committee directed EHC to meet with the San Diego County Apartment Association (SDCAA) and the San Diego Association of Realtors (SDAR) to further discuss the proposed amendment.

On June 16, 2010, after numerous meetings between the key stakeholders, both the SDCCA and SDAR communicated their positions to oppose the point-of-sale clause.

FISCAL CONSIDERATIONS: None at this time.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: PS&NS: On May 13, 2009, Environmental Health Coalition (EHC) made a presentation to the PS&NS Committee seeking to strengthen the Lead Hazard Prevention & Control Ordinance with a point-of-sale clause to protect children from the dangers of deteriorated lead-based paint. EHC presented two Options. Option A included the point-of-safe language as drafted by the City of San Diego Lead Poisoning Prevention Citizen's Advisory Taskforce and Option B included the same language as proposed by the Taskforce but limited to multi-family buildings.

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COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

A series of federal, state and local laws require housing occupants to be warned of possible lead exposure. The impact of these laws however, has been limited by the lack of resources dedicated to enforcement. Owners of housing built before 1978 are required to disclose to tenants and buyers all known information about lead-based paint and lead hazards, including any available records. The disclosure rule does not create a duty to test the property for lead. In fact, the notice requirement actually creates a disincentive to test – if the owner doesn't know whether the paint contains lead, the owner has nothing to disclose.

According to Environmental Health Coalition's (EHC) lead hazard pilot project conducted in 2002, 77% of the pre-1979 units (175,927) have at least one lead hazard that would require repair to bring the paint condition to good standards. In the City of San Diego, there are approximately 300,000 pre-1979 homes. All districts have pockets of pre-1979 housing stock. With this information, the San Diego Housing Commission in collaboration with EHC has raised \$21 million since 2002. The funding is available to assist landlords in making their homes lead-safe.

In 2008, the City of San Diego unanimously passed the Children's Right to Lead-Safe Housing Ordinance excluding a point-of-sale clause. The point-of-sale language developed by the Lead Citizen's Advisory Taskforce was intended to be for all homes on the market. The City of San Diego's low-flow toilet ordinance was used as a template for this section. In 2009, the City of San Diego's Environmental Services Department records on costs associated to making homes lead-safe showed an average of \$700 per unit. This is a reasonable amount considering the goal is to ensure all children are ready to learn when they go to school.

Despite efforts to protect children from the dangers of lead-based paint, many children continue to be exposed to lead. According to the County of San Diego Childhood Lead Poisoning Prevention Program, 1650 children in the year 2010 were identified with concerning lead levels (levels over 4.5 microgram/DL). Unfortunately, many children without access to healthcare are not being tested.

Late 2011, the Center for Disease Control & Prevention issued a recommendation to lower the lead-safe threshold to 5 micrograms/DL from 10 micrograms/DL. This means that the number of children which we had currently considered to be "lead poisoned" is much higher, making it more urgent to take further action.

Recently, the United States Environmental Protection Agency (US EPA) presented the City's Lead Poisoning Prevention Citizen's Advisory Taskforce an Environmental Justice Award for its efforts to protect children's health.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Tenants and landlords of multi-family properties.

Attachments(s): Copy of draft language developed by the City of San Diego Lead Poisoning Prevention Citizen's Advisory Taskforce amended to include multi-family rental properties only

54.1010 Identification and Remediation of Lead Hazards Upon Change of Ownership

- (a) Upon entering into a listing agreement for the sale, transfer, or exchange of a *dwelling unit for rental use* constructed prior to January 1, 1978, a real estate agent shall notify the seller or transferor of the *dwelling unit for rental use* of the provisions of section 54.1007.
- (b) Upon entering into a limited service agreement or a fee for service agreement for the advertising or marketing of a *dwelling unit for rental use* constructed prior to January 1, 1978, the person offering such services shall notify the seller or transferor of the *multi-dwelling unit complex* of the provisions of section 54.1007.
- (c) Prior to a change of ownership, the transferor of the *dwelling unit for rental use* constructed prior to January 1, 1978, shall have a lead risk assessment performed on the *dwelling unit for rental use* by a Certified Lead Inspector/Assessor and shall have all identified lead hazards corrected in accordance with Division 10 and all applicable state and federal requirements, unless the *dwelling unit for rental use* is exempt pursuant to section 54.1010 (h). The requirements of this section shall apply to a change of ownership which occurs on or after 180 calendar days from the effective date of amendment.
- (d) Compliance with section 54.1010 (c) shall be demonstrated as follows:
 - a. Upon completing the lead risk assessment and correcting all identified lead hazards, the transferor and Certified Lead Inspector/Assessor shall sign a lead-safe certificate or lead-free certificate certifying compliance with the requirement of Division 10.
 - b. Within seven days thereafter, the transferor shall forward the lead-safe certificate or lead-free certificate to the transferee for review and signature, together with all documents prepared in connection with section 54.1010 relating to lead inspections, lead remediation, and clearance inspections for the dwelling unit.
 - c. Within seven days of receipt of the signed lead-safe certificate or lead-free certificate, the transferee shall sign the lead-safe certificate or lead-free certificate, thereby acknowledging awareness and understanding of the requirements of Division 10, and shall submit the lead-safe certificate or lead-free certificate along with the associated cost recovery fee to: City of San Diego Environmental Services Lead Safe Certificate 9601 Ridgehaven Court, Suite 310 San Diego CA 92123
 - d. If the transfer of the *dwelling unit for rental use* is accomplished through an escrow, the transferor also shall file a copy of the lead-safe certificate or lead-free certificate with the escrow agent before the close of escrow.
- (e) Prior to a change of ownership, the transferor and the transferee of a *dwelling unit for rental use* constructed prior to January 1, 1978, may agree to transfer responsibility for compliance with section 54.1010 (c) to the transferee. In the event the transferor and transferee of a dwelling unit agree that the transferee shall assume this responsibility, then prior to the change of ownership, the transferor and the transferee shall complete the following procedures:

- a. The transferor and the transferee shall sign a transfer of responsibility certificate certifying that the transferee has assumed the responsibility for complying with section 54.1010 (c).
 - b. After the transferor and the transferee have signed the transfer of responsibility certificate, the transferor shall submit the transfer of responsibility certificate along with the associated cost-recovery fee to: City of San Diego Environmental Services Lead Safe Certificate 9601 Ridgehaven Court, Suite 310 San Diego CA 92123
 - c. If the transfer of the *dwelling unit for rental use* is accomplished through an escrow, the transferor also shall file a copy of the transfer of responsibility certificate with the escrow agent before the close of escrow.
 - d. The transferee shall perform a lead-risk assessment, correct all identified lead hazards, and complete the clearance inspection within ninety days of the change of ownership, unless:
 - i. The Director or designee determines that a lead hazard is present, which lead hazard constitutes an immediate threat to the health and safety of occupants of the multi-dwelling unit, in which case the transferee shall comply with the Director's or designee's directives; or
 - ii. The transferee files a statement of intent and work plan demonstrating the need for additional time, a proposed work schedule, and the methods by which the transferee will accomplish compliance with Division 10 including, but not limited to, compliance with the temporary relocation requirements of section 54.1006 (c), in which case the Director or designee may extend the time for compliance with Division 10.
 - e. Upon completing the lead risk assessment and correcting all identified lead hazards, the transferee and the Certified Lead Inspector/Assessor shall sign a lead-safe certificate or lead-free certificate certifying compliance with the requirements of Division 10.
 - f. Within thirty days of the completion of the requirements of section 54.1010 (c), the transferee shall submit the signed lead-safe certificate or lead-free certificate and all DHS Forms 8522 associated with lead hazard control work performed on the interior and exterior of the multi-dwelling unit complex along with the associated cost-recovery fee to: City of San Diego Environmental Services Lead Safe Certificate 9601 Ridgehaven Court Suite 310 San Diego CA 92123
- (f) The lead risk assessment must be conducted according to the following procedures:
- a. Background information shall be collected regarding the physical characteristics of the dwelling unit use patterns that may cause lead exposure to a child.
 - b. Each surface with deteriorated paint, as determined by documented methodologies, shall be tested for the presence of lead. Every other surface which is a potential source of lead hazards, as determined by documented methodologies, shall be tested for the presence of lead.

- c. Single surface dust sampling from windows and floors shall be collected in all living areas where deteriorated paint has been identified.
 - d. If any deteriorated paint is present on the exterior of a multi-dwelling unit complex, soil samples shall be collected and analyzed for lead concentrations in the exterior play areas where bare soil is present and in the dripline/foundation areas where bare soil is present.
 - e. The lead risk assessment report, prepared by the Certified Lead Inspector/Assessor shall include the following information:
 - i. Date of assessment
 - ii. Address
 - iii. Date of construction
 - iv. Name, address, and telephone number of owner
 - v. Name, signature, and certification of the Certified Lead Inspector/Assessor conducting the assessment
 - vi. Name, address, and telephone number of each accredited laboratory conducting analysis of collected samples;
 - vii. Results of visual inspection
 - viii. Testing methods and sampling procedures employed for paint analysis
 - ix. Specific locations of each painted component tested for the presence of lead;
 - x. All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device used;
 - xi. All results of laboratory analysis on collected paint, soil, and dust samples;
 - xii. All other sampling results;
 - xiii. All background information collected pursuant to section 54.1010;
 - xiv. To the extent that they are used as part of the lead hazard determination, the results of all previous inspections or analyses for the presence of lead paint or other assessments related to lead hazards;
 - xv. A description of the location, type, and severity of identified lead hazards and all other potential lead hazards; and
 - xvi. A description of interim controls and/or abatement options for each identified lead hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.
- (g) The transferor of a *dwelling unit for rental use* constructed prior to January 1, 1978, shall not be required to conduct a lead risk assessment when a change of ownership occurs as a result of the following:
- a. A court order, including an order by a probate court in the administration of an estate;
 - b. A foreclosure or voluntary or involuntary bankruptcy;
 - c. The exercise of eminent domain;
 - d. The administration of a deceased person's estate, guardianship, conservatorship, or trust;

- e. One title co-holder of real property transferring, selling, or exchanging with one or more other title co-holders;
 - f. A transfer, without consideration, from one family member to another family member; or
 - g. A decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement incidental to any such decree.
- (h) The transferor of a *dwelling unit for rental use* constructed prior to January 1, 1978, shall not be required to perform a lead risk assessment if a lead-free certificate has been issued for the *dwelling unit for rental use*.
- (i) The owner of the *dwelling unit for rental use* shall maintain the lead risk assessment report and supporting documentation for a period of five years from the date of the report and shall make the report and supporting documentation available to the City of San Diego upon request.

Definition of Dwelling Unit For Rental Use: Property sold for the purposes of being a rental unit, not owner-occupied.