



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: October 24, 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 §54.1001-54.1015

REQUESTED ACTION: Support the purpose and content of the draft *Lead-Safe Disclosure Form For Multi-Family Rental Properties*, direct the City Attorney's office to provide a legal opinion within 60 days, direct City Attorney's office to review and revise *Lead-Safe Disclosure Form For Multi-Family Rental Properties*, with the understanding that the purpose and content should remain the same. Any changes to the proposed Form from the City Attorney and stakeholder meetings will be brought back and discussed before the Public Safety and Neighborhood Services Committee.

SUMMARY:

On March 14, 2012, 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 for multi-family rental properties to protect children from the dangers of deteriorated lead-based paint. The point-of-safe language as drafted by the City of San Diego Lead Poisoning Prevention Citizen's Advisory Taskforce was updated to limit the ordinance only to multi-family rental properties.

The PS&NS Committee directed the key stakeholders including EHC, San Diego County Apartment Association (SDCAA), San Diego Association of Realtors (SDAR), and Environmental Services Department to work together in an effort to strengthen the Lead Hazard Prevention Ordinance in the City of San Diego.

The Stakeholders group developed the proposed *Lead-Safe Disclosure Form For Multi-Family Rental Properties* as the alternative to the point-of-sale language presented on May 14, 2012. The intent of this form is to create a real opportunity for a conversation related to the dangers of lead between the seller and buyer during the point-of-sale transaction, to offer the buyer and seller several options on how to proceed with handling deteriorated lead-based paint, and to reinforce the possibility of a random inspection by Environmental Services Department for transactions choosing not to repair the lead hazards. Due to the complex nature of real estate transactions and the potential fiscal impacts on property owners, the *Lead-Safe Disclosure Form*

*For Multi-Family Rental Properties* will be thoroughly vetted by the appropriate stakeholder committees and Board of Directors of the San Diego County Apartment Association and the San Diego Association of Realtors® in November and December 2012.

FISCAL CONSIDERATIONS: A fee for the administration and the random inspections conducted by the City's Environmental Services Department (ESD) will be established should the proposed amendment be approved. The fee is being calculated by ESD.

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 which included the same language as proposed by the Taskforce but limited to multi-family buildings.

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 \$25 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.

Mid- April 2012, the Center for Disease Control & Prevention eliminated the 10 micrograms/dl threshold level of concern to indicate that based on solid science there is no safe level for lead. The new reference level is 5 micrograms/dl. This means that the number of children which we had considered as “lead poisoned” is much higher, making it more urgent to take further action.

In January 2012, 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, landlords of multi-family properties, Realtors® and property managers.

Attachments(s): Copy of draft language developed for proposed *Lead-Safe Disclosure Form For Multi-Family Rental Properties*

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DRAFT

**Lead-Safe Disclosure Form For  
Multi-Family Rental Properties  
City of San Diego  
§ 54.1016**

The City of San Diego works to protect children, families, workers and the environment from the lead-based paint hazards in older housing stock built before 1979. In 2008, the City of San Diego passed the Lead Hazard Prevention & Control Ordinance § 54.1001-54.1015. Ignoring the City's lead law may result in penalties and jail time.

Childhood lead poisoning is the number one environmental health threat impacting children under the age of six. Lead-based paint and dust are the main source of lead poisoning. Lead poisoning in children causes brain damage, hyperactivity, learning disorders, and aggressive behavior. To prevent lead-based paint poisoning in children, the City of San Diego strongly encourages both sellers and buyers involved in a sale transaction of a multi-family rental property to do the following:

- Obtain a lead assessment to determine location presence of any lead hazards. Per HUD guidelines, not all units need to be inspected.
- Correct all lead hazards using interim controls NOT lead abatement which is cost prohibitive. Some examples of interim controls include: removing lead dust, HEPA vacuuming, wet methods, repainting and repairing friction and impact surfaces and preventing access to lead contaminated soil. This method is less expensive. It can be implemented immediately but requires ongoing monitoring (since lead-based paint remains in the house) to ensure lead hazard does not return.
- Based on the age and maintenance practices of lead-based paint a lead hazard may reappear. It is best to obtain a quality paint job and perform periodic maintenance, which includes repainting on a regular basis before the paint deteriorates.

Property Address: \_\_\_\_\_

I, \_\_\_\_\_, (buyer and/or seller) understand the importance of making multi-family rental properties lead-safe and will ensure that the property listed above is inspected and all lead hazards corrected.

- OR -

I, \_\_\_\_\_, (seller) agree to sell the property listed above and acknowledge that the multi-family rental property listed above is not certified as lead-safe.

I, \_\_\_\_\_, (buyer) purchase the property listed above, as is, without a lead-safe certificate. By checking this box, I am aware that in accordance with the City of San Diego's Lead Hazard Prevention & Control Ordinance, the property listed above may be subject to a random inspection by the Environmental Services Department for a percentage of units within the complex. A percentage of the units would be checked for lead hazards within 30 days, if title is filed, or up to 6 months, if title is not filed.

- OR -

I, \_\_\_\_\_, (buyer) plan to paint/repair/renovate the property listed above. Due to the City of San Diego Lead Hazard Prevention & Control Ordinance, lead-safe work practices must be followed in all paint, repair, and renovation activities. The City's Environmental Services Department will not select the property listed above for a random inspection if a lead-safe certification is submitted within 90 days.

If, I, \_\_\_\_\_(buyer) neglect to submit proof of a lead-safe certification, the property listed above may be subject to a random inspection within 180 days of the sale transaction. An extension may be requested and is subject to approval by the Environmental Services Department.

Buyers please note that the Lead Hazard Prevention and Control Ordinance requires owners of rental properties built before January 1, 1979 to perform a visual inspection and correction of presumed lead hazards prior to re-occupancy of a vacant rental unit.

A \$\_\_\_\_\_ fee is required by the City of San Diego Environmental Services Department for the administration of the multifamily rental property sale transactions and the random lead-hazard auditing. Should you have any questions about this fee, please feel free to

contact the City of San Diego Environmental Services Department Lead Safety & Healthy Homes Program at [lead-safe@sandiego.gov](mailto:lead-safe@sandiego.gov) or call 858.694.7000. The Lead Safety and Healthy Homes Program serves as the primary liaison for connecting the community with resources to prevent lead poisoning. Environmental Services Department is working with a collaboration of agencies dedicated towards eliminating childhood lead poisoning.

**Definitions**

**Multi-Family Rental Property:** 5 units and above

**Lead-Safe:** Lead hazards are not present.

**Lead Hazard:** (1) the existence of deteriorated paint over a surface area larger than de minimis levels in the interior or exterior of a dwelling unit or structure constructed prior to January 1, 1979; or (2) the existence of deteriorated paint, in the interior or exterior of a dwelling unit or structure constructed prior to January 1, 1979, over a surface area smaller than de minimus levels but which, as determined by an enforcement official, is likely to endanger the health of the public or the occupants of the dwelling unit or structure; or (3) the disturbance of lead-based paint or presumed lead-based paint without containment barriers; or (4) the creation of maintenance of any other condition which may result in persistent and quantifiable lead exposure; or (5) the presence of lead-contaminated dust or lead-contaminated soil.

**Disclosure:** With respect to the information contained above, it is not intended to be used and cannot be used against any realtor agent and/or realtor or apartment association affiliated with the multi-family rental property transaction listed above.

**SELLER: (first and last name)** \_\_\_\_\_

**Date:** \_\_\_\_\_

**BUYER: (first and last name)** \_\_\_\_\_

**Date:** \_\_\_\_\_

# Blood Lead Levels in Children

## What Do Parents Need to Know to Protect Their Children?

Protecting children from exposure to lead is important to lifelong good health. Even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. And effects of lead exposure cannot be corrected.

The most important step parents, doctors, and others can take is to **prevent lead exposure before it occurs**.



## Update on Blood Lead Levels in Children

- Children can be given a blood test to measure the level of lead in their blood.
- Until recently, children were identified as having a blood lead level of *concern* if the test result is 10 or more micrograms per deciliter of lead in blood. Experts now use a new level based on the U.S. population of children ages 1-5 years who are in the top 2.5% of children when tested for lead in their blood (when compared to children who are exposed to more lead than most children).
- In the past, blood lead level tests below 10 micrograms per deciliter of lead in blood may, or may not, have been reported to parents. The new, lower value means that more children likely will be identified as having lead exposure allowing parents, doctors, public health officials, and communities to take action *earlier* to reduce the child's future exposure to lead.
- What has *not* changed is the recommendation for when to use medical treatment for children. These new recommendations do not change the recommendation that chelation therapy be considered when a child is found with a test result of greater than or equal to 45 micrograms per deciliter of lead in blood.

## Actions for Parents

Parents can take simple steps to make their homes more lead-safe.

- Talk to your local health department about testing paint and dust in your home for lead if you live in a home built before 1978.
- Common home renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint. These can be harmful to adults and children.
- Renovation activities should be performed by certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices.
- Learn more at EPA's Renovation, Repair, and Painting rule Web page: <http://www.epa.gov/lead/pubs/renovation.htm>.
- If you see paint chips or dust in windowsills or on floors because of peeling paint, clean these areas regularly with a wet mop.
- Wipe your feet on mats before entering the home, especially if you work in occupations where lead is used. Removing your shoes when you are entering the home is a good practice to control lead.
- Remove recalled toys and toy jewelry from children. Stay up-to-date on current recalls by visiting the Consumer Product Safety Commission's Web site: <http://www.cpsc.gov/>.

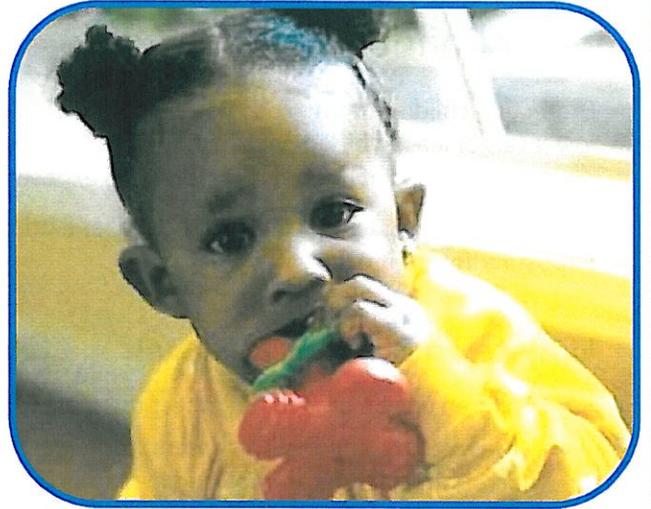
**Lead can be found in a variety of sources. These include:**

- paint in homes built before 1978.
- water pumped through leaded pipes.
- imported items including clay pots.
- certain consumer products such as candies, make up and jewelry.
- certain imported home remedies.

## Background

### Effect of a Different Blood Lead Level

- In the past, blood lead level tests below 10 micrograms per deciliter may, or may not, have been reported to parents. Identifying a child's blood lead equal to or above 5 micrograms per deciliter means more parents should learn that their child has an elevated blood lead level.
- Even though no medical treatment is recommended for children with blood lead levels lower than 45 micrograms per deciliter, parents will know they need to learn about sources of lead exposure and find out if one or more unrecognized sources of lead are present in their home. Parents then can follow the Centers for Disease Control and Prevention (CDC)'s recommendations to control exposure to lead.
- No changes are recommended to the existing CDC guidelines for the evaluation and treatment of children requiring chelation (those with BLLs  $\geq$  45 micrograms per deciliter).

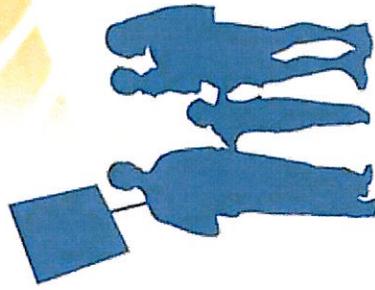


### New Recommendations to Define Elevated Blood Lead Levels

- In January 2012, a committee of experts recommended that the CDC change its "blood lead level of concern." The recommendation was based on a growing number of scientific studies that show that even low blood lead levels can cause lifelong health effects.
- The committee recommended that CDC link lead levels to data from the National Health and Nutritional Examination Survey (NHANES) to identify children living or staying for long periods in environments that expose them to lead hazards. This new level is based on the population of children aged 1-5 years in the U.S. who are in the top 2.5% of children when tested for lead in their blood. Currently, that is 5 micrograms per deciliter of lead in blood. CDC's "blood lead level of concern" has been 10 micrograms per deciliter.
- The new value means that more children will be identified as having lead exposure earlier and parents, doctors, public health officials, and communities can take action earlier.
- The committee also said, as CDC has long said, that the best way to protect children is to prevent lead exposure in the first place.

To learn more about preventing lead exposure, visit CDC's Web site at <http://www.cdc.gov/nceh/lead/>

# Strengthening Children's Right to Lead-Safe Housing Ordinance



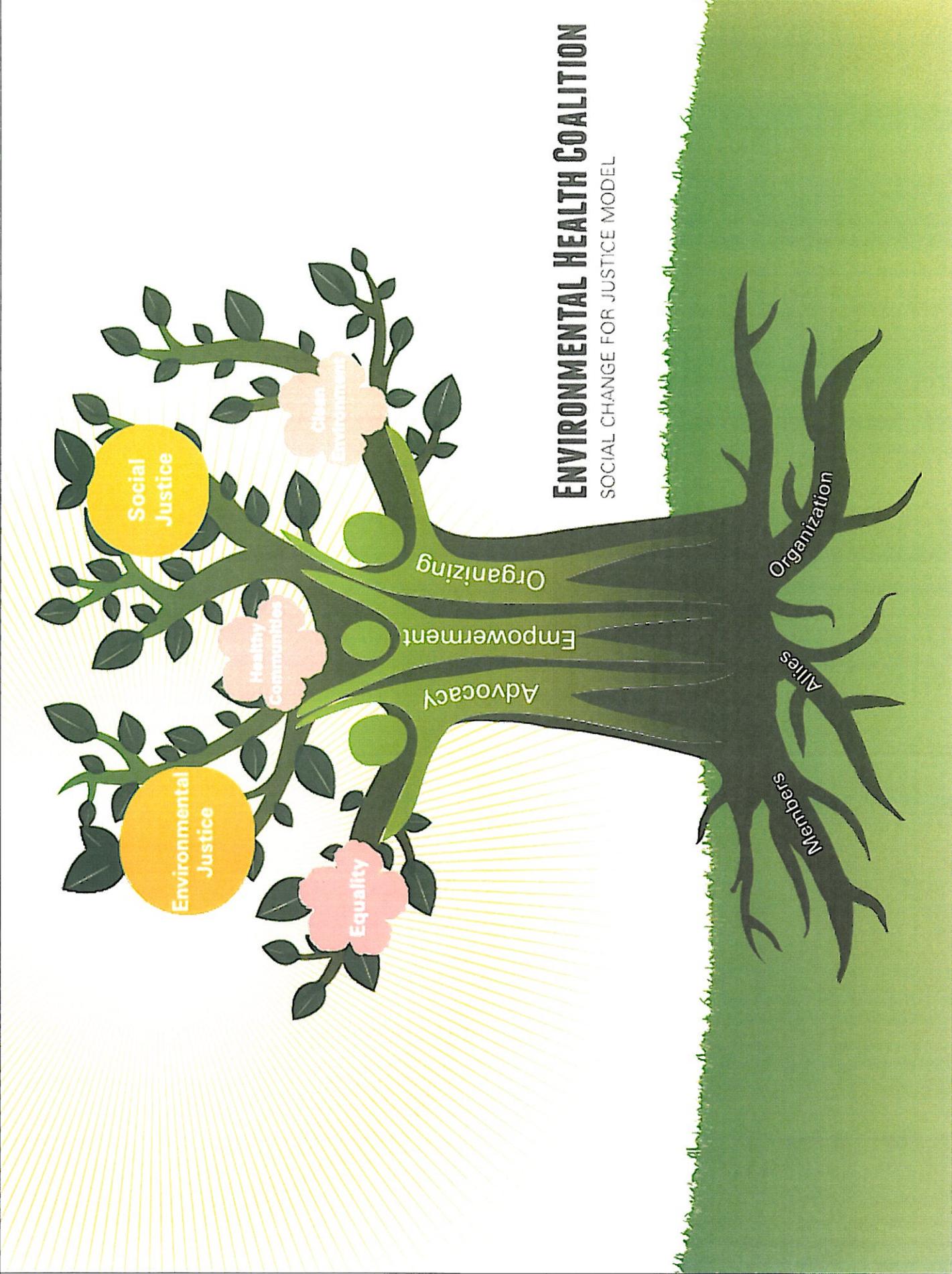
**ENVIRONMENTAL  
HEALTH COALITION**

**EMPOWERING PEOPLE. ORGANIZING COMMUNITIES. ACHIEVING JUSTICE.**



October 24, 2012





# ENVIRONMENTAL HEALTH COALITION

SOCIAL CHANGE FOR JUSTICE MODEL

# National Lead Poisoning Prevention Week

October 21-27, 2012

*Lead-Free Kids for a Healthy Future*



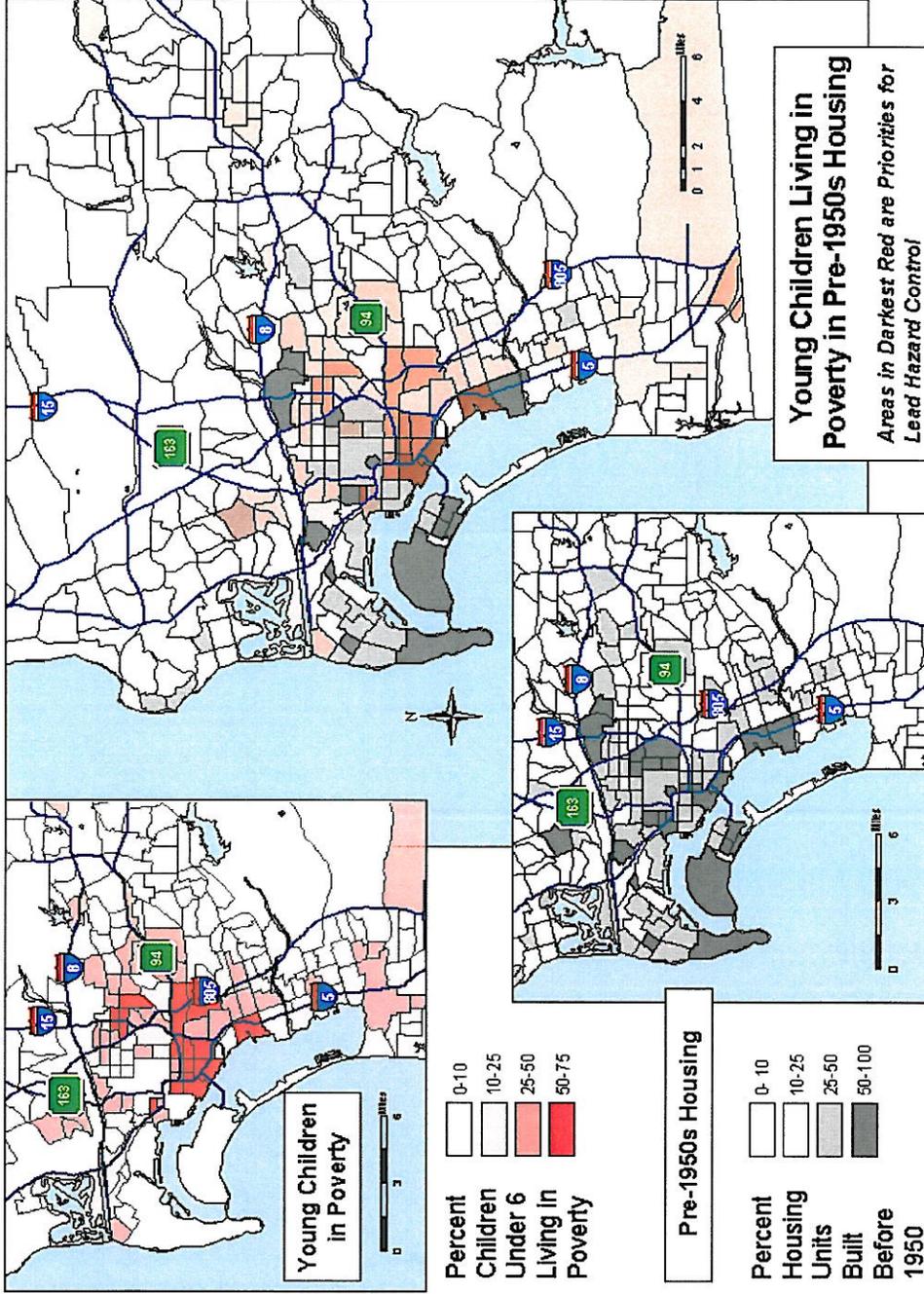
October 21 - October 27, 2012

1-800-424-LEAD (53239) [leadfreekids.org](http://leadfreekids.org)

## National Lead Poisoning Prevention Week

Get Your Home Tested Get Your Child Tested Get The Facts





Map by Environmental Health Coalition, 2002

Source: Centers for Disease Control and Prevention, based on 1990 U.S. Census data  
Notes: Values are by census tract, Census tracts where children under 6 numbered < 20 excluded

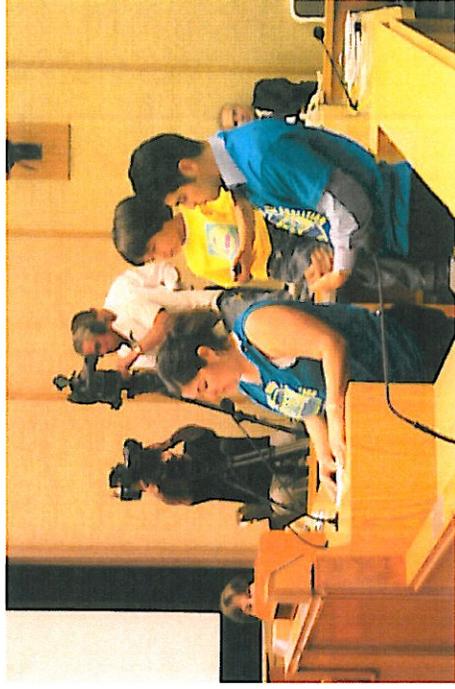
## Children at Risk for Lead Poisoning San Diego

# Children's Right to Lead-Safe Housing Ordinance – City of San Diego

- To prevent, identify and remedy lead hazards in housing before children are poisoned.
- To ensure that children living in pre-1978 rental and owner-occupied homes are protected from the dangers of lead-based paint and dust.
- To protect workers by banning unsafe lead work practices.

# Victory!!! San Diego City Council

## March 11, 2008



# Making Homes Lead Safe





# 2010 National Achievements in Environmental Justice Awards



*Recognizing Successful Partnerships  
Achieving Public Health and Environmental Justice Goals*





[Centers for Disease Control and Prevention](#)

[24/7: Saving Lives. Protecting People. Saving Money through Prevention.™](#)

- **New Policy: No safe level for lead.**
  - Scientists have determined low blood lead levels can cause lifelong health effects
  - Take Action @ Low Levels



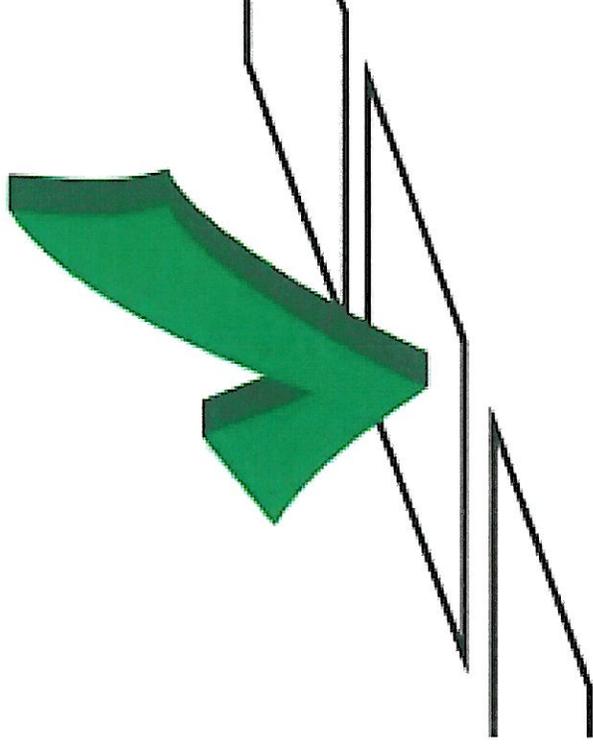
# Children's Right to Lead Safe Housing Ordinance Amendment



# Proposed Amendment: Buyer/Seller Urged to Take Steps To Reduce Lead

## Exposure

- Informs buyer and seller of City's Lead Ordinance
  - Warns buyer and seller of penalties related to non-compliance with lead ordinance
- Provides options on how to handle potential lead hazards. Buyer and seller can check off which option they prefer.



# Proposed Point of Sale Requirements

- Lead-Safe Disclosure Form For Multi-Family Rental

## Properties

 Strongly encourages buyer and seller to test and remediate

- Buyer and seller can negotiate

 Buyer can purchase “as is” without lead repairs

- Potential random inspection

 Buyer can opt to make repairs after escrow period

- Potential random inspection

- Administration & Random Inspection Program Fee

# Stakeholder Review Timeline

## **November / December 2012**

- Stakeholder organizations review the work product from the stakeholder meetings for input and approval of direction.

## **City Attorney Review – 60 Days**

- City Attorney will review the work product from the stakeholder meetings for input and direction.

## **December 2012/ Into 2013**

- Stakeholders review and incorporate organizational input and City Attorney input.

**Early 2013 Stakeholders Return to PSNS to present proposal**



# Blood Lead Testing



SAN DIEGO  
HOUSING  
COMMISSION

**October 25, 2012 at Neighborhood House Association  
12-4PM**

**841 S. 41<sup>st</sup> Street San Diego CA 92113**

Blood tests are conducted by using a Lead Care II blood analyzer purchased by SDHC through the "Home Safe Home" Program

\$2.48 million grant awarded in 2012 from the U.S. Department of Housing & Urban Development (HUD) for home lead remediation and blood lead-level testing for children

Since 2002 SDHC has received a total of \$22.4 million funding



# Questions & Discussion

**Leticia Ayala**  
**Associate Director For Programs**  
**Environmental Health Coalition**

**Molly Kirkland**  
**Director of Public Affairs**  
**San Diego County Apartment Association**

**Jordan Marks**  
**Director of Government Affairs**  
**Greater San Diego Association of REALTORS®**