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THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 6, 2008

IBA Report Number: 08-22

City Council Docket Date: March 11, 2008

Item Number: 330 and 331

Lead Hazard Prevention and Control Ordinance

OVERVIEW

On Tuesday, March 8, 2008 the City Council will consider two ordinances related to lead hazard prevention and control. These ordinances would strengthen the City's regulations pertaining to lead hazards, and provide greater effectiveness for the City's code enforcement and lead hazard abatement efforts.

Item 330 reflects the proposed ordinance that was recommended by the Land Use and Housing Committee (LU&H) on August 4, 2004 (O-2008-90, "Version A"), while Item 331 reflects the current proposal from the Mayor (O-2008-91, "Version B"). The two proposals differ in that the LU&H ordinance would require inspection for and correction of any lead hazards prior to a change in ownership of residential property, while the Mayor's proposed ordinance does not contain such a requirement. The ordinances are substantively identical in all other respects.

As these ordinances would result in tighter regulations pertaining to lead hazards, a certain amount of enforcement would be necessary to ensure optimal effectiveness. To partially fund this enforcement effort, both Items propose establishment of a cost-recovery fee for building permit-related enforcement, while Item 330 also proposes a cost-recovery fee related to the lead hazard correction requirement upon change of ownership. However, in neither case are the revenues from cost recovery fees sufficient to fully fund an optimal level of enforcement, as some enforcement efforts do not currently have a permanent funding mechanism.

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This report aims simply to provide clarification on what these ordinances require, the difference between the alternative proposals, and the potential budgetary impacts to the City in terms of enforcement and cost recovery.

FISCAL/POLICY DISCUSSION

The proposed Lead Hazard Prevention and Control Ordinances for both Item 330 (Version A) and Item 331 (Version B), are largely similar in substance. They both implement significant new regulations pertaining to lead hazards, such as requiring the use of lead-safe work practices, inspection and correction of lead hazards prior to re-occupancy of rental housing, and notification of lead hazard regulations by home-improvement stores that sell or rent high pressure water equipment.

Both of the proposed ordinances would do the following:

1. Declare that lead hazards are a public nuisance;
2. Make it unlawful to create or maintain a lead hazard;
3. Require the use of lead-safe work practices for activities that disturb lead-based paint;
4. Establish a rebuttable presumption that paint on dwelling units constructed prior to 1979 is lead-based paint;
5. Impose a duty on owners of housing to correct lead hazards upon notification that a hazard exists;
6. Provide for occupant relocation during lead hazard remediation;
7. Require visual inspection and correction of deteriorated paint in rental housing constructed prior to 1979 prior to re-occupancy;
8. Require home improvement stores that sell or rent high-pressure water equipment to provide pamphlets and post notification of lead hazards and lead-safe work practices;
9. Impose a duty on child care centers to require parents of each child provide a doctor's note that the child has been screened for lead poisoning;
10. Provide for enforcement authority and remedies;
11. Provide for reinspection cost recovery

The proposed ordinances differ in that Version A also includes a point-of-sale provision, which requires identification and correction of lead hazards prior to a change in ownership of a residential property. This provision, found in Section 54.1010 in Version A (O-2008-90), places responsibility on the seller of a residential property to have a lead risk assessment performed by a Certified Lead Inspector, and to correct all identified lead hazards. This section also includes provisions whereby the responsibility for compliance may be transferred to the buyer.

Compliance with this provision will be effectuated by requiring the buyer, the seller and the Certified Lead Inspector to sign and submit to the City a lead-safe or lead-free certificate. Item 330 also proposes establishing a cost recovery application filing fee associated with the lead-safe or lead-free certificates pursuant to this provision. As both of the proposed ordinances would tighten and enhance City regulations pertaining to lead hazards and lead-safe work practices, they would both require increased City costs for education, outreach and enforcement to be fully effective. The Environmental Services Department estimates that adequate enforcement would require additional costs of approximately \$1.1 million for Version A and \$840,000 for Version B. For both versions, this includes estimated costs for education, outreach and enforcement associated with the new lead hazard regulations, including lead-safe working standards, lead hazard inspection, home improvement store lead hazard notification and child care lead screening requirements. Version A also includes costs related to administration and enforcement of the point-of-sale provisions.

Item 330 and 331 propose cost recovery fees in order to offset a portion of these costs. Both Items propose a \$31 permit fee to be applied to certain permit categories in order to recover the cost of permit-related enforcement associated with lead-safe working practices. Item 330 also proposed a \$40 cost recovery application filing fee associated with lead-safe or lead-free certificates pursuant to the point-of-sale provision in Version A. While these fees would fully recover certain enforcement costs, there are additional enforcement efforts that currently do not have a permanent funding mechanism. The table below shows the full enforcement cost and level of cost recovery for each of the proposed ordinances.

Proposed Ordinance	Estimated Full Cost	Cost Recovered	Funding Needed*
Version A	\$1,083,630	\$358,100	\$725,530
Version B	\$841,264	\$119,580	\$721,684

** In FY09 the funding gap may be partially mitigated with the use of grant funds*

As this table shows, the cost recovery fees for either ordinance are not sufficient to fully fund adequate enforcement costs. Again, this is due to the fact that certain enforcement efforts do not currently have a permanent funding mechanism. Absent additional revenue sources, either the General Fund would be required to support the remaining cost of enforcement, or a sub-optimal level of enforcement would be provided. The staff report states that program implementation will be prioritized based on available funding, indicating that the Mayor does not plan to utilize General Fund dollars for this purpose.

The IBA is concerned about the practice of establishing new policies or regulations without providing the funding for adequate enforcement or implementation. This has occurred with items such as the Living Wage Ordinance and Equal Opportunity

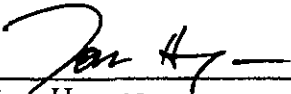
Contracting, and has led to sub-optimal levels of enforcement in those areas. It is important to note, however, that even with partial funding the City would still benefit from adoption of either of the proposed ordinances, as they would provide the necessary tools and legal language to ensure the effectiveness of the City's enforcement efforts, regardless of the level of that effort.

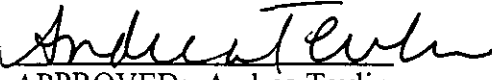
The Council may wish to consider allocating General Fund resources for this purpose in the FY 2009 budget, or continue investigating alternative funding sources. Potential funding sources include an increase in the Rental Unit Business License Tax, a cost-recovery fee for enforcement inspections that result in a Notice of Violation, and grant funds.

CONCLUSION

Items 330 and 331 present two versions of the proposed Lead Hazard Prevention and Control Ordinance. Both ordinances strengthen the City's lead hazard regulations in an effort to reduce or eliminate lead exposure. Version A (Item 330) differs from Version B (Item 331) in that it includes a provision that requires identification and correction of lead hazards prior to a change of ownership of residential property. The two versions are substantively identical in all other aspects.

The cost of adequate education, outreach and enforcement for these ordinances is estimated to be \$1.1 million for Version A and \$840,000 for Version B. While partial funding would be generated through cost recovery fees, under either version additional resources would be needed to fully implement adequate enforcement programs. The staff report indicates that the General Fund will not be used to support these costs, and that the enforcement program would be prioritized based on available funding. The IBA is concerned about the practice of implementing new laws and regulations without providing adequate funding for enforcement, though the City would still benefit from adoption of either of the proposed ordinances, even with partial funding. However, the City Council may wish to consider using General Fund resources or explore additional alternative funding sources to support a greater level of enforcement.


Tom Haynes
Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
Independent Budget Analyst



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THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 5, 2008

REPORT NO. 08-029

ATTENTION: Council President and City Council
Agenda of March 11, 2008

SUBJECT: Lead Hazard Prevention and Control Ordinance

REFERENCE: City Manager's Report (CMR) No. 04-178, dated July 29, 2004 (Attachment 3)

REQUESTED ACTION:

- 1) Amend *Abatement of Lead Hazards*, Sections 54.1001 *et seq.* of the San Diego Municipal Code as recommended by Mayor's Office by replacing it with the *Lead Hazard Prevention and Control Ordinance* ("Ordinance"), Attachment 1 to Report to Council No. 08-029
- 2) Amend *Judicial Remedies*, Section 12.0204 of the San Diego Municipal Code to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code, Attachment 2 to report to Council No. 08-029
- 3) Establish a cost recovery, regulatory fee of \$31 to be added to the permit fee for the specific Building and Demolition/Removal permits identified in this Report to Council, effective beginning 60 days after the effective date of Ordinance, for lead enforcement in connection with proposed Section 54.1005, Lead Safe Work Practices Standards Required and Section 54.1006, Lead Safe Work Practice Standards and directing the City Clerk to amend the Ratebook of City Fees and Charges.
- 4) Find that the cost recovery, regulatory fee of \$31 is established for the purpose of meeting operational expenses associated with education, outreach and enforcement in connection with the Ordinance.
- 5) Receive the Lead Hazard Prevention and Control Ordinance Report and all attachments.

STAFF RECOMMENDATIONS:

Approve all requested actions.

SUMMARY**Background**

The Centers for Disease Control and Prevention (CDC) has identified lead poisoning as the number one preventable environmental health problem affecting our children. It affects a child's development and later success as an adult. Lead poisoning can cause permanent damage to a child's nervous system, loss of intelligence quotient (IQ), create learning disabilities, behavioral problems, criminal activity, and at very high levels, coma, convulsions, and death. In lead poisoning cases, the exposure sources may vary but the most common is lead-contaminated dust from chipping and peeling paint and from home improvement projects which disturb or remove lead paint in an unsafe manner. These types of lead hazards pose imminent threats to the health and safety of young children.

The presence of lead hazards in San Diego housing is significant with approximately 66% of San Diego housing units constructed prior to 1979 (~310,000 housing units), the year lead was banned from paint. The City of San Diego's Environmental Services Department lead hazard inspection/enforcement unit inspected 773 residential structures between January 2004 and June 2007 of which eighty-nine percent (89%) contained lead hazards. The San Diego Housing Commission, as a part of the Department of Housing and Urban Development (HUD) Lead Hazard Control Grant, performed inspections of 661 residential structures between March 2003 and June 2007, which revealed that 97% contained lead hazards.

The Ordinance

After years of concerted effort and dedication of significant time and resources by the Lead Poisoning Prevention Advisory Taskforce members, the Environmental Services Department (ESD), the Neighborhood Code Compliance Department (NCCD), and the City Attorney's Office, a comprehensive lead ordinance was developed. The Ordinance's primary purpose is to prevent lead poisoning through lead-safe housing and ensuring lead-safe work practices. It is generally acknowledged that preventing lead poisoning results in significant financial benefits, including savings in medical costs, special education costs, and juvenile justice costs.

The proposed Lead Hazard Prevention and Control Ordinance found in Attachment One includes five key requirements intended to prevent lead poisoning:

- Requiring renovators to use lead-safe work practices when disturbing lead paint on pre-1979 housing and other structures;
- Requiring property owners to correct lead hazards in pre-1979 housing after notice of the lead hazard;
- Requiring property owners to perform visual inspection and correction of presumed lead hazards prior to re-occupancy of a vacant rental unit;
- Requiring home improvement/water pressure equipment rental stores to make available lead education material to customers; and
- Requiring that childcare facilities obtain proof of blood lead testing at enrollment.

The Environmental Services Department (ESD) has coordinated the development of a Lead Safe Neighborhoods Program, and since 2002, has expanded its technical knowledge and expertise in

the area of lead hazards. Therefore, ESD will have the primary role in coordinating inspections and enforcement activities outlined in this Ordinance, but will coordinate with the Neighborhood Code Compliance Department (NCCD) as appropriate.

Non lead-based paint poisoning sources such as the manufacture and sale of lead-contaminated candy, tableware, and toys were evaluated during the drafting of the Ordinance and were not included at this time because (1) candy regulations were pending at the State level and (2) City regulation of the manufacture/sale of lead-contaminated toys and tableware is preempted by State laws which already prohibit manufacture and sale of such toys and tableware. To the extent possible, the City will continue an education and outreach campaign on all lead sources, and will maintain partnerships with stakeholders and agencies in an effort to protect our children from being exposed to all sources of lead.

Judicial Abatement

It is important for the code enforcement process to have a variety of remedies available to address violations of the Municipal Code. Amended section 54.1001(e) declares that a lead hazard found on any property within the City is a public nuisance. Public nuisance violations may be abated administratively by City Departments or prosecuted by the City Attorney's Office. Currently, San Diego Municipal Code section 121.0302(b)(4), contained in the Land Development Code, states that it is unlawful for any person to maintain or allow the existence of any condition that creates a public nuisance. This same language should be present in Chapter 1 of the Municipal Code to clarify that any public nuisance violation is unlawful under the Municipal Code, not just violations relative to the Land Development Code. The language amending section 12.0204, found in Attachment Two, would strengthen the City's ability to prosecute a lead hazard violation as a public nuisance.

FISCAL CONSIDERATIONS:

Financial resources will be necessary to implement an education and enforcement program for the Lead Hazard Prevention and Control Ordinance. **Only partial funding** is outlined in this report. Additional funding options are needed for full implementation of the Ordinance.

Program Implementation Costs

The funding identified in this report for the education, outreach and enforcement components of the Lead Hazard Prevention and Control Ordinance does not provide the resources necessary for full implementation. Full enforcement implementation of the proposed Ordinance is estimated at \$841,264 (9.35 FTE) but only \$129,580 in revenues have been identified. Consequently, program implementation will be prioritized based on the resources available. Adoption of the Ordinance will provide a competitive advantage at the state and national levels for grant funding to implement additional Ordinance's components. Adopting the Ordinance without full funding will still improve the City's ability to perform enforcement and reduce the presence of lead hazards, and demonstrate a commitment to preventing lead poisoning.

Education, Outreach and Enforcement Program Costs

If City Council approves the fee increases identified in this report, the following table identifies the annual revenues sources available for the Ordinance related to education, outreach, and enforcement:

Revenue Type*	AMT
DSD Permit Fees	\$119,580
Fines and Penalties	\$10,000
TOTAL	\$129,580

* Does not include any Community Development Block Grant funding or grant from CA Department of Public Health for lead enforcement which should begin on July 1, 2008. The City of San Diego allocation from this state grant has not been determined at the time of this report.

With the limited funding identified in this report, the following is the projected budget and positions for FY 2008-2009:

Personnel Costs (1.30 FTE)*	\$118,339
Non-personnel Costs	\$11,241
Total Costs	\$129,580

* 1.30 FTE are existing positions

Cost Recovery Fee Calculations for Development Services Department (DSD) Permit Fees
Construction activities that impact lead paint and are not performed using lead-safe work practices can be a significant source of lead hazards. A major component of the Lead Hazard Control and Prevention Ordinance is the regulation and education of contractors in the use of lead-safe work practices. A cost recovery, regulatory fee of \$31 will be added to all the following permit categories for structures built before 1979:

Building Permit for Residential Room Addition
Building Permit for Residential Remodel
Building Permit for Non-residential Addition/Alterations
Building Permit for Commercial Tenant Improvement
Demolition/Removal Permit

The fee is derived from the following assumptions:

1. The total three year average of annual permits issued for those categories listed above during fiscal years 2002 through 2007 is 6,643.
2. DSD estimates that 60% of the average annual permits in these permit categories were for structures built before 1979 totaling 3,986.
3. Estimated annual enforcement cases related to lead-safe work practices (LSWP) under this proposed Ordinance is 780 (15 per week).
4. One-third of the estimated 780 annual LSWP enforcement cases will be related to the building permit types referenced in this report.

Cost recovery services related to Section 54.1005, *Lead-Safe Work Practice Standards Required* and 54.1006, *Lead-Safe Work Practice Standards* of the proposed Ordinance, include performing education, outreach and conducting enforcement associated with those permits identified in this Report.

In accordance with Administrative Regulation 95.25, the following are the associated personnel and non-personnel costs, and associated cost calculations for the education, outreach and enforcement components of the Ordinance

PERSONNEL COSTS				
Classification	FTE	Salary	Fringe	Total
LSNP Coordinator	0.10	\$9,321	\$4,167	\$13,488
Senior Combination Inspector	0.40	\$30,588	\$13,677	\$44,265
Asbestos and Lead Program Inspector	2.00	\$131,209	\$62,362	\$193,570
Administrative Aide II	0.30	\$15,206	\$7,997	\$23,203
Word Processor	0.20	\$7,569	\$4,762	\$12,331
Account Clerk	0.30	\$11,363	\$6,778	\$18,141
	3.30	\$205,255	\$99,743	\$304,998
FY08 Overhead Rate (14.3%)				\$29,351
TOTAL PERSONNEL COSTS				\$334,349

NON-PERSONNEL COSTS	
Description	Cost
Office Supplies	\$723
Postage/Mailing	\$2,500
Other Safety Supplies	\$800
Lab Services – Outside	\$2,800
Uncias Professional Services	\$1,600
Residential Support	\$2,000
Print Shop Services	\$6,000
Transportation Allowance	\$2,000
Training - In Town	\$1,000
Motive Equip – Usage	\$2,222
Motive Equip – Assignment	\$3,862
EPACs Database Maintenance	\$2,000
Network Access – Committed	\$3,485
Equip/Support – Committed	\$1,540 *
Hardware Lease – Committed	\$544
Telephone Set/Install/Cable Pull	\$144 *
Telephone Service - DP Corp	\$1,392
Equipment Outlay	\$1,100 *
Motive Equipment Outlay	\$2,500
Workstations	\$785 *
TOTAL NON-PERSONNEL COSTS	\$38,997 **
Less One Time Costs* (first year asset acquisition costs which will be recovered from collected fees over the life expectancy of the item.	\$6,069
Plus Amortized Annualized Cost of the asset acquisition	\$797
TOTAL Adjusted NPE	\$33,725

TOTAL PE of \$334,349 plus Adjusted NPE of \$33,725 = \$368,074 Annual Education, Outreach, and Enforcement Costs

Cost Recovery Fee Calculations

Of the 780 annual LSWP enforcement cases, approximately one-third (260 enforcement cases) are assumed to be related to individuals required to obtain one of the permit types listed in this memorandum that could disturb lead-based paint.

$$\$368,074 \div 780 \text{ cases} = \$471/\text{enforcement case}$$

$$260 \text{ cases} \times \$471 = \$122,460$$

As referenced in the assumptions, it is estimated that the number of annual types of permits that could disturb lead-based paint for pre-1979 structures would be 4,127.

$$\$122,460 \div 3,986 = \$30.72/\text{permit} - (\text{rounded down to } \$30/\text{permit}).$$

Estimated revenue to be generated is \$119,580 (3,986 x \$30) for education, outreach and enforcement

DSD processing fee is \$1/permit. Total fee is \$31. In accordance with Administrative Regulation 95.25, Attachment Four is the current and proposed fee schedule.

PREVIOUS COUNCIL and/or COMMITTEE ACTION

On August 4, 2004, the Lead Hazard Prevention and Control Ordinance (CMR 04-178) was presented to the LU&H and was approved unanimously with modifications (Frye, Inzunza, Lewis, Peters in support). The proposed Ordinance in Attachment One includes all of the modifications requested at LU&H, but excludes the "point-of-sale" provisions approved by the Committee, which required a lead risk assessment and corrections of lead hazards in connection with the sale of pre-1978 residential housing.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

Over the past three years of the Ordinance development, there has been extensive community participation. A Lead Poisoning Prevention Citizen's Advisory Taskforce was created to assist in developing a Lead Safe Neighborhoods Program and to draft a comprehensive ordinance. Members of the Taskforce began meeting in September 2002. This Taskforce was co-chaired by Council members Donna Frye and Ralph Inzunza and members included:

Association of General Contractors -- *Brad Barnum*
 City Heights Development Corporation -- *Jay Powell*
 Education Enrichment Systems, Inc. -- *Robin Layton*
 Environmental Health Coalition -- *Leticia Ayala*
 Family Health Clinics of San Diego -- *Janet Adamain*

Linda Vista Planning Community Group -- *Ed Cramer*
 San Diego Association of Realtors -- *Courtney Comer*
 San Diego County Apartment Association -- *Bob Grinchuk*
 University of California San Diego, School of Medicine -- *Ruth Heifetz, M.D.*
 University of California San Diego, Western Region Lead Training Institute -- *Lisa McKay*
 YMCA Childcare Resource Service -- *Deborah Boles*

All Taskforce meetings were open to the public and allowed for public comment. In addition to Taskforce meetings, presentations on the proposed Ordinance have been provided to Development Service's Technical Advisory Committee, San Diego Chamber of Commerce, San Diego County Apartment Association, San Diego Association of Realtors, Pacific Southwest Association of Realtors, Linda Vista Community Planning Board, Linda Vista Collaborative, San Diego Community Engagement Action Forum, San Diego Housing Advisory and Appeals Board, and Association of General Contractors.

Letters will be mailed two weeks in advance of this item being heard at Council to Development Services Department's (DSD) notification mailing list, which consists of various building industry members, related associations and concerned members of the public who have requested prior notification of fee and other regulatory changes. A legal notice will be placed in the San Diego Daily Transcript approximately two weeks in advance of the Council hearing on this item.

KEY STAKEHOLDERS & PROJECTED IMPACTS

Organizations and participants that were directly involved in the development of the proposed Ordinance consisted of Taskforce members listed in this report and the following Taskforce staff members:

City Attorney's Office – *Grace Lowenberg, Diane Silva-Martinez, and Linh Nuygen*
 Environmental Services Department – *Chris Gonaver and Alan Johanns*
 Development Services Department – *Jeff Isbell and William Barranon*
 Neighborhood Code Compliance Department – *Marcia Samuels*
 San Diego Housing Commission – *Frank Ballow*
 County of San Diego, Childhood Lead Poisoning Prevention Program – *Diane Rexin*
 Western Center for Law and Poverty – *Greg Spiegel*

CONCLUSION

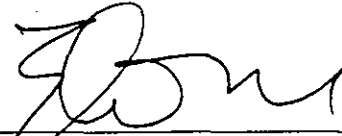
Nationwide and throughout California, local agencies have been adopting lead-related Ordinances and use enforcement as the most effective means of eliminating lead exposure sources before children are poisoned. The City of San Diego's Lead Safe Neighborhoods Program will continue working in a collaborative effort on all strategic areas to eliminate lead poisoning, including enforcement activities. By adopting the proposed Ordinance, the City will

be taking an important step forward to help eliminate lead hazards in San Diego's homes and making them safe for occupancy by families with young children.

Respectfully submitted,



Chris Gonaver
Environmental Services Acting Director



Elmer L. Heap, Jr.
Deputy Chief of Community Services

CG/LP/AJJ

- Attachments:
1. Proposed San Diego Municipal Code Section § 54.1001 *et. seq.*
 2. Proposed San Diego Municipal Code Section § 12.0204
 3. City Manager's Report No. 04-178, dated July 29, 2004
 4. Current and Proposed Fee Schedule for Permits



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: July 29, 2004 REPORT NO. 04-178
ATTENTION: Land Use & Housing Committee
Agenda of August 4, 2004
SUBJECT: Comprehensive Lead Paint Ordinance

SUMMARY

Issues – 1) Should the City modify Section 54.1001 *et seq.* of the San Diego Municipal Code as recommended by the Lead Poisoning Prevention Citizen's Advisory Taskforce?, 2) Should the City pursue various funding sources for the enforcement of the lead ordinance including: an increased fee on remodeling permits; an increased per unit charge on the rental business fee; and a filing fee for the lead-safe certificate?

Manager's Recommendations - 1) Modify Section 54.1001 *et seq.* of the San Diego Municipal Code as recommended by the Lead Poisoning Prevention Citizen's Advisory Taskforce, 2) Pursue various funding sources for the enforcement of the lead ordinance including: an increased fee on remodeling permits; an increased per unit charge on the rental business fee; and a filing fee for the lead-safe certificate.

Other Recommendation – None

Fiscal Impact – Additional resources will be necessary to fund enforcement of the proposed ordinance. Three possible funding sources have been identified in this Manager's Report.

BACKGROUND

The Centers for Disease Control and Prevention (CDC) has identified lead poisoning as the number one preventable environmental health problem affecting our children. It causes adverse affects on a child's development and later success as an adult. Lead poisoning can cause

permanent damage to a child's nervous system, loss of intelligence quotient (IQ), create learning disabilities, behavioral problems, and at very high levels, coma, convulsions, and death. In lead poisoning cases, the sources may vary but the most common is lead-contaminated dust from chipping and peeling paint, or generated by home improvement projects. Because children under the age of six frequently perform hand-to-mouth behavior, the most common route of exposure is ingestion of lead-contaminated house dust.

According to the 2000 census, approximately 70 percent of the housing units in San Diego were constructed before 1978 (350,000 homes), the first year in which the federal government banned the sale of residential paint containing more than 600 parts per million (ppm) of lead.

According to the County of San Diego, Childhood Lead Poisoning Prevention Program (CLPPP), 299 children age six or younger were identified to have been poisoned by lead in the County of San Diego in 2003. This number is likely not representative of the true impact of this problem as only a small number of children have their blood tested for lead concentrations.

The CDC defines lead poisoning as occurring when a child's blood lead level is 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) or greater. However, recent medical research has determined that the largest decrease in IQ actually takes place at blood lead levels below 10 $\mu\text{g}/\text{dL}$ as demonstrated by Figure 1, taken from the *New England Journal of Medicine*, April 2003. Consequently, medical research indicates there could be six to ten times the number of children in the county with blood lead levels sufficiently elevated to cause decreases in IQ but these same children have not reached the CDC's official poisoning threshold of 10 $\mu\text{g}/\text{dL}$.

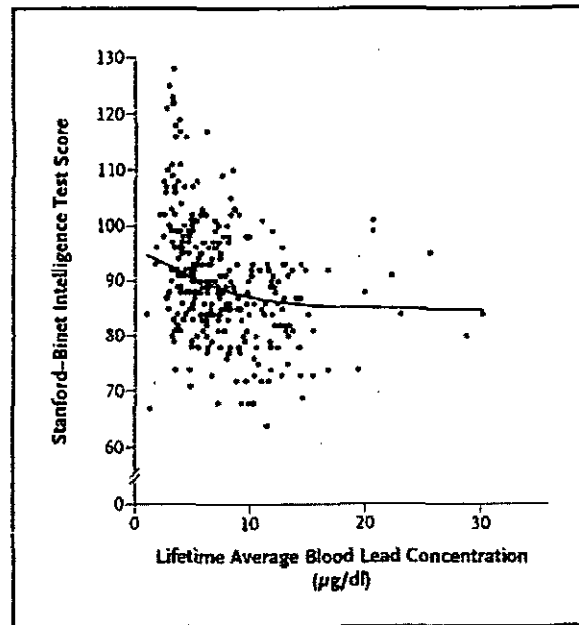


Figure 1

Across the country, all levels of government are actively working together on ways to eliminate lead poisoning by the year 2010. The first line of defense in protecting children from lead poisoning is primary prevention, which means controlling and/or eliminating the source of lead before children are exposed.

Lead-related enforcement in California underwent major changes when Senate Bill 460 became law on January 1, 2003. The major local enforcement components of SB 460 are codified in the California Health & Safety Code 17920.10 and 105255-56 and are as follows:

1. Residential property containing a lead hazard, as defined under state law, is deemed substandard.

2. Contractors disturbing paint on a pre-1979 structure without proper containment are deemed to be creating a lead hazard.
3. Local enforcement agencies are authorized to ensure compliance with this new law.

The City began enforcement of Senate Bill 460 on October 1, 2003. This included training of City Building Inspectors and Land Development Investigators to identify lead hazards during routine inspections so that prevention can be handled in a proactive manner.

DISCUSSION

Lead Safe Neighborhoods Program

In April 2002, the City Council approved an initial lead ordinance and the creation of the Lead Safe Neighborhoods Program (LSNP) to implement primary prevention strategies toward eliminating childhood lead poisoning. One of the strategies included the creation of the Lead Poison Prevention Citizen's Advisory Taskforce (Taskforce) and directed staff, in cooperation with the Taskforce, to develop a more comprehensive lead ordinance.

The overall management of the LSNP is coordinated by the Environmental Services Department (ESD). The other participating City staff include the City Attorney's Office, Council District 6, Council District 8, the Development Services Department (DSD), the Neighborhood Code Compliance Department (NCCD), and the San Diego Housing Commission.

The major strategic areas of the LSNP are as follows (summary of each strategy is in Attachment 1):

- "Clearinghouse" Agency
- Building Partnerships
- Identifying Resources
- Education & Outreach
- Training
- Inspections/Assessments
- Enforcement
- Lead Hazard Reduction Programs
- Early Intervention
- Equipment Loaner Program
- Outreach via City Services

The LSNP's innovative strategies for primary prevention has national recognition and is having an impact on reducing childhood lead poisoning. The City has received more than \$3 million in grants over the past two years.

Lead Poison Prevention Citizen's Advisory Taskforce (Taskforce)

In September 2002, the various stakeholders in the Taskforce began meeting to provide guidance in the development of the LSNP and drafting of a comprehensive lead ordinance. This Taskforce is co-chaired by Councilmembers Donna Frye and Ralph Inzunza. The past and current Taskforce members include:

Association of General Contractors -- *Brad Barnum*
 City Heights Development Corporation -- *Jay Powell*
 Education Enrichment Systems, Inc. -- *Robin Layton*
 Environmental Health Coalition -- *Leticia Ayala*
 Family Health Clinics of San Diego -- *Janet Adamain*
 Linda Vista Planning Community Group -- *Ed Cramer*
 San Diego Association of Realtors -- *Courtney Comer*
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 University of California San Diego, School of Medicine -- *Ruth Heifetz, M.D.*
 University of California San Diego, Western Region Lead Training Institute -- *Lisa McKay*
 YMCA Childcare Resource Service -- *Deborah Boles*

The Taskforce formed two subcommittees. The Education and Outreach subcommittee was responsible for developing educational materials that are culturally sensitive, and identifying the various outreach vehicles and how best to utilize them. The Ordinance subcommittee was responsible for drafting a comprehensive lead ordinance, and prioritizing/leveraging resources for the high risk communities.

Ordinance Development Process

The Ordinance Subcommittee began the development process by reviewing lead-related ordinances from around the country including the State of New Jersey, State of Indiana, New York City, City of New Orleans, City of Chicago, City/County of San Francisco, and City of Long Beach. The goal was to identify the best components of various model ordinances and couple them with additional ideas generated by the subcommittee. The outcome of this consensus driven process became the outline of the City's lead ordinance.

The subcommittee members spent considerable hours discussing language, and for the most part, were able to arrive at consensus on most issues. A concerted effort was made to include only elements that were enforceable. Elements that were considered procedural or educational in nature will be incorporated into the City's policy and procedures.

There are two outstanding issues where consensus among all stakeholders was not achieved. One is the requirement that a certified lead inspection and lead hazard remediation must occur before or after the sale of any pre-1978 dwelling units. The other is requiring all pre-1978 property to have a lead risk assessment and remediation of lead hazards by December 31, 2010. Staff research identifies that San Diego would be the first jurisdiction in the country to implement a universal inspection requirement on all pre-1978 dwelling units.

Ordinance Overview

The attached draft ordinance would amend Sections 54.1001-54.1006 and add Sections 54.1007-54.1017 to the San Diego Municipal Code (Attachment 2). The following is an overview of the proposed ordinance:

1. **54.1001:** Declares a lead hazard, as defined in 54.1003, to be a public nuisance.
2. **54.1002:** Declares the overall purpose of the ordinance to include the prevention, identification, and remediation of lead hazards so as to protect persons, in particular children, from exposure to lead hazards.
3. **54.1003:** Provides definitions for the ordinance including key terms such as lead hazard and lead-based paint. Remediating a lead hazard is not removing all lead-based paint.
4. **54.1004:** Makes it unlawful to create or maintain a lead hazard and unlawful to fail to eliminate or reduce a lead hazard.
5. **54.1005-06:** Requires the use of lead safe work practices by renovators disturbing paint on dwelling units built before January 1, 1979, or if sampling is performed and the lead quantity is greater than 1,000 ppm or 0.5 $\mu\text{g}/\text{cm}^2$. This Section defines the minimum lead safe work practices, and establishes conditions for requiring dust clearance sampling. It also provides for the relocation of occupants if work cannot be done safely when they are present.
6. **54.1007(a), (b):** Establishes a rebuttable presumption that paint in or on dwelling units constructed prior to January 1, 1979, is lead-based paint, unless the dwelling unit has been proven to contain no lead-based paint or the lead-based paint has been removed.
7. **54.1007(c):** Imposes a duty on owners of dwelling units constructed prior to January 1, 1979, to perform a lead risk assessment on the dwelling unit by the following dates:
 - By December 31, 2008, for all dwelling units with 16 or more units.
 - By December 31, 2009, for all dwelling units with 5 to 15 units.
 - By December 31, 2010, for all other dwelling units.
8. **54.1007(c):** Imposes a duty on owners of dwelling units constructed prior to January 1, 1979, to correct identified lead hazards and complete a clearance inspection within 30 days, with limited exceptions, after notice of the existence of a lead hazard.
9. **54.1007(d),(e),(f):** Provides for administrative, summary, and judicial abatement of lead hazards.
10. **54.1008:** Establishes responsibility for residential tenant relocation and the associated costs in the event of an abatement action to remediate a lead hazard in a dwelling unit.

11. **54.1009:** Requires owners of rental dwelling units built before January 1, 1979, to conduct visual inspections prior to re-occupancy of vacated units.
12. **54.1010:** Requires identification and remediation of lead hazards in connection with a change of ownership (with certain exceptions) of a dwelling unit constructed prior to January 1, 1978, unless the dwelling unit is exempted; provides a mechanism for a buyer and seller to agree to transfer responsibility to the buyer for performance of the lead risk assessment and remediation of identified lead hazards.
13. **54.1011:** Requires home improvement stores that sell paint supplies and/or rent high-pressure water equipment to prominently display lead educational materials provided by the City.
14. **54.1012:** Requires Child Care Facilities to have parents or legal guardians of children, aged six months to six years, provide a note from a physician or other healthcare provider indicating that the child has been appropriately screened for lead poisoning, unless the parent objects on religious grounds.
15. **54.1013:** Provides enforcement authority to the Director or to their designee. ESD will have the primary responsibility for enforcement of this ordinance and will work in coordination with NCCD.

Cost of Ordinance Requirements to Property Owner/Responsible Party

Lead Risk Assessment - The cost of a lead risk assessment by a state certified lead inspector/assessor as defined in the proposed ordinance will vary by the number of units inspected at one time. It is estimated that the ranges of costs are:

Apartment/Condo Unit: **\$150 - \$300**
 Single-Family Detached Home: **\$300 - \$500**

Lead Hazard Remediation - Lead hazard remediation, as required by the proposed ordinance, is for the removal of the lead hazard only (referred to as interim controls) and does not include complete removal of all lead-based paint. Based on a national survey conducted by the Department of Housing and Urban Development (HUD) in 2001, 25% of homes that were inspected have lead hazards. Lead hazard remediation will vary greatly and can range from \$50 for a simple paint coating repair to \$20,000 if the paint on the dwelling unit is in significant disrepair. These costs will vary by number of units remediated at one time and does not include relocation if it is required. The estimated ranges of costs are:

Apartment/Condo Unit: **\$750 - \$1,000**
 Single-Family Detached Home: **\$1,500 - \$2,000**

Lead Safe Work Practices -- Lead Safe Work Practices, as proposed in this ordinance, would not add any significant costs to a project unless a dust clearance is required. Estimated ranges of costs for one room of a structure when a dust clearance is required are:

Apartment/Condo Unit: **\$150 - \$200**
 Single-Family Detached Home: **\$150 - \$200**

Funding

The enforcement of this ordinance cannot be fully implemented with current staffing levels and will require additional revenue sources. Three new possible funding sources have been identified to implement enforcement of this ordinance:

1. An increase to the fee for all remodeling permits to fund lead safe work practice enforcement as defined under proposed Sections 54.1005-1006.
2. An increase to the per unit charge on the rental business fee to fund the enforcement of lead hazards creating substandard housing as defined in proposed Section 54.1007. The City Treasurer's current billing software program cannot accommodate this additional fee increase. It may be up to two years until the software is in place to collect the fee increase. Staff is researching the feasibility of the County collecting this revenue as an interim solution.
3. A new cost-recovery fee for filing of a lead-safe certificate for all properties defined in proposed Section 54.1007 required to have a lead risk assessment, and for all properties that have a sales transaction as defined in proposed Section 54.1010.

Until the final ordinance is adopted, it is difficult to accurately calculate the amount needed to fund enforcement activities. However, the anticipated range of fees are estimated to be: \$5 - \$6 increase in the remodeling permit fee, \$2 - \$3 increase for the rental business fee, and \$20 - \$25 new fee for filing the lead-safe certificate. One-time partial funding sources for start-up phase in FY 05 have been identified with Community Development Block Grant Funding provided by Council Districts 1, 3, & 6, and from the NCCD's Civil Penalties Code Enforcement Fund. Once the enforcement program is fully implemented, an initial estimate of the annual cost should be in the \$800,000 - \$850,000 range.

Other revenue sources will come from active enforcement of this ordinance that will generate fines and penalties for those in non-compliance. The LSNP will also continue its pursuit of grant funding.

Potential Concerns

The adoption of this ordinance will produce significant benefits towards providing lead-safe housing. There are concerns that could arise in working towards the elimination of lead hazards.

- A lead hazard corrected with interim controls could return.
 - ✓ *There are benefits to eliminating the lead hazards one time and educating residents about the significant impact a lead hazard can have on the health of their children.*
- Requiring lead inspections and remediation of lead hazards at the point of sale could add time to the transaction.

- ✓ *This will ensure that lead hazards will be identified and corrected before a child becomes poisoned. It will add to the current requirements for disclosure warnings in the escrow paperwork.*
- The cost of requiring lead risk assessments and remediation of lead hazards could impact low-income families.
- ✓ *The City is committed to working to achieve voluntary compliance and will continue the pursuit of grants and other funding options to minimize these costs to low-income families. The City will build on its successful HUD lead hazard remediation grants for the low-income. There will be exceptions under various circumstances for low-income property owners to ensure housing is safe and remains affordable.*
- It is understood that this proposed ordinance primarily addresses environmental lead hazards stemming from lead paint and that there are other sources of childhood lead poisoning.
- ✓ *The City will continue its lead education and outreach program on all lead poisoning sources as well as work with other agencies and organizations that can help eliminate sources.*
- The current capacity of state certified lead inspectors/assessors is not adequate to ensure compliance with the ordinance.
- ✓ *The City is committed to developing this necessary capacity and will initiate grace periods until local market forces can adjust to meet the demand.*

CONCLUSION

Nationwide and throughout California, local agencies have been adopting lead-related ordinances and using enforcement as one means of eliminating lead poisoning. This ordinance is comprehensive and will have impacts on property owners. However, by accepting the Taskforce's recommendations, the City will be taking an important step forward to help eliminate lead hazards in our children's homes.

ALTERNATIVES

1. Eliminate and/or modify specific Section(s) of the ordinance and adopt the modified ordinance.
2. Modify or select different funding options for enforcement.
3. Do not adopt the ordinance.

Respectfully submitted,

Elmer L. Heap, Jr.
Environmental Services Director

Marcia K. Samuels
Neighborhood Code Compliance Director

Approved: Richard G. Mendes
Deputy City Manager

HEAP/SAMUELS/AJJ

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: 1. Summary of the LSNP strategic components
2. Proposed San Diego Municipal Code Section 54.1001 *et seq.*

In accordance with Administrative Regulation 95.25, the following is the current and proposed fee schedule related to the lead enforcement cost recovery fee for building permits that impact lead paint on a pre-1979 structure:

The current permit fee schedule as of March 2, 2007.

Work Item or Service	Unit	Current Fee	Proposed Fee
Carport-Standard	each	\$311	\$342
Carport-With Calcs	each	\$533	\$564
Demolition	each	\$177	\$208
Pre-Demolition Inspection	per hour	\$99	n/a
Partition - Commercial, Interior	up to 50 l.f.	\$367	\$381
Additional partition	each 20 l.f.	\$38	n/a
Partition - Residential, Interior	up to 50 l.f.	\$222	\$253
Additional partition	each 20 l.f.	\$15	n/a
Roof Structure Replacement	up to 300 s.f.	\$222	\$253
Remodel (Residential)	up to 100 s.f.	\$188	\$219
Additional remodel	each 100 s.f.	\$99	n/a
Room Addition (Residential)	up to 100 s.f.	\$289	\$320
Additional room addition	each 100 s.f.	\$166	n/a
Skylight			
Less than 10 s.f.	each	\$166	\$197
Greater than 10 s.f. or structural	each	\$289	\$320
Stairs	first flight	\$266	\$297
Each additional flight	per flight	\$111	n/a
Storage Racks			
6' and higher (up to 100 l.f.)	first 100 l.f.	\$712	\$743
Additional racks	each 50 l.f.	\$60	n/a
Stucco and Siding, Stone or Brick Veneer application	up to 400 s.f.	\$233	\$264
Additional application	each 100 s.f.	\$10	n/a
Window/Door (Including Sliding Glass)			
New (non structural)-first unit	each	\$144	\$175
New (structural shear wall or masonry)	first one	\$489	\$520
Replacement	first one	\$177	\$208
Closing of existing door/window opening	each	\$255	\$286
Bay Window (structural)	first one	\$656	\$687
Additional door/window	each	\$88	n/a

The proposed fee is an increase to each of the base fee categories by \$31

		Construction Categories I FR and II FR		Construction Categories II 1-HR, III 1-HR, and V 1-HR		Construction Categories II N, III N, IV, and V N	
Occupancy Type	Project Size Threshold	Base Fee	Plus Increment*	Base Fee	Plus Increment*	Base Fee	Plus Increment*
Office Tenant Improvements	1,000	\$626.00	\$5.23	\$521.50	\$4.36	\$417.50	\$3.46
Office Tenant Improvements	5,000	\$835.00	\$8.36	\$696.00	\$6.96	\$556.00	\$5.58
Office Tenant Improvements	10,000	\$1,253.00	\$2.09	\$1,044.00	\$1.74	\$835.00	\$1.40
Office Tenant Improvements	20,000	\$1,461.50	\$1.39	\$1,217.50	\$1.16	\$974.50	\$0.93
Office Tenant Improvements	50,000	\$1,879.50	\$1.67	\$1,566.00	\$1.39	\$1,253.00	\$1.11
Office Tenant Improvements	100,000	\$2,714.50	\$1.67	\$2,262.50	\$1.39	\$1,810.00	\$1.11
Other Tenant Improvements	200	\$324.50	\$40.94	\$270.50	\$34.13	\$216.00	\$27.31
Other Tenant Improvements	1,000	\$652.00	\$7.85	\$543.50	\$6.50	\$434.50	\$5.25
Other Tenant Improvements	2,000	\$730.50	\$4.05	\$608.50	\$3.40	\$487.00	\$2.70
Other Tenant Improvements	4,000	\$811.50	\$8.13	\$676.50	\$6.77	\$541.00	\$5.41
Other Tenant Improvements	10,000	\$1,299.00	\$8.94	\$1,082.50	\$7.45	\$865.50	\$5.96
Other Tenant Improvements	20,000	\$2,192.50	\$8.94	\$1,827.00	\$7.45	\$1,461.50	\$5.96
Retail Tenant Improvements	1,000	\$742.00	\$18.74	\$618.00	\$15.63	\$494.50	\$12.49
Retail Tenant Improvements	5,000	\$1,491.50	\$3.58	\$1,243.00	\$2.98	\$994.00	\$2.39
Retail Tenant Improvements	10,000	\$1,670.50	\$1.86	\$1,392.00	\$1.55	\$1,113.50	\$1.24
Retail Tenant Improvements	20,000	\$1,856.00	\$3.71	\$1,546.50	\$3.10	\$1,237.00	\$2.48
Retail Tenant Improvements	50,000	\$2,970.00	\$4.09	\$2,475.00	\$3.40	\$1,979.50	\$2.72
Retail Tenant Improvements	100,000	\$5,012.50	\$4.09	\$4,177.00	\$3.40	\$3,341.50	\$2.72

*Per Each Add'l 100 Square Feet or Fraction Thereof

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: February 12, 2008
SUBJECT: Lead Hazard Prevention and Control Ordinance	

GENERAL CONTRACT INFORMATION

Recommended Contractor: None

Amount of this Action: \$ 129,580 (Partial Enforcement Costs)

Funding Source: City of San Diego

SUBCONTRACTOR PARTICIPATION

No subcontractor participation for this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

There is no contractor for this action.

ADDITIONAL COMMENTS

This action is to request a Lead Hazard Prevention and Control Ordinance and to establish a cost recovery regulatory fee.

by MM-J

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): ENVIRONMENTAL SERVICES				3. DATE: January 14, 2008	
4. SUBJECT: LEAD HAZARD PREVENTION AND CONTROL ORDINANCE							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Alan Johanns, 858-573-1262, MS 1103A			6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Linda Pratt, 858-492-5088, MS 1103A			7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND						9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.						Financial resources to begin partial enforcement for the Ordinance: \$129,580 Total Expenditures \$129,580 Total Revenues	
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	1/15/08	8	DEPUTY CHIEF	<i>[Signature]</i>	2/27/08
2	EOC	<i>[Signature]</i>	2/12/08	9	COO		
3	DSD/EAS	<i>[Signature]</i>	2/15/08	10	CITY ATTORNEY	<i>[Signature]</i>	2/27/08
4	LIAISON OFFICE	<i>[Signature]</i>	2/21/08	11	ORIG. DEPT		
5	FINANCIAL MANAGEMENT	<i>[Signature]</i>	2/27/08	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON _____			
6	COMPTROLLER	<i>[Signature]</i>	2/27/08	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <i>[Signature]</i> <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 3/11/08			
7							
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1) Amending <i>Abatement of Lead Hazards</i> , Sections 54.1001 <i>et seq.</i> of the San Diego Municipal Code as recommended by Mayor's Office by replacing it with the <i>Lead Hazard Prevention and Control Ordinance</i> ("Ordinance"), Attachment 1 to Report to Council No. ____. 2) Amending <i>Judicial Remedies</i> , Section 12.0204 of the San Diego Municipal Code to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code, Attachment 2 to Report to Council No. ____. (Continued on Attachment "A")							
11A. STAFF RECOMMENDATIONS: Approve the Resolutions and Ordinances							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)							
COUNCIL DISTRICT(S):		ALL					
COMMUNITY AREA(S):		ALL					
ENVIRONMENTAL IMPACT:		THIS ACTIVITY IS NOT A "PROJECT" AND THEREFORE NOT SUBJECT TO CEQA PER CEQA GUIDELINES SECTION 15060 (C) (2); THE PROPOSED FEES ARE OPERATING EXPENSES AND THEREFORE STATUTORILY EXCEPTED FROM CEQA PURSUANT TO SECTION 15273(A)(1).					
HOUSING IMPACT:		IMPROVE THE QUALITY OF AFFORDABLE HOUSING STOCK					
OTHER ISSUES:		N/A					

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):
ENVIRONMENTAL SERVICES

3. DATE:
January 14, 2008

4. SUBJECT:
LEAD HAZARD PREVENTION AND CONTROL ORDINANCE

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
Alan Johanns, 858-573-1262, MS 1103A

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
Linda Pratt, 858-492-5088, MS 1103A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:
							Financial resources to begin partial enforcement for the Ordinance: \$129,580 Total Expenditures \$129,580 Total Revenues

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT.	<i>[Signature]</i>	1/15/08	8	DEPUTY CHIEF	<i>[Signature]</i>	2/27/08
2	EOC	<i>[Signature]</i>	2/12/08	9	COO		
3	DSD/EAS	<i>[Signature]</i>	2/15/08	10	CITY ATTORNEY	<i>[Signature]</i>	2/27/08
4	LIAISON OFFICE	<i>[Signature]</i>	2/21/08	11	ORIG. DEPT.	<i>[Signature]</i>	2/27/08
5	FINANCIAL MANAGEMENT	<i>[Signature]</i>	2/27/08	DOCKET COORD: _____ COUNCIL LIAISON _____			
6	COMPTROLLER	<i>[Signature]</i>	2/27/08	<input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____			
7							

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1) Amending *Abatement of Lead Hazards*, Sections 54.1001 *et seq.* of the San Diego Municipal Code as recommended by Mayor's Office by replacing it with the *Lead Hazard Prevention and Control Ordinance* ("Ordinance"), Attachment 1 to Report to Council No. ____.

2) Amending *Judicial Remedies*, Section 12.0204 of the San Diego Municipal Code to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code, Attachment 2 to Report to Council No. ____.

(Continued on Attachment "A")

11A. STAFF RECOMMENDATIONS:
Approve the Resolutions and Ordinances

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): ALL

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A "PROJECT" AND THEREFORE NOT SUBJECT TO CEQA PER CEQA GUIDELINES SECTION 15060 (C) (2); THE PROPOSED FEES ARE OPERATING EXPENSES AND THEREFORE STATUTORILY EXCEPTED FROM CEQA PURSUANT TO SECTION 15273(A)(1).

HOUSING IMPACT: IMPROVE THE QUALITY OF AFFORDABLE HOUSING STOCK

OTHER ISSUES: N/A

009661

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03111

ATTACHMENT A
CITY OF SAN DIEGO

DATE:
JANUARY 14, 2008

SUBJECT:

LEAD HAZARD PREVENTION AND CONTROL ORDINANCE

BACKGROUND:

(continuation of box 11):

- 3) Establish a cost recovery, regulatory fee of \$31 to be added to the permit fee for specific permits identified in Report to Council No. 08-029 dated March 5, 2008, effective beginning 60 days after the effective date of the Ordinance, for lead enforcement in connection with proposed Section 54.1005, Lead Safe Work Practices Standards Required and Section 54.1006, Lead Safe Work Practice Standards and directing the City Clerk to amend the Ratebook of City Fees and Charges.
- 4) Find that the cost recovery, regulatory fee of \$31 is established for the purpose of meeting operational expenses associated with education, outreach and enforcement in connection with the Ordinance.
- 5) Receive the Lead Hazard Prevention and Control Ordinance Report and all attachments.

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3/11

**REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET**

DATE REPORT ISSUED: March 5, 2008 REPORT NO: 08-029
ATTENTION: Council President and City Council
ORIGINATING DEPT: Environmental Services Department
SUBJECT: Lead Hazard Prevention and Control Ordinance
COUNCIL DISTRICTS: City-wide
STAFF CONTACT: Alan Johanns (858-573-1262)

REQUESTED ACTION:

- 1) Amend *Abatement of Lead Hazards*, Sections 54.1001 *et seq.* of the San Diego Municipal Code as recommended by Mayor's Office by replacing it with the *Lead Hazard Prevention and Control Ordinance* ("Ordinance"), Attachment 1 to Report to Council No. 08-029 date March 5, 2008.
- 2) Amend *Judicial Remedies*, Section 12.0204 of the San Diego Municipal Code to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code, Attachment 2 to Report to Council No. 08-029 date March 5, 2008.
- 3) Establish a cost recovery, regulatory fee of \$31 to be added to the permit fee for specific permits identified in Report to Council No. 08-029 date March 5, 2008, effective beginning 60 days after the effective date of the Ordinance, for lead enforcement in connection with proposed Section 54.1005, Lead Safe Work Practices Standards Required and Section 54.1006, Lead Safe Work Practice Standards and directing the City Clerk to amend the Ratebook of City Fees and Charges.
- 4) Find that the cost recovery, regulatory fee of \$31 is established for the purpose of meeting operational expenses associated with education, outreach and enforcement in connection with the Ordinance.
- 5) Receive the Lead Hazard Prevention and Control Ordinance Report and all attachments.

STAFF RECOMMENDATIONS:

Approve all requested actions.

EXECUTIVE SUMMARY:

The Federal government has identified lead poisoning as the number one preventable environmental health problem affecting young children. Exposure to lead, a powerful neurotoxin, can result in permanent adverse health effects, including loss of intelligence quotient (IQ), learning and behavior problems, stunted growth, and hearing deficits. Children under the age of six are particularly vulnerable to lead's harmful effects. The most common source of lead exposure is from lead-based paint, which was used in U.S. housing until 1978. Approximately 70% of San Diego's housing was built prior to 1979. The City of San Diego's Environmental Services Department lead hazard inspection/enforcement unit inspected 773 residential structures from January 2004 through June 2007 of which eighty-nine percent (89%) contained lead hazards. The San Diego Housing Commission, as a part of the Department of Housing and Urban Development (HUD) Lead Hazard Control Grant, performed inspections of 661 residential structures between March 2003 and June 2007, which revealed that 97% of those housing units contained lead hazards.

The Ordinance establishes responsibilities and requirements that are intended to prevent exposure to lead and protect the health of San Diego residents. These include: 1) adherence to lead-safe work practices by renovation contractors and others who disturb lead painted surfaces in pre-1979 homes and other structures; 2) correction of lead hazards in housing by the property owner after having been given notice; 3) visual inspection by owners of pre-1978 rental housing for the presence of deteriorated paint at the time of each unit turnover, and safe restoration of the area prior to unit reoccupancy; 4) requirement of home

improvement stores and water-pressure equipment rental to display lead education materials; and 5) proof of blood lead testing prior to a child's enrollment in childcare facilities. Since only partial funding for enforcement has been identified, implementation will be prioritized based on the resources available and for Ordinance components with cost-recovery fees.

FISCAL CONSIDERATIONS:

Positions related to this Ordinance will be funded by the General Fund (Department 511). Partial funding is anticipated due to the related increase in fees and enforcement fines totaling \$129,580 is outlined in detail in the Report to Council. Council is asked to increase specific building permit fees by \$31 on pre-1979 structures for enforcement related to section 54.1006 of the Ordinance. Without these fees, there will be minimal lead safe work practice enforcement. Requires a one-time first year asset acquisition cost in the amount \$6,069 which will be recovered from collected fees.

Personnel Costs (1.30 FTE)*	\$118,339
Non-personnel Costs	\$11,241
Partial Enforcement Costs	\$129,580
*1.30 existing positions	

Adoption of the Ordinance will provide a competitive advantage at the state and national levels for grant funding that can supplement implementation of some Ordinance components. Even without full funding, approval of the Ordinance improves the City's ability to work toward eliminating lead hazards, and demonstrates a commitment to preventing lead poisoning.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On August 4, 2004, the Ordinance (CMR 04-178 – Attachment 3) was presented to the Land Use & Housing Committee and was approved unanimously with modifications (Frye, Inzunza, Lewis, Peters in support). Those modifications are included in the Ordinance attached as Attachment "1" to the Report to Council. However, Attachment "1" differs from the Ordinance approved at Committee in that it does not include the point-of-sale requirement described below.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

Over the three years of the Ordinance development, there has been extensive community participation. The Lead Poisoning Prevention Citizen Advisory Taskforce that generated the Ordinance consisted of key stakeholders and was co-chaired by Councilmembers Frye and Inzunza. The only component of the Ordinance about which consensus was not achieved is the requirement for a lead risk assessment and associated lead hazard remediation, before, or, shortly after, the sale of any pre-1978 dwelling units ("point-of-sale requirement").

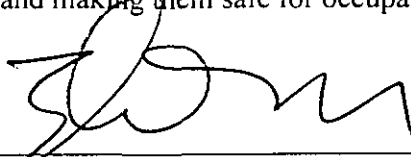
KEY STAKEHOLDERS & PROJECTED IMPACTS

Stakeholders are all City of San Diego residents as the proposed ordinance works to make our housing safer. Cost-recovery fee of \$31 is proposed for identified building permits that may disturb lead based paint (past five year average is 4,000 permits). Contractors will be required to use lead safe work practices as defined in the ordinance to help ensure lead poisoning sources do not remain after work is completed. Rental property owners will be required to visually check for lead hazards during unit turnover and correct identified lead hazards. Childcare facilities are required to verify children have had a blood lead test. Home improvement and rental stores are required to display lead related information.

By approving the Lead Hazard and Control Ordinance, the City will be taking an important step forward to help eliminate lead hazards in San Diego's homes and making them safe for occupancy by families with young children.



Chris Gonaver
Environmental Services Director



Elmer L. Heap, Jr.
Deputy Chief, Neighborhood & Community Services

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, AND 54.1015; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

This ordinance expands upon the current regulations in the Municipal Code pertaining to the prevention and abatement of lead hazards. The overall goal of the proposed lead ordinance is to eventually eliminate lead hazards (due mainly to lead-based paint) in various structures including, but not limited to, housing. The ordinance attempts to further this goal by doing the following: (1) declaring lead hazards a public nuisance; (2) making it unlawful to create or maintain a lead hazard; (3) requiring the use of lead safe work practices while engaging in activities which could disturb lead-based paint; (4) establishing a rebuttable presumption that paint on housing constructed prior to 1979 is lead-based paint; (5) imposing a duty on owners of housing to correct identified lead hazards after notice of the hazard; (6) providing for occupant relocation during lead hazard remediation; (7) requiring a visual inspection for and correction of deteriorated paint in rental housing, constructed prior to 1979, prior to re-occupancy; (8) imposing a duty on home improvement stores to maintain pamphlets and post a warning sign regarding the dangers of lead hazards when disturbing paint on housing constructed prior to

1979; (9) requiring child care centers to require parents to provide a doctor's note that the child has been screened for lead poisoning, unless the parent has a religious objection to the screening; and (10) providing for enforcement of the ordinance provisions and cost recovery.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk, City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb
02/27/08
Or.Dept: ESD
D-2008-91

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, AND 54.1015; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

WHEREAS, the Centers for Disease Control and Prevention estimates that more than 434,000 preschoolers are affected by lead poisoning in the United States, and that lead poisoning is one of the most common, preventable pediatric health problems in this country; and

WHEREAS, lead is most harmful to young children because lead is absorbed into their growing bodies, interfering with the developing brain and other organs and systems such as the nervous system and kidneys. Lead poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, reading and learning disabilities, and other health, behavioral, and intellectual consequences; and

WHEREAS, while lead poisoning crosses socioeconomic, geographic, and racial boundaries, lead poisoning predominantly affects children from low-income families living in older, poorly maintained housing; and

WHEREAS, the Council of the City of San Diego takes legislative notice of the contents of the City Manager's Report regarding the Lead-Safe Neighborhoods Program (CMR-04-178) and its accompanying oral and documentary evidence as presented before the Land Use and Housing Committee on August 4, 2004; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 5, Article 4, Division 10, of the San Diego Municipal Code is hereby amended by renaming Division 10 "Lead Hazard Prevention and Control Ordinance," by amending Sections 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, and 54.1006, and by adding Sections 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, and 54.1015, to read as follows:

Division 10

Lead Hazard Prevention and Control Ordinance

§ 54.1001 Findings

The Council of the City of San Diego finds and declares that:

- (a) **Problem:** In the City of San Diego, between 1992 and 2003, there were 781 reported cases of childhood *lead* poisoning (greater than 15 µg/dL) and almost 300 children in 2003 with blood *lead* levels greater than 10 µg/dL in San Diego County. These figures are not considered a true representation of the problem, as only a small percentage of children are tested (state average is 20%). The Centers for Disease Control and Prevention has declared that the most effective approach to *lead* poisoning is prevention by eliminating *lead hazards* from children's environment.
- (b) **Health Effects:** *Lead* is most harmful to young children because it interferes with the development of the brain, as well as other organs and systems such as the kidneys and nervous system. *Lead* poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, and reading and learning disabilities. Recent research has revealed that even low levels of *lead*

exposure can cause a permanent decrease in a *child's* IQ. In adults, high *lead* levels can cause high blood pressure, headaches, digestive problems, memory and concentration problems, kidney damage, mood changes, nerve disorders, sleep disturbances, and muscle or joint pain.

- (c) Housing Stock: *Lead-based paint*, and associated *lead-contaminated dust* and *lead-contaminated soil*, is the number one source of *lead* poisoning. According to the 2000 United States census, approximately sixty-six percent (310,000) of the housing units in the City of San Diego were built before 1979, and approximately twenty-eight percent (135,000) of the City of San Diego's housing stock was constructed before 1960.
- (d) Prevention is Key: Childhood *lead* poisoning is preventable. There is no medical treatment to reverse the effects of *lead* poisoning. Household *lead hazards* can be permanently eliminated by abatement or controlled through proper maintenance and *lead-safe* work practices.
- (e) Lead Paint Ban: The Consumer Product Safety Commission banned the use of *lead* in concentrations greater than 600 parts per million in residential paint after February 27, 1978. For this reason, *paint* applied to a *dwelling unit* or *structure* prior to January 1, 1979, is presumed to contain *lead* unless *lead-based paint testing* proves it is below thresholds defined in Division 10. All *paint* applied to a *steel structure* is presumed to contain *lead* unless *lead-based paint testing* proves it is below thresholds defined in Division 10.

- (f) Lead Hazard: A *lead hazard* found on any *property, premises, dwelling unit, structure, or steel structure* within the City of San Diego is a *public nuisance*.
- (g) Lead Safe Work Practices: Dust generated in disturbance of *lead paint* during renovation and repair is a principal source of *lead* dust exposure to our children and community. Unless the dust is contained, it permeates the carpet, ductwork, and soil, so that children and adults may breathe or ingest the dust for months and years to come.
- (h) Authority: The implementation of Division 10 and the associated enforcement will assist in reducing the presence of *lead hazards* and, thereby, help the City of San Diego in achieving its goal of eliminating childhood *lead* poisoning. On January 1, 2003, California implemented Senate Bill 460, which modified California Civil Code section 1941.1 and California Health and Safety Code sections 17920.10, 17980, 105255, and 105256 that state that the existence of *lead hazards* in housing can constitute a violation of State Housing Law and make it illegal for maintenance or construction activities to generate *lead hazards*. Amended Health and Safety Code sections 17961, 17980, 105255, and 105256 provide local jurisdictions with specific authority to correct and prevent *lead hazards*. Division 10 establishes the City of San Diego's enforcement mechanism for purposes of Senate Bill 460 and also provides additional regulation and enforcement tools which will help reduce the exposure of children and others to *lead hazards*.

- (i) Tenant Protection: The Council acknowledges that California Civil Code section 1942.5 prohibits certain acts of retaliation by a landlord against a tenant because of the tenant's complaint to an appropriate agency regarding a residential unit which contains *lead hazards*.
- (j) Necessary Service: The performance of a *lead risk assessment* in the interior and on the *exterior* of a *dwelling unit* constructed prior to January 1, 1979, as well as the common areas of the *dwelling unit*, is a necessary service and/or repair to protect the health, safety, and welfare of the occupants of the *dwelling unit* and the public.

§ 54.1002 Purpose

The purpose of Division 10 is:

- (a) to prevent, identify, and remedy *lead hazards* in housing before children are poisoned;
- (b) to protect occupants and the public from exposures to *lead hazards*;
- (c) to provide standards to implement *lead hazard* control requirements;
- (d) to strengthen the authority of local agencies responding to *lead paint* poisoning cases; and
- (e) to establish and promote *lead-safe* work practice standards for *owners*, maintenance workers, and all *persons* involved in *lead hazard* control and activities such as remodeling, *renovation*, rehabilitation, and repair that disturb *lead paint*, in order to protect occupants and the public from exposure to *lead hazards*.

§ 54.1003 Definitions

All defined terms in Division 10 appear in *italics*, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land Development Code, are not italicized in this Division. For purposes of Division 10, the following terms have the following meanings:

Accredited laboratory means a laboratory which is accredited through the United States Environmental Protection Agency National Lead Laboratory Accreditation Program.

Adjacent properties means *properties* that abut the *property* at which activities which *disturb or remove paint* have been, are being, or will be performed.

Certified means a process used by the State of California Department of Health Services and the United States Environmental Protection Agency to identify individuals who have completed training and other requirements to permit the proper and safe execution of *lead risk assessments* and *lead inspections*, *lead dust clearance sampling*, or *lead hazard* reduction and control work.

Child means any person less than six years of age.

Child-care facility means a facility that provides nonmedical care for children less than 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. This includes day care centers and employer-sponsored child care centers.

Clearance inspection means an onsite limited investigation, performed by a *certified lead* inspector/assessor or a *certified lead* project monitor, of single surface dust sampling or soil sampling a minimum of one hour after completion of final cleanup activities to determine whether dust or soil *lead* levels are below thresholds defined in Division 10. The methodology for conducting the sampling shall follow procedures as defined in 40 Code of Federal Regulations part 745.227, as it may be amended from time to time.

Containment barriers means a system, process, or barrier, on the interior or exterior of a *dwelling unit, structure, or steel structure*, designed to ensure that *lead-contaminated dust, lead-contaminated soil, or lead paint contaminants* are not spread, blown, or tracked from inside to outside of a work site, which system, process, or barrier is at least as effective as those contained within the *HUD Guidelines*, or, for *steel structures*, at least as effective as those contained in the most recent edition of the Lead Paint Removal Guide published by the Steel Structures Painting Council.

De minimis levels means an area less than: (1) two square feet in any one interior room or space of a *dwelling unit or structure*; or (2) twenty square feet on an *exterior* surface; or (3) ten percent of the surface area on any component part, either interior room or space or *exterior*, with a small surface area such as a window sill, baseboard, or trim.

Department means the City Environmental Services Department and/or the Neighborhood Code Compliance Department.

Deteriorated paint means *paint* that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the *dwelling unit* or any component thereof.

DPH means the California Department of Public Health.

Director has the same meaning as set forth in section 11.0210 of this Code.

Disturb or remove paint means any action that creates friction, pressure, heat, or a chemical reaction upon any *paint* on an interior or *exterior* surface so as to abrade, loosen, penetrate, chip, cut through, remove, or eliminate *paint* from that surface. This term shall include all *lead hazard* correction activities, all demolition activities, and all surface preparation activities performed upon an interior or *exterior* surface containing *paint*.

Dwelling unit has the same meaning as set forth in section 113.0103 of this Code and also includes *multiple dwelling unit* and *single dwelling unit* as those terms are defined in section 113.0103 of this Code.

Enforcement official has the same meaning as set forth in section 11.0210 of this Code.

Exterior means the outside of a *dwelling unit*, *structure*, or *steel structure* and the areas around it within the boundaries of the *property*, including the *exterior* of any detached *structure*, and including, but not limited to, freestanding and common walls, stairways, fences, light wells, breezeways, sheds, garages, patio covers, decks, and any similar *structures*.

HEPA means a High Efficiency Particulate Air Filter.

Home improvement store means all retail stores which sell home improvement products including, but not limited to, *paint* and *paint* removal products, construction and building materials, and tools and hardware.

HUD Guidelines means the most recent version of the United States Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing."

Imminent lead hazard means a *lead hazard* which creates a present and immediate danger to life, *property*, health, or public safety.

Landlord means an *owner*, lessor, or sublessor who receives or is entitled to receive rent for the use or occupancy of any commercial or residential rental *property* in the City of San Diego, and the agent, representative, or successor of any of the foregoing.

Lead means metallic lead and all inorganic and organic compounds of lead.

Lead-based paint or *lead paint* means *paint* or other surface coatings that contain an amount of *lead* equal to, or in excess of, one milligram per square centimeter (1.0 mg/cm²) or one-half of one percent (0.5%) by weight.

Lead-based paint testing means: (1) testing of surfaces to determine the presence of *lead-based paint* performed by an independent *Certified Lead Risk Assessor/Inspector*, in accordance with the *HUD Guidelines*, and which testing includes bulk *paint* samples analyzed by an *accredited laboratory*; or (2) testing by an *XRF*.

Lead-contaminated dust means dust that contains an amount of *lead* equal to, or in excess of, forty micrograms per square foot (40 µg/ft²) for interior floor

surfaces, two hundred and fifty micrograms per square foot ($250 \mu\text{g}/\text{ft}^2$) for interior horizontal window surfaces, and four hundred micrograms per square foot ($400 \mu\text{g}/\text{ft}^2$) for *exterior* floor and *exterior* horizontal window surfaces.

Lead-contaminated soil means bare soil that contains an amount of *lead* equal to, or in excess of, four hundred parts per million (400 ppm) in childrens' play areas and one thousand parts per million (1000 ppm) in all other areas.

Lead dust testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of *lead-contaminated dust* within a defined area.

Lead hazard means: (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 minimis 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 or 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*.

Lead inspection means a surface by surface investigation to determine the presence of *lead paint*, as described in Chapter 7: Lead-Based Paint Inspection, *HUD Guidelines*, as they may be amended from time to time, conducted by a *Certified Lead Inspector/Assessor*.

Lead paint contaminants means substances containing *lead paint* or *presumed lead-based paint* which are potentially hazardous to human health or the environment including, but not limited to, *paint* chips and *paint-containing soil*, debris, dust, abrasives, fumes, or water.

Lead risk assessment means an on-site investigation by a *Certified Lead Inspector/Assessor* to determine the existence, nature, severity, and location of *lead hazards* and the preparation of a written report describing the results of the investigation and options for eliminating *lead hazards*.

Lead soil testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of *lead-contaminated soil* within a defined area.

Occupants means tenants or other *persons* legally authorized to occupy or partially occupy the *property*.

Owner means the *person* or *persons* owning *property* or any improvements thereon in the City of San Diego and includes such *person's* legally authorized agent or representative and any successors in interest.

Paint means any paint, varnish, shellac, or other similar coating.

Person means any natural person, municipal, county, or state agency to the extent allowable by law, firm, joint venture, joint stock company, business concern, trust, organization, club, association, partnership, company, or corporation, or the officers, agents, employees, managers, representatives, heirs, executors, administrators, successors, or assigns of any of them or any other entity which is recognized by law as the subject of rights and duties.

Premises has the same meaning as set forth in section 54.0202 of this Code.

Presumed lead-based paint means *paint* or surface coating affixed to a component in or on a *dwelling unit, structure, or steel structure*, excluding *paint* or surface coating affixed to a component in or on a *dwelling unit or structure* constructed on or after January 1, 1979.

Prohibited practices means work practices prohibited under section 54.1006 of this Code.

Property means real property, together with any and all improvements thereon.

Public nuisance has the same meaning as that set forth in section 11.0210 of this Code.

Regulated area means an area in which work is being performed that *disturbs or removes paint* and to which access is restricted in order to prevent migration of *paint* contaminants. *Regulated area* shall also include any area contaminated with *lead paint* as a result of a breach or lack of *containment barriers* or a violation of the containment requirements set forth in section 54.1006.

Renovation means any modification of all or part of an existing *dwelling unit, structure, or steel structure* which modification *disturbs or removes paint*.

Renovator means any *person* who performs for compensation a *renovation*.

Responsible person means a *person* who a *Director* determines is responsible for causing or maintaining a *public nuisance* or a violation of this Code or applicable state codes. The term *responsible person* includes, but is not limited to,

an *owner*, tenant, *person* with a legal interest in *property* or improvements thereon, and/or a *person* in possession of *property*.

Steel structure means any *structure* that is not a building and that has *exterior* surfaces made of steel or other metal including, but not limited to, bridges, billboards, walkways, water towers, steel tanks, and roadway or railway overpasses.

Structure has the same meaning as that set forth in section 113.0103 of this Code.

Underlying defect means any condition or circumstance which generates, creates, or sustains a *lead hazard*.

XRF means a portable X-Ray Fluorescence Spectrometer.

§ 54.1004 Lead Hazard Unlawful

- (a) It is unlawful to create and/or maintain a *lead hazard* or allow a *lead hazard* to remain upon any *property*, *premises*, surfaces, *dwelling unit*, *structure*, *steel structure*, or appurtenances.
- (b) It is unlawful to fail to reduce or eliminate a *lead hazard*.

§ 54.1005 Lead-Safe Work Practice Standards Required

- (a) It is presumed that *paint* in the interior or on the *exterior* of all *dwelling units* and all *structures* constructed prior to January 1, 1979, and all *steel structures* is *lead-based paint*.
- (b) Any *person* who *disturbs* or *removes paint* from any surface in the interior or on the *exterior* of a *dwelling unit* or *structure* constructed prior to January 1, 1979, or from any surface on a *steel structure* shall use *lead-safe work*

practice standards as set forth in section 54.1006, unless a *Certified Lead Inspector/Assessor* determines, prior to the commencement of activities which *disturb or remove paint*, that the concentration of *lead* in the *paint* is below 1000 ppm or .5 mg/cm².

- (c) Any person who *disturbs or removes paint* in any amount in the interior or on the *exterior* of a *dwelling unit* to correct a *lead hazard* where a *child* with blood lead levels greater than or equal to 10 µg/dL has been identified shall use *lead-safe* work practice standards as set forth in section 54.1006.
- (d) Section 54.1005 does not change the definition of *lead-based paint* and is only intended to identify when *lead-safe* work practice standards are required.
- (e) The failure to use *lead-safe* work practice standards as set forth in section 54.1005 shall constitute a violation of Division 10. The *lead-safe* work practice standards set forth in Division 10 are in addition to, and are not a substitute for, any requirements under state or federal law. Compliance with the *lead-safe* work practice standards set forth in section 54.1006 does not negate responsibility for a violation of section 54.1004.

§ 54.1006 Lead Safe Work Practice Standards

The *lead-safe* work practice standards in this section apply to all activities which *disturb or remove paint* which is *lead-based paint* or *presumed lead-based paint*.

(a) Notice to Occupants

Not less than seven business days before beginning activities which *disturb or remove paint*, a written notice, in accordance with state and federal law,

shall be posted in a conspicuous location and provided to each *occupant* of a *dwelling unit* and/or *structure* where such activities will be conducted.

A *person* who engages in unplanned activities that *disturb or remove paint*, in response to a sudden, unexpected event which, if not immediately attended to, would present a safety or public health hazard or would threaten *property* with significant damage, shall provide written notice to each *occupant* of a *dwelling unit* and/or *structure* prior to engaging in such activities.

- (1) The written notice shall identify the location in the *dwelling unit* and/or *structure* where such activities will take place, state that *lead-related activities will be performed at the dwelling unit and/or structure*, and state the dates for the performance of such activities.
- (2) The written notice shall be in the form of a sign and letter or memorandum, shall be placed in a conspicuous location open and available to *occupants* of or any *person* visiting the *dwelling unit* and/or *structure*, and shall prominently state the following: "Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint."
- (3) Prior to beginning activities which *disturb or remove paint*, the *owner* of the *property* shall provide each *occupant* with a copy of the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," unless the *owner* has previously provided this pamphlet to the *occupant*.

(4) For purposes of Division 10, *renovators* performing activities which *disturb or remove paint* shall comply with 40 Code of Federal Regulations part 745, subpart E, as they may be amended from time to time, by providing to each *occupant* the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," by complying with the required paperwork, and by maintaining the required records.

(b) Occupant Protection

Occupants shall not be permitted to enter the *regulated area* during the course of activities which *disturb or remove paint* (unless they are employed in the conduct of these activities in the *regulated area*), until after activities which *disturb or remove paint* have been completed and clearance as set forth in section 54.1006 has been achieved.

(c) Temporary Relocation

(1) Occupants of a *dwelling unit* shall be temporarily relocated, before and during the course of activities which *disturb or remove paint*, to a suitable, decent, safe, comparable, and similarly accessible *dwelling unit* that does not have a *lead hazard*, unless:

(A) the activities will not disturb *lead-based paint*, *lead-contaminated dust* or *lead-contaminated soil*;

(B) the activities affect only the *exterior* of the *dwelling unit*, and windows, doors, ventilation intakes, and other openings in or near

the *regulated area* are sealed during the course of the activities and cleaned afterward, and at least one entrance is free of *lead-contaminated dust, lead-contaminated soil, and lead paint contaminants*;

- (C) the activities in the interior of the *dwelling unit* will be started and completed during the daytime within eight consecutive hours, the *regulated area* is contained so as to prevent the release of *lead-contaminated dust and lead paint contaminants* into other areas, and the activities do not create other safety, health, or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
- (D) the activities in the interior of the *dwelling unit* will be completed within five consecutive days, the *regulated area* is secure so as to prevent the release of *lead-contaminated dust and lead paint contaminants* into other areas, the activities do not create other safety, health, or environmental hazards, and, at the end of work on each day, the *regulated area* and the area within at least ten feet of the *regulated area* is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas and bathroom and kitchen facilities.
- (2) Occupants' belongings shall be protected from contamination by *lead-contaminated dust and lead paint contaminants* during the course of

activities which *disturb or remove paint*. Occupants' belongings in the *regulated area* shall be relocated to a safe and secure area outside the *regulated area* or shall be completely covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(d) Worksite Preparation

The *regulated area* shall be prepared to prevent the release of dust, and to contain, within the *regulated area*, *lead-based paint chips*, *lead-contaminated dust*, *lead-contaminated soil*, and *lead paint contaminants* from activities which *disturb or remove paint* until they can be safely removed from the *regulated area*. Practices that minimize the spread of *lead-contaminated dust*, *lead-based paint chips*, *lead-contaminated soil*, and *lead paint contaminants* shall be used during preparation of the *regulated area* for work which *disturbs or removes paint*. The tables in Appendix "A" identify the minimum required levels of worksite preparation, as excerpted from the *HUD Guidelines*.

(e) Specialized Cleaning

After activities which *disturb or remove paint* have been completed, the *regulated area* shall be cleaned by using:

- (1) methods, products, and devices which are successful in removing *lead-contaminated dust*, such as a *HEPA* vacuum or other method of equivalent efficacy; and
- (2) all purpose general detergents or *lead-specific* detergents or by following the *HUD Guidelines*.

(f) Visible Lead Paint Contaminants

All visible *lead paint contaminants* shall be cleaned up daily and removed from the *regulated areas* prior to completion of the activities which *disturb or remove paint*.

(g) Disposal

All waste generated from activities which *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, is deemed hazardous waste pursuant to title 22 of the California Code of Regulations, as it may be amended from time to time, and must be disposed of lawfully.

(h) Lead-Safe Work Practice Clearance Inspection Standards

(1) A visual inspection to verify the absence of visible dust or debris must be performed upon the completion of all activities which *disturb or remove paint*:

(A) where the *paint* is *presumed lead-based paint* covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where *lead-based paint testing* performed on the *paint* revealed *lead* levels greater than 1000 ppm or 0.5 mg/cm².

A *renovator* shall record the results of the visual inspection on the form provided by the City of San Diego, shall maintain that form for a minimum of three years, and shall make all such forms available to the City of San Diego upon request.

- (2) A *clearance inspection* must be performed upon the completion of all activities which *disturb or remove paint* and after visual inspection:
- (A) where the *paint* is *presumed lead-based paint* covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or
- (B) where *lead-based paint testing* performed on the *paint* revealed *lead* levels greater than 5000 ppm or 1.0 mg/cm².

A copy of the *DPH* Form 8552 for each *clearance inspection* shall be submitted to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

- (3) The *lead-safe work practice clearance inspection* standards shall be performed only by a *Certified Lead Inspector/Assessor* or *certified lead* project monitor.
- (4) All *clearance inspection* procedures shall be in compliance with 40 Code of Federal Regulations part 745.227, as it may be amended from time to time, and shall meet title 17 of the California Code of Regulations clearance guidelines, as it may be amended from time to time.

(i) Prohibited Practices

It is unlawful to use *prohibited practices* while conducting activities which *disturb or remove paint* including, but not limited to:

- (1) acetylene or propane burning and torching;
- (2) scraping, sanding, or grinding without *containment barriers* or a *HEPA* local vacuum exhaust tool;
- (3) hydro-blasting or high-pressure wash without *containment barriers*;
- (4) abrasive blasting or sandblasting without *containment barriers* or a *HEPA* local vacuum exhaust tool; or
- (5) heat guns operating above 1,100 degrees fahrenheit;

§ 54.1007 Lead Hazards in Housing

(a) Presumption

For all *dwelling units* constructed prior to January 1, 1979, it is presumed that the *paint* in the interior or on the *exterior* of the *dwelling unit* is *lead-based paint*.

(b) Owner's Opportunity to Rebut Presumption

- (1) The *owner* of a *dwelling unit* constructed prior to January 1, 1979, may apply to the *Department* to have such *dwelling unit* exempted from the presumption contained in section 54.1007(a) when either:
 - (A) *lead-based paint testing* results demonstrate that no *lead paint* is present in the interior or on the *exterior* of such *dwelling unit*; or

- (B) documentation from a *Certified Lead Inspector/Assessor* demonstrates that alterations have been made to the *dwelling unit* and such alterations have resulted in the removal of all *lead-based paint* in that *dwelling unit*.
- (2) The *Director* shall establish written policies that set forth criteria for granting the exemption described in section 54.1007(b).
- (c) Owner's Duty to Correct
- (1) The existence of a *lead hazard* in any *dwelling unit* is hereby declared to constitute a condition dangerous to life and health. The *owner* of a *dwelling unit* shall take action to prevent the occurrence of a *lead hazard* and shall expeditiously correct a *lead hazard*, upon receiving notice of its existence, in accordance with section 54.1006. If the *lead hazard* is caused in whole or in part by an *underlying defect*, the *owner* of the *dwelling unit* shall correct the *underlying defect* to prevent a further *lead hazard*.
- (2) The *owner* of a *dwelling unit* shall correct all identified *lead hazards* and complete the *clearance inspection* within thirty (30) days of receiving notice of the existence of the *lead hazard*, unless:
- (A) 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 *dwelling unit*, in which case the *owner* of the *dwelling unit* shall comply with the *Director's* or designee's directives; or

- (B) the *owner* of the *dwelling unit* files a statement of intent and work plan demonstrating the need for additional time to correct the *lead hazard*, a proposed work schedule, and the methods by which the *owner* 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.
- (3) Within seven days after completing the *clearance inspection*, the *owner* of a *dwelling unit* shall provide proof of compliance with section 54.1007 by submitting a copy of the *DPH* Form 8552 for each *clearance inspection* to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

- (d) Administrative abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 6.
- (e) Summary abatement of an *imminent lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 7.

- (f) Judicial abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 2.

§ 54.1008 Procedures for Occupant Relocation

- (a) The *responsible person* is responsible for the relocation and associated costs of any *occupants* displaced as a result of a judicial, administrative or summary abatement action pursuant to Division 10 and must follow applicable requirements of state law.
- (b) If relocation costs are paid by the City, the costs shall be assessed against the *responsible person* as an administrative or summary abatement cost or as part of a judicial action and may be recovered pursuant to procedures in San Diego Municipal Code Chapter 1, Article 3, Division 3 (Recovery of Abatement Costs).

§ 54.1009 Visual Lead Inspection and Correction Prior to Re-Occupancy of Rental Housing

For all rental *dwelling units* constructed prior to January 1, 1979, the *responsible person* shall conduct a visual inspection for *deteriorated paint* each time a tenant vacates the *dwelling unit* and prior to re-occupancy of the *dwelling unit*.

Deteriorated paint shall be corrected prior to re-occupancy in accordance with Division 10, unless *lead-based paint testing* proves the *deteriorated paint* is not *lead-based paint*. Inspection, testing, and correction documents shall be maintained for three years and shall be made available to the City of San Diego upon request.

§ 54.1010 Duty to Notify

- (a) All *home improvement stores* and stores which sell or rent high pressure water equipment shall maintain a supply of the *lead-safe work practices pamphlets* prepared and supplied by the *Director*. The pamphlets shall be prominently displayed where painting supplies are sold and high pressure water equipment is sold or rented and shall be provided upon request to customers or other invitees.
- (b) *Home improvement stores* and stores which sell or rent high pressure water equipment shall conspicuously post the *Lead-Safe Work Practices sign* prepared by the *Director* or a sign of substantially the same size, typeface, and language. The sign shall make the following statement, or a substantially equivalent statement, in large or boldface capital letters no less than one-half inch in size:

IT IS UNLAWFUL TO CREATE A LEAD HAZARD.
YOU ARE REQUIRED TO USE LEAD-SAFE WORK
PRACTICES IF YOU LIVE IN A PRE-1979 DWELLING
AND WILL BE DISTURBING PAINT. PAINTING AND
REMODELING CAN EXPOSE YOUR FAMILY TO
LEAD. ASK FOR A FREE PAMPHLET ON LEAD-
BASED PAINT HAZARDS.

- (c) For all *dwelling units* constructed prior to January 1, 1978, the *responsible person* shall be in compliance with 24 Code of Federal Regulations parts 35.80 – 98 inclusive.
- (d) All *DPH-certified lead* personnel conducting *lead hazard evaluation* (e.g., risk assessment, *clearance inspection*, *paint testing*, dust sampling, etc.) shall

deliver a completed copy of the *DPH Lead Hazard Evaluation Report* (Form 8552) to the City of San Diego, if the *property* evaluated is located within the city limits of the City of San Diego, within thirty days of conducting the evaluation. The copy shall be submitted to:

City of San Diego
Environmental Services Lead Form 8552
9601 Ridgehaven Court, Suite 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

§ 54.1011 Child-Care Facility

Each *child-care facility* licensed or approved by the State of California, except for a *child-care facility* located on public school property, shall require a parent or legal guardian of each *child* between the ages of six months and seven years of age inclusive to provide a statement from a physician or health care provider that the *child* has been screened for *lead* poisoning. This statement must indicate that the screening of the *child* has been performed in accordance with applicable criteria mandated by the State of California. This statement shall be provided prior to admission, but in no event later than thirty days after admission. The *child-care facility* shall maintain the statement for three years after receipt and shall make such statements available to the City for review during normal operating hours upon request. Nothing in section 54.1012 shall be construed to require any *child* to undergo a blood *lead* level screening or test when the parent or guardian of the

child objects on the grounds that the screening or test conflicts with his or her religious beliefs.

§ 54.1012 Enforcement Authority

- (a) The *Director* is authorized to administer and enforce the provisions of Chapter 5, Article 4, Division 10 of this Code. The *Director* or anyone designated by the *Director* to be an *enforcement official* may exercise any enforcement powers as provided in Chapter 1 of this Code.
- (b) In addition to the general enforcement powers provided in Chapter 1 of this Code, the *Director* or designee may exercise any of the following supplemental enforcement powers as the *Director* or designee determines may be necessary under the circumstances.

(1) Inspection Authority

The *Director* or designee is authorized to inspect the interior and exterior of any *dwelling unit, structure, steel structure, adjacent properties, or premises* where conditions may exist which could amount to a *lead hazard* or where activities which may *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10. All inspections shall be conducted in a reasonable manner. If an *owner, occupant, or agent* refuses permission to enter or inspect, the *Director* or designee may seek an administrative inspection warrant pursuant to the procedures provided

for in California Code of Civil Procedure sections 1822.50 through 1822.60.

(2) Sampling Authority

The *Director* or designee may collect *paint*, dust, and soil samples from the interior or *exterior* of a *dwelling unit, structure, steel structure, adjacent properties, or premises* where conditions may exist which amount to a *lead hazard* or where activities which *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10.

(3) Training

The *Director* or designee may require a *responsible person*, and any employee, agent, or representative of a *responsible person* in violation of Division 10 to attend an approved *lead-safe* work practice training course. The *Director* or designee shall require proof of attendance and satisfactory completion of the course, including certification from the instructor or provider of the course. Upon receipt of said proof, the *Director* or designee, in his or her sole discretion, may reduce or eliminate an administrative penalty, if any, imposed for a violation of Division 10.

§ 54.1013 Enforcement Remedies

- (a) It is unlawful to violate any provision or requirement of Division 10. The failure to comply with any requirement of Division 10 constitutes a violation

of Division 10. Violations of the provisions or requirements of Division 10 may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee alternatively may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.

- (b) Remedies under section 54.1013 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

§ 54.1014 Cost Recovery

- (a) Reinspection Fee

Whenever the *Director* or designee reinspects a *dwelling unit, structure, steel structure, adjacent properties, or premises* to determine compliance with Division 10, this Code, or applicable state law, the *Director* may assess and collect fees, as set forth in Chapter 1, Article 3, Division 1 of this Code, against the *responsible person* to recover the fully ascertainable costs to the City for the following:

- (1) *dwelling unit, structure, or steel structure* reinspections;
- (2) *lead-safe work practice* reinspections;
- (3) laboratory analysis; and
- (4) sample collection fees.

- (b) Fees, including but not limited to Reinspection Fees and increases to Building Permit fees and Demolition/Removal Permit fees, which are imposed for purposes of regulation, education, and enforcement under Division 10 shall be segregated and deposited into a separate account within a fund. All such fees and accrued interest thereon shall be used solely and exclusively for the purposes for which the fee was imposed.
- (c) The assessment and collection of these fees shall not preclude the imposition of any administrative or judicial penalty or fine for violations of this Code or applicable state laws.
- (d) Civil penalties collected pursuant to Division 10 and investigative costs associated with the enforcement action shall be deposited in the Code Enforcement Civil Penalty Fund established pursuant to section 13.0402 of this Code.
- (e) A fee schedule shall be established and revised as necessary by the City Manager in accordance with Council Policy and City Administrative Regulations to reflect current costs. The fee schedule shall be filed in the Rate Book of City Fees and Charges in the City Clerk's Office.

§ 54.1015 Strict Liability Offenses

Violations of Division 10 shall be treated as strict liability offenses regardless of intent.

APPENDIX "A"

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Typical Applications (Hazard Controls)	Dust removal and any abatement or interim control method disturbing no more than 2 square feet of painted surface per room.	Any interim control or abatement method disturbing between 2 and 10 square feet of painted surface per room.	Same as Level 2.	Any interim control or abatement method disturbing more than 10 square feet per room.
Time Limit Per Dwelling	One work day.	One work day.	Five work days.	None.
Containment and Barrier System	Single layer of plastic sheeting on floor extending 5 feet beyond the perimeter of the treated area in all directions. No plastic sheeting on doorways is required, but a low physical barrier (furniture, wood planking) to prevent inadvertent access by resident is recommended.	Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways. Doors secured from inside the work area need not be sealed.	Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways to work areas. Doors secured from inside the work area need not be sealed. Overnight barrier should be locked or firmly secured.	Two layers of plastic on entire floor or isolate the work area. If entire unit is being treated, cleaned, and cleared, individual room doorways need not be sealed. If only a few rooms are being treated, seal all doorways with primitive airlock flap to avoid cleaning entire dwelling. Doors secured from inside the work area need not be sealed.
Warning Signs	Required at entry to room but not on building (unless exterior work is also under way).	Same as Level 1.	Posted at main and secondary entryways; if resident will not be present to answer the door.	Posted at building exterior near main and secondary entryways; if resident will not be present to answer the door.

APPENDIX "A"

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Ventilation System	Dwelling ventilation system turned off, but vents need not be sealed with plastic if they are more than 5 feet away from the surface being treated. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances (for example, solvent vapors).	Turned off and all vents in room sealed with plastic. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances (for example, solvent vapors).	Same as Level 2.	Same as Level 2.
Furniture	Left in place uncovered if furniture is more than 5 feet from working surface. If within 5 feet, furniture should be sealed with a single layer of plastic or moved for paint treatment. No covering is required for dust removal.	Removed from work area. Large items that cannot be moved can be sealed with a single layer of plastic sheeting and left in work area.	Same as Level 2.	Same as Level 2.

APPENDIX "A"

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Cleanup (See Chapter 14 of HUD Guidelines for further discussion of cleanup methods)	HEPA vacuum, wet wash, and HEPA vacuum all surfaces and floors extending 5 feet in all directions from the treated surface. For dust removal work alone, a HEPA vacuum and wet wash cycle is adequate (i.e., no second pass with a HEPA vacuum is needed). Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; transfer to a locked secure area at the end of each day.	HEPA vacuum, wet wash, and HEPA vacuum <i>all</i> surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; use a secure locked area.	Remove top layer of plastic from floor and discard. Keep bottom layer of plastic on floor for use on the next day. HEPA vacuum, wet wash, and HEPA vacuum <i>all</i> surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; use a secure locked area.	Full HEPA vacuum, wet wash, and HEPA vacuum cycle, as detailed in Chapter 14 of HUD Guidelines.
Clearance Inspection	Visual Clearance only	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .

* Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain *lead paint* or *presumed lead-based paint* are not included in this table. Work shall follow the *HUD Guidelines* chapter 8, section VII.

Note: Primitive air locks are constructed using two sheets of plastic. The first one is taped on the top, the floor, and two sides of doorway. Next, cut a slit 6 feet high down the middle of the plastic; do not cut the slit all the way down to the floor. Tape the second sheet of

APPENDIX "A"

plastic across the top of the door only, so that it acts as a flap. The flap should open *into* the work area.

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Typical Applications	Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing between 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.
Time Limit Per Dwelling	One day.	None.	None.

APPENDIX "A"

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Containment and Barrier System	One layer of plastic on ground extending 10 feet beyond the perimeter of working surfaces. Extend plastic further if necessary to collect paint chips and associated debris. Do not anchor ladder feet on top of plastic (Puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc., if necessary. Raise edges of plastic to create a basin to prevent contaminated runoff in the event of unexpected precipitation. Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weight all plastic sheets down with two-by-fours or similar objects. Keep all windows within 20 feet of working surfaces closed, including windows of adjacent structures.	Same as Level 1.	Same as Level 1.
Playground Equipment, Toys, Sandbox	Remove all movable items to a 20-foot distance from working surfaces. Items that cannot be readily moved to a 20-foot distance can be sealed with taped plastic sheeting.	Same as Level 1.	Same as Level 1.

APPENDIX "A"

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around working surfaces (or less if distance to next building or sidewalk is less than 20 feet). If an entryway is within 10 feet of working surfaces, require use of alternative entryway. If practical install vertical containment to prevent exposure. Use a locked dumpster, covered truck, or locked room to store <i>lead paint contaminants</i> before disposal.	Same as Level 1.	Same as Level 1.
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet).	Same as Level 1.	Same as Level 1.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.	Same as Level 1.	Same as Level 1.
Cleanup (See Chapter 14 of HUD Guidelines)	Do not leave <i>lead paint contaminants</i> or plastic out overnight if work is not completed. Keep all <i>lead paint contaminants</i> in secured area until final disposal.	Same as Level 1.	Same as Level 1.

APPENDIX "A"

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Porches	If dwelling is occupied, one lead-safe entryway must be made available to residents at all times. Do not treat front and rear porches at the same time if there is not a third doorway.	Same as Level 1.	Same as Level 1.
Clearance Inspection	Visual <i>Clearance Inspection</i>	<i>Clearance inspection</i> required if it is <i>presumed lead-based paint</i> or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> required if it is <i>presumed lead-based paint</i> or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm ² .

* Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain *lead paint* or *presumed lead-based paint* are not included in this table. Work shall follow the *HUD Guidelines* chapter 8, section VII.

WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION	
Appropriate Applications	Any Window Treatment or Replacement
Time Limit Per Dwelling	None.
Containment and Barrier System	One layer of plastic on ground or floor extending 5 feet beyond the perimeter of window being treated/ replaced. Two layers of plastic taped to interior wall if working on window from outside; if working from the inside, tape two layers of plastic to exterior wall. If working from inside, implement a minimum interior Worksite Preparation Level 2. Children cannot be present in an interior room where plastic sheeting is located due to suffocation hazard. Do not anchor ladder feet on top of plastic (place a hard surface such as plywood under ladder). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc. (if necessary). Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weigh all plastic sheets down with two-by-fours or similar objects. All windows in dwelling should be kept closed. All windows in adjacent dwellings that are closer than 20 feet to the work area should be kept closed.

APPENDIX "A"

WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION	
Appropriate Applications	Any Window Treatment or Replacement
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). If window is to be removed from inside, no exterior sign is necessary.
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). Use a locked dumpster, covered truck, or locked room to store <i>lead paint contaminants</i> before disposal.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.
Playground Equipment, Toys, Sandbox	Remove from work area and adjacent areas. Remove all items to a 20-foot distance from dwelling. Large, unmovable items can be sealed with taped plastic sheeting.
Cleaning	If working from inside, HEPA vacuum, wet wash, and HEPA vacuum all interior surfaces within 10 feet of work area in all directions. If working from the exterior, no cleaning of the interior is needed, unless the containment is breached. Similarly, no cleaning is needed on the exterior if all work is done on the interior and the containment is not breached. If containment is breached, then cleaning on both sides of the window should be performed. No <i>lead paint contaminants</i> or plastic should be left out overnight if work is not completed. All <i>lead paint contaminants</i> must be kept in a secure area until final disposal.
Clearance Inspection	<i>Clearance inspection</i> required if work is performed from interior of <i>dwelling unit</i> and if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .

Section 2. That this activity is not subject to the California Environmental Quality Act pursuant to CEQA guideline 15060(c)(2) because this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 3. That a full reading of this ordinance is dispensed with prior to final passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
02/27/08
Or.Dept:ESD
O-2008-91

I hereby certify that the foregoing ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

OLD LANGUAGE - ~~Stricken~~
 NEW LANGUAGE - Underlined

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, AND 54.1015; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

Division 10

Abatement of Lead Hazards

~~§54.1001 Findings and Declaration of Purpose~~

~~The Council of the City of San Diego finds and declares that:~~

- ~~(a) The Centers for Disease Control identified childhood lead poisoning as one of the most common pediatric health problems in the United States. While adults can be affected by lead hazards, children under seven are especially at risk.~~
- ~~(b) Lead is most harmful to young children because it interferes with the development of the brain, as well as other organs and systems such as the kidneys and nervous system. Lead poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, and reading and learning disabilities. Between 1992 and 2000, there were 377 reported cases of childhood lead poisoning in the City of San Diego.~~

~~“Lead poisoning” has the same meaning as that in California Health and Safety Code section 105280.~~

~~“Premises” has the same meaning as that in Municipal Code section 54.0202.~~

~~“Public nuisance” has the same meaning as that in Municipal Code section 11.0210.~~

~~“Responsible person” has the same meaning as that in Municipal Code section 11.0210.~~

~~“Structure” has the same meaning as that in Municipal Code section 113.0103.~~

~~§ 54.1003 Enforcement Authority~~

~~The *Director* of the Neighborhood Code Compliance Department, or any other Director authorized by the City Manager, is authorized to administer and enforce the provisions of this Division. The Director or anyone designated by the Director to be an Enforcement Official may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.~~

~~§54.1004 Enforcement Remedies~~

~~Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue any administrative remedy provided in Chapter 1 of this Code.~~

~~§54.1005 Strict Liability Offenses~~

~~Violations of this Division shall be treated as strict liability offenses regardless of intent.~~

levels can cause high blood pressure, headaches, digestive problems, memory and concentration problems, kidney damage, mood changes, nerve disorders, sleep disturbances, and muscle or joint pain.

- (c) Housing Stock: *Lead-based paint, and associated lead-contaminated dust and lead-contaminated soil, is the number one source of lead poisoning. According to the 2000 United States census, approximately sixty-six percent (310,000) of the housing units in the City of San Diego were built before 1979, and approximately twenty-eight percent (135,000) of the City of San Diego's housing stock was constructed before 1960.*
- (d) Prevention is Key: *Childhood lead poisoning is preventable. There is no medical treatment to reverse the effects of lead poisoning. Household lead hazards can be permanently eliminated by abatement or controlled through proper maintenance and lead-safe work practices.*
- (e) Lead Paint Ban: *The Consumer Product Safety Commission banned the use of lead in concentrations greater than 600 parts per million in residential paint after February 27, 1978. For this reason, paint applied to a dwelling unit or structure prior to January 1, 1979, is presumed to contain lead unless lead-based paint testing proves it is below thresholds defined in Division 10. All paint applied to a steel structure is presumed to contain lead unless lead-based paint testing proves it is below thresholds defined in Division 10.*
- (f) Lead Hazard: *A lead hazard found on any property, premises, dwelling unit, structure, or steel structure within the City of San Diego is a public nuisance.*

- (i) Necessary Service: The performance of a *lead risk assessment* in the interior and on the *exterior* of a *dwelling unit* constructed prior to January 1, 1979, as well as the *common areas* of the *dwelling unit*, is a necessary service and/or repair to protect the health, safety, and welfare of the occupants of the *dwelling unit* and the public.

§ 54.1002 Purpose

The purpose of Division 10 is:

- (a) to prevent, identify, and remedy *lead hazards* in housing before children are poisoned;
- (b) to protect occupants and the public from exposures to *lead hazards*;
- (c) to provide standards to implement *lead hazard* control requirements;
- (d) to strengthen the authority of local agencies responding to *lead paint* poisoning cases; and
- (e) to establish and promote *lead-safe* work practice standards for owners, maintenance workers, and all *persons* involved in *lead hazard* control and activities such as remodeling, *renovation*, *rehabilitation*, and repair that disturb *lead paint*, in order to protect occupants and the public from exposure to *lead hazards*.

§ 54.1003 Definitions

All defined terms in Division 10 appear in *italics*, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land

procedures as defined in 40 Code of Federal Regulations part 745.227, as it may be amended from time to time.

Containment barriers means a system, process, or barrier, on the interior or exterior of a dwelling unit, structure, or steel structure, designed to ensure that lead-contaminated dust, lead-contaminated soil, or lead paint contaminants are not spread, blown, or tracked from inside to outside of a work site, which system, process, or barrier is at least as effective as those contained within the HUD Guidelines, or, for steel structures, at least as effective as those contained in the most recent edition of the Lead Paint Removal Guide published by the Steel Structures Painting Council.

De minimis levels means an area less than: (1) two square feet in any one interior room or space of a dwelling unit or structure; or (2) twenty square feet on an exterior surface; or (3) ten percent of the surface area on any component part, either interior room or space or exterior, with a small surface area such as a window sill, baseboard, or trim.

Department means the City Environmental Services Department and/or the Neighborhood Code Compliance Department.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the dwelling unit or any component thereof.

DPH means the California Department of Public Health.

Director has the same meaning as set forth in section 11.0210 of this Code.

Imminent lead hazard means a lead hazard which creates a present and immediate danger to life, property, health, or public safety.

Landlord means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use or occupancy of any commercial or residential rental property in the City of San Diego, and the agent, representative, or successor of any of the foregoing.

Lead means metallic lead and all inorganic and organic compounds of lead.

Lead-based paint or lead paint means paint or other surface coatings that contain an amount of lead equal to, or in excess of, one milligram per square centimeter (1.0 mg/cm^2) or one-half of one percent (0.5%) by weight.

Lead-based paint testing means: (1) testing of surfaces to determine the presence of lead-based paint performed by an independent Certified Lead Risk Assessor/Inspector, in accordance with the HUD Guidelines, and which testing includes bulk paint samples analyzed by an accredited laboratory; or (2) testing by an XRF.

Lead-contaminated dust means dust that contains an amount of lead equal to, or in excess of, forty micrograms per square foot ($40 \text{ } \mu\text{g/ft}^2$) for interior floor surfaces, two hundred and fifty micrograms per square foot ($250 \text{ } \mu\text{g/ft}^2$) for interior horizontal window surfaces, and four hundred micrograms per square foot ($400 \text{ } \mu\text{g/ft}^2$) for exterior floor and exterior horizontal window surfaces.

Lead-contaminated soil means bare soil that contains an amount of lead equal to, or in excess of, four hundred parts per million (400 ppm) in childrens' play areas and one thousand parts per million (1000 ppm) in all other areas.

Lead risk assessment means an on-site investigation by a Certified Lead Inspector/Assessor to determine the existence, nature, severity, and location of lead hazards and the preparation of a written report describing the results of the investigation and options for eliminating lead hazards.

Lead soil testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of lead-contaminated soil within a defined area.

Occupants means tenants or other persons legally authorized to occupy or partially occupy the property.

Owner means the person or persons owning property or any improvements thereon in the City of San Diego and includes such person's legally authorized agent or representative and any successors in interest.

Paint means any paint, varnish, shellac, or other similar coating.

Person means any natural person, municipal, county, or state agency to the extent allowable by law, firm, joint venture, joint stock company, business concern, trust, organization, club, association, partnership, company, or corporation, or the officers, agents, employees, managers, representatives, heirs, executors, administrators, successors, or assigns of any of them or any other entity which is recognized by law as the subject of rights and duties.

Premises has the same meaning as set forth in section 54.0202 of this Code.

Presumed lead-based paint means paint or surface coating affixed to a component in or on a dwelling unit, structure, or steel structure, excluding paint or surface coating affixed to a component in or on a dwelling unit or structure constructed on or after January 1, 1979.

Underlying defect means any condition or circumstance which generates, creates, or sustains a lead hazard.

XRF means a portable X-Ray Fluorescence Spectrometer.

§ 54.1004 Lead Hazard Unlawful

- (a) It is unlawful to create and/or maintain a lead hazard or allow a lead hazard to remain upon any property, premises, surfaces, dwelling unit, structure, steel structure, or appurtenances.
- (b) It is unlawful to fail to reduce or eliminate a lead hazard.

§ 54.1005 Lead-Safe Work Practice Standards Required

- (a) It is presumed that paint in the interior or on the exterior of all dwelling units and all structures constructed prior to January 1, 1979, and all steel structures is lead-based paint.
- (b) Any person who disturbs or removes paint from any surface in the interior or on the exterior of a dwelling unit or structure constructed prior to January 1, 1979, or from any surface on a steel structure shall use lead-safe work practice standards as set forth in section 54.1006, unless a Certified Lead Inspector/Assessor determines, prior to the commencement of activities which disturb or remove paint, that the concentration of lead in the paint is below 1000 ppm or .5 mg/cm².
- (c) Any person who disturbs or removes paint in any amount in the interior or on the exterior of a dwelling unit to correct a lead hazard where a child with blood lead levels greater than or equal to 10 µg/dL has been identified shall use lead-safe work practice standards as set forth in section 54.1006.

activities will be performed at the *dwelling unit* and/or *structure*, and state the dates for the performance of such activities.

- (2) The written notice shall be in the form of a sign and letter or memorandum, shall be placed in a conspicuous location open and available to *occupants* of or any *person* visiting the *dwelling unit* and/or *structure*, and shall prominently state the following: "Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint."
- (3) Prior to beginning activities which *disturb or remove paint*, the *owner* of the *property* shall provide each *occupant* with a copy of the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," unless the *owner* has previously provided this pamphlet to the *occupant*.
- (4) For purposes of Division 10, *renovators* performing activities which *disturb or remove paint* shall comply with 40 Code of Federal Regulations part 745, subpart E, as they may be amended from time to time, by providing to each *occupant* the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home." by complying with the required paperwork, and by maintaining the required records.

(b) Occupant Protection

Occupants shall not be permitted to enter the *regulated area* during the course of activities which *disturb or remove paint* (unless they are employed in the

(D) the activities in the interior of the dwelling unit will be completed within five consecutive days, the regulated area is secure so as to prevent the release of lead-contaminated dust and lead paint contaminants into other areas, the activities do not create other safety, health, or environmental hazards, and, at the end of work on each day, the regulated area and the area within at least ten feet of the regulated area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas and bathroom and kitchen facilities.

(2) Occupants' belongings shall be protected from contamination by lead-contaminated dust and lead paint contaminants during the course of activities which disturb or remove paint. Occupants' belongings in the regulated area shall be relocated to a safe and secure area outside the regulated area or shall be completely covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(d) Worksite Preparation

The regulated area shall be prepared to prevent the release of dust, and to contain, within the regulated area, lead-based paint chips, lead-contaminated dust, lead-contaminated soil, and lead paint contaminants from activities which disturb or remove paint until they can be safely removed from the regulated area. Practices that minimize the spread of lead-contaminated dust, lead-based paint chips, lead-contaminated soil, and lead paint contaminants shall be used during preparation of the regulated area for work which disturbs

(A) where the paint is presumed lead-based paint covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where lead-based paint testing performed on the paint revealed lead levels greater than 1000 ppm or 0.5 mg/cm².

A renovator shall record the results of the visual inspection on the form provided by the City of San Diego, shall maintain that form for a minimum of three years, and shall make all such forms available to the City of San Diego upon request.

(2) A clearance inspection must be performed upon the completion of all activities which disturb or remove paint and after visual inspection:

(A) where the paint is presumed lead-based paint covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where lead-based paint testing performed on the paint revealed lead levels greater than 5000 ppm or 1.0 mg/cm².

A copy of the DPH Form 8552 for each clearance inspection shall be submitted to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the DPH.

- (1) The owner of a dwelling unit constructed prior to January 1, 1979, may apply to the Department to have such dwelling unit exempted from the presumption contained in section 54.1007(a) when either:
 - (A) lead-based paint testing results demonstrate that no lead paint is present in the interior or on the exterior of such dwelling unit; or
 - (B) documentation from a Certified Lead Inspector/Assessor demonstrates that alterations have been made to the dwelling unit and such alterations have resulted in the removal of all lead-based paint in that dwelling unit.
 - (2) The Director shall establish written policies that set forth criteria for granting the exemption described in section 54.1007(b).
- (c) Owner's Duty to Correct
- (1) The existence of a lead hazard in any dwelling unit is hereby declared to constitute a condition dangerous to life and health. The owner of a dwelling unit shall take action to prevent the occurrence of a lead hazard and shall expeditiously correct a lead hazard, upon receiving notice of its existence, in accordance with section 54.1006. If the lead hazard is caused in whole or in part by an underlying defect, the owner of the dwelling unit shall correct the underlying defect to prevent a further lead hazard.
 - (2) The owner of a dwelling unit shall correct all identified lead hazards and complete the clearance inspection within thirty (30) days of receiving notice of the existence of the lead hazard, unless:

- (d) Administrative abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 6.
- (e) Summary abatement of an *imminent lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 7.
- (f) Judicial abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 2.

§ 54.1008 Procedures for Occupant Relocation

- (a) The *responsible person* is responsible for the relocation and associated costs of any *occupants* displaced as a result of a judicial, administrative or summary abatement action pursuant to Division 10 and must follow applicable requirements of state law.
- (b) If relocation costs are paid by the City, the costs shall be assessed against the *responsible person* as an administrative or summary abatement cost or as part of a judicial action and may be recovered pursuant to procedures in San Diego Municipal Code Chapter 1, Article 3, Division 3 (Recovery of Abatement Costs).

§ 54.1009 Visual Lead Inspection and Correction Prior to Re-Occupancy of Rental Housing

For all rental *dwelling units* constructed prior to January 1, 1979, the *responsible person* shall conduct a visual inspection for *deteriorated paint* each time a tenant

- (c) For all dwelling units constructed prior to January 1, 1978, the responsible person shall be in compliance with 24 Code of Federal Regulations parts 35.80 - 98 inclusive.
- (d) All DPH-certified lead personnel conducting lead hazard evaluation (e.g., risk assessment, clearance inspection, paint testing, dust sampling, etc.) shall deliver a completed copy of the DPH Lead Hazard Evaluation Report (Form 8552) to the City of San Diego, if the property evaluated is located within the city limits of the City of San Diego, within thirty days of conducting the evaluation. The copy shall be submitted to:

City of San Diego
Environmental Services Lead Form 8552
9601 Ridgehaven Court, Suite 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the DPH.

§ 54.1011 Child-Care Facility

Each child-care facility licensed or approved by the State of California, except for a child-care facility located on public school property, shall require a parent or legal guardian of each child between the ages of six months and seven years of age inclusive to provide a statement from a physician or health care provider that the child has been screened for lead poisoning. This statement must indicate that the screening of the child has been performed in accordance with applicable criteria mandated by the State of California. This statement shall be provided prior to admission, but in no event later than thirty days after admission. The child-care

conducted in a reasonable manner. If an *owner, occupant, or agent* refuses permission to enter or inspect, the *Director* or designee may seek an administrative inspection warrant pursuant to the procedures provided for in California Code of Civil Procedure sections 1822.50 through 1822.60.

(2) Sampling Authority

The *Director* or designee may collect *paint, dust, and soil* samples from the interior or exterior of a *dwelling unit, structure, steel structure, adjacent properties, or premises* where conditions may exist which amount to a *lead hazard* or where activities which *disturb or remove paint, which is lead-based paint or presumed lead-based paint, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10.*

(3) Training

The *Director* or designee may require a *responsible person, and any employee, agent, or representative of a responsible person in violation of Division 10* to attend an approved *lead-safe work practice training course. The Director or designee shall require proof of attendance and satisfactory completion of the course, including certification from the instructor or provider of the course. Upon receipt of said proof, the Director or designee, in his or her sole discretion, may reduce or eliminate an administrative penalty, if any, imposed for a violation of Division 10.*

- (3) laboratory analysis; and
- (4) sample collection fees.
- (b) Fees, including but not limited to Reinspection Fees and increases to Building Permit fees and Demolition/Removal Permit fees, which are imposed for purposes of regulation, education, and enforcement under Division 10 shall be segregated and deposited into a separate account within a fund. All such fees and accrued interest thereon shall be used solely and exclusively for the purposes for which the fee was imposed.
- (c) The assessment and collection of these fees shall not preclude the imposition of any administrative or judicial penalty or fine for violations of this Code or applicable state laws.
- (d) Civil penalties collected pursuant to Division 10 and investigative costs associated with the enforcement action shall be deposited in the Code Enforcement Civil Penalty Fund established pursuant to section 13.0402 of this Code.
- (e) A fee schedule shall be established and revised as necessary by the City Manager in accordance with Council Policy and City Administrative Regulations to reflect current costs. The fee schedule shall be filed in the Rate Book of City Fees and Charges in the City Clerk's Office.

§ 54.1015 Strict Liability Offenses

Violations of Division 10 shall be treated as strict liability offenses regardless of intent.

<u>*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>				
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Level 4</u>
<u>Ventilation System</u>	<u>Dwelling ventilation system turned off, but vents need not be sealed with plastic if they are more than 5 feet away from the surface being treated. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances (for example, solvent vapors).</u>	<u>Turned off and all vents in room sealed with plastic. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances (for example, solvent vapors).</u>	<u>Same as Level 2.</u>	<u>Same as Level 2.</u>
<u>Furniture</u>	<u>Left in place uncovered if furniture is more than 5 feet from working surface. If within 5 feet, furniture should be sealed with a single layer of plastic or moved for paint treatment. No covering is required for dust removal.</u>	<u>Removed from work area. Large items that cannot be moved can be sealed with a single layer of plastic sheeting and left in work area.</u>	<u>Same as Level 2.</u>	<u>Same as Level 2.</u>

<u>*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>			
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Typical Applications</u>	<u>Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>	<u>Any interim control or abatement method disturbing between 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>	<u>Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>
<u>Time Limit Per Dwelling</u>	<u>One day.</u>	<u>None.</u>	<u>None.</u>
<u>Containment and Barrier System</u>	<u>One layer of plastic on ground extending 10 feet beyond the perimeter of working surfaces. Extend plastic further if necessary to collect paint chips and associated debris. Do not anchor ladder feet on top of plastic (Puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc., if necessary. Raise edges of plastic to create a basin to prevent contaminated runoff in the event of unexpected precipitation. Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weight all plastic sheets down with two-by-fours or similar objects. Keep all windows within 20 feet of working surfaces closed, including windows of adjacent structures.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>

<u>*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>			
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Cleanup</u> (See Chapter 14 of HUD Guidelines)	<u>Do not leave lead paint contaminants or plastic out overnight if work is not completed. Keep all lead paint contaminants in secured area until final disposal.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Porches</u>	<u>If dwelling is occupied, one lead-safe entryway must be made available to residents at all times. Do not treat front and rear porches at the same time if there is not a third doorway.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Clearance Inspection</u>	<u>Visual Clearance Inspection</u>	<u>Clearance inspection required if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>	<u>Clearance inspection required if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>

* Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain lead paint or presumed lead-based paint are not included in this table. Work shall follow the HUD Guidelines chapter 8, section VII.

<u>WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION</u>	
<u>Appropriate Applications</u>	<u>Any Window Treatment or Replacement</u>
<u>Time Limit Per Dwelling</u>	<u>None.</u>

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
CHAPTER 1, ARTICLE 2, DIVISION 2, OF THE MUNICIPAL CODE
BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL
ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

This ordinance adds a subsection to the Municipal Code clarifying that it is unlawful to maintain or allow the existence of a public nuisance.

This ordinance contains a notice that a full reading of the ordinance is dispensed with prior to its passage, since a written copy was made available to the City Council and the public prior to the day of passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk, City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb
02/27/08
Or.Dept: ESD
D-2008-109

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 1, ARTICLE 2, DIVISION 2 OF THE MUNICIPAL CODE BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

WHEREAS, the Council of the City of San Diego wishes to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 1, Article 2, Division 2 of the San Diego Municipal Code relating to Judicial Abatement is hereby amended by amending Section 12.0204 to read as follows:

§ 12.0204 Judicial Abatement

- (a) It is unlawful to maintain or allow the existence of any condition that creates a *public nuisance*.
- (b) Pursuant to California Government Code section 38773, the City has the authority to judicially abate *public nuisances* by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the *public nuisance* a special assessment, or a lien against the property on which it is maintained and a personal obligation against the *property owner*, in accordance with California Government Code section 38773.1 or 38773.5.

Section 2. That this activity is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(2) because this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
02/27/08
Or.Dept: ESD
O-2008-109

I hereby certify that the foregoing ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

OLD LANGUAGE - STRICKEN
NEW LANGUAGE - UNDERLINED

STRIKEOUT ORDINANCE

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
CHAPTER 1, ARTICLE 2, DIVISION 2 OF THE MUNICIPAL CODE
BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL
ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

§ 12.0204 Judicial Abatement

- (a) It is unlawful to maintain or allow the existence of any condition that creates a public nuisance.
- (b) Pursuant to California Government Code section 38773, the City has the authority to judicially abate nuisances public nuisances by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the ~~nuisance~~ public nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code ~~S~~section 38773.1 or 38773.5.

GCL:mb
02/27/08
Or.Dept:ESD
S-2008-109

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE CITY COUNCIL ESTABLISHING A COST RECOVERY, REGULATORY FEE IN CONNECTION WITH THE NEW LEAD HAZARD PREVENTION AND CONTROL ORDINANCE; FINDING THAT SUCH FEE IS FOR OPERATING EXPENSES; AND RECEIVING THE LEAD HAZARD PREVENTION AND CONTROL ORDINANCE REPORT AND ASSOCIATED FEE COST CALCULATIONS.

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That a cost recovery; regulatory fee of \$31.00 is hereby established, to be added to the permit fee for the specific Building and Demolition/Removal permits identified in Report to the Council No. 08-029 dated March 5, 2008, for lead enforcement in connection with the new Lead Hazard Prevention and Control Ordinance No. O-2008-91 [Ordinance] sections 54.1005 Lead Safe Work Practice Standards Required and 54.1006 Lead Safe Work Practice Standards.
2. That the new cost recovery, regulatory fee described above shall become effective beginning sixty days after the date of final passage of the Ordinance.
3. That the City Clerk is hereby directed to amend the Ratebook of City Fees and Charges to reflect the cost recovery, regulatory fee described above.
4. That the Council hereby finds that the new cost recovery, regulatory fee is established for the purpose of meeting operating expenses associated with education, outreach, and enforcement in connection with sections 54.1005 and 54.1006 of the Ordinance.
5. That the Council hereby receives Report to Council No. 08-029 including all attachments to that Report.
6. That the establishment of the proposed cost recovery, regulatory fee is statutorily exempt from the California Environmental Quality Act [CEQA] pursuant to CEQA Guidelines

section 15273(a)(1) because the fee is established for the purpose of meeting operating expenses associated with the Ordinance. The remaining activities are exempt from CEQA pursuant to CEQA Guidelines section 15060(c)(2) because the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
02/27/08
Or.Dept:ESD
R-2008-718

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

331
3/11



March 5, 2008

Elizabeth Maland, City Clerk
City of San Diego
202 C Street
San Diego, CA 92101

**Re: Proposed Lead Hazards Ordinance – Support if Amended
March 11, 2008 Docket #330 & #331**

Dear Ms. Maland:

On December 21, 2007, the San Diego County Apartment Association (SDCAA) had sent the attached letter to you and the Council offices regarding the Proposed Lead Hazards Ordinance, which is now coming forward on the March 11, 2008 docket.

At the time, the SDCAA was unable to reference a docket item number, as one had not yet been assigned. To ensure that our letter is included in the docket materials, we are again sending the letter with the recently assigned docket item number.

Please respond to me at 858-751-2213 or via e-mail at apentico@sdcaa.com to confirm that the letter will be included in the docket information.

On behalf of the members of the SDCAA, thank you in advance for your attention to this matter.

Sincerely,

Alan Pentico
Director of Public Affairs

Attachment: 12/21/2007 SDCAA Letter Regarding Proposed Lead Hazards Ordinance



San Diego County Apartment Association®

Since 1919



December 21, 2007

Mayor Sanders and Council Members
City of San Diego
202 C Street
San Diego, CA 92101

Re: Proposed Lead Hazards Ordinance – Support, if amended

Dear Mayor Sanders and Council members:

It is anticipated that in just a few weeks, the Council will be considering the long-awaited Lead Hazards ordinance. At this time, the Executive Committee of the San Diego County Apartment Association (SDCAA) has taken a position to support the ordinance if the program implementation is amended so as not to create a budget shortfall in the years ahead.

As part of the draft presented to the Land Use and Housing (LU&H) Committee in 2004, the projected budget failed to support the program being proposed after a just a few years of operation. Additionally, by year five the program was nearly \$1 million short of the funds needed to operate the program. As the ordinance stands now, the industry can integrate the rental housing requirements into their existing business practices.

In an effort to resolve the financial shortcomings of our city, the members of the SDCAA have supported increases in water and sewer rates over the next several years to bring the city's infrastructure up to date. Additionally, we have supported the Mayor's efforts to streamline city government and cut waste wherever possible. If the Lead Hazards program truly is a citywide effort, then the council needs to acknowledge this and designate general funds to ensure its success. At that time, the SDCAA will fully support the ordinance as forwarded from the LU&H committee.

In conclusion, the SDCAA supports the visual inspection of pre-1979 rental units for lead hazards, and a certified inspection of rental properties during the transfer of ownership of the property. The industry wants to be part of the solution to preventing children from being exposed to lead hazards. It has been several years since the Task Force presented the ordinance and the LU&H forwarded the ordinance to the council. It's time that the ordinance was adopted.

If you should have any questions, please feel free to contact me at 858-751-2213.

Sincerely,

Alan Penticco
Director of Public Affairs