

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 $\mu\text{g}/\text{dL}$.

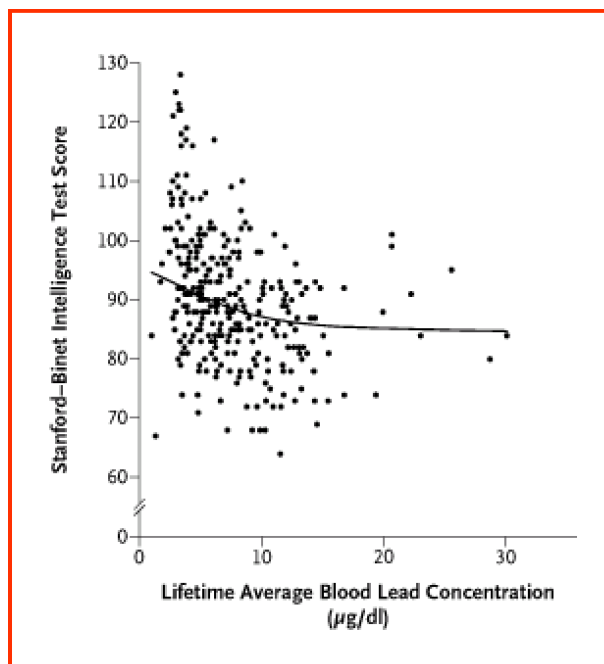


Figure 1

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*
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*

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

2. Eliminate and/or modify specific Section(s) of the ordinance and adopt the modified ordinance.
3. Modify or select different funding options for enforcement.
4. 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.*

