



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
Unclas 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.

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

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

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.

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

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:

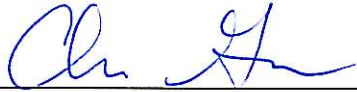
City Attorney's Office – *Grace Lowenberg, Diane Silva-Martinez, and Linh Nuygen*
Environmental Services Department – *Chris Gonaver and Alan Johanns*
Development Services Department – *Jeff Isbell and William Barranon*
Neighborhood Code Compliance Department – *Marcia Samuels*
San Diego Housing Commission – *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