Evaluating Rochester’s innovative local lead law: Two years of progress

Katrina Smith Korfmacher, PhD
Environmental Health Sciences Center, University of Rochester

2008 National Healthy Homes Conference ❖ September 15-17, 2008 in Baltimore, MD
History and Context

- As of 2002, 2% of children had elevated blood lead levels (EBL)
- In New York State, 5% of children
- In Monroe County, 7.4% (around 1000 children)
- In the City of Rochester, nearly 25%
- Some neighborhoods exceeded 30%
Lead in Rochester

- High-risk housing stock
- 87% of housing built prior to 1970
- High poverty rate – 38% of children in poverty
- Many low-value rental properties (60% rental, mean value $53,000)
- Housing stock in poor condition
Coalition to Prevent Lead Poisoning

- Formed in 2000
- 200 volunteer members
- Diverse interests/backgrounds
- Focus on ‘systems change’
- Policy goal: local lead law
Why a local lead law?

- EBL rates were level for three years
- Most lead poisoning is caused by older housing in poor condition
- Existing policies = “secondary prevention”
- Difficult to get new state policy
- Existing local inspection system did not prevent lead hazards
Community organizing

- Commitment to broad goals
  - 2010 Goal
  - “Five principles”
- Science-based proposals
- Information, organizing, and communication
Coalition’s “five principles”

- Protect the kids who are at the greatest risk first
- Inspect buildings, not bodies, to find hazards before kids are poisoned
- Do the work safely -- don't make the problem worse!
- Warn people about lead poisoning risks when they buy or rent, and when work is being done
- Don't let tenants be punished
Legislative History

- Three bills submitted (Jan. 2005)
- Environmental Impact Statement
- Council work sessions (Fall 2005)
- Unanimously adopted (Dec. 2005)
What is the Rochester Lead Law?

- Amendment to Property Maintenance Code
- Added lead to “Certificate of Occupancy” inspections of rentals
- Started July 1, 2006
- Targeted “high risk” housing
What housing does it address?

- All pre-1978 rental housing in the city subject to Certificate of Occupancy
- Inspections also on request, during other inspections, and through county QHI program
- Exempts properties inspected through federal programs or if certified lead free
- Some effects on owner-occupied units
Implementation details

- Visual inspection of all properties
- Dust wipes in “high risk areas” if PASS visual inspection
- Violations must be addressed
- Workers must have lead safe work practices training
- Clearance by private firm
Must all the lead be removed?

- NO - Law does not specify treatments
- Repainting generally acceptable
- Lead Safe Work Practices, re-inspection provisions, and clearance help insure safety
How is it working?

- Number and cost of inspections?
- Impacts on housing?
- Costs to property owners?
- Protecting children?
Number of inspections

- 16,449 in first year
Costs of inspections

- Projected costs of inspections
Impacts on housing

- 94% of units passed inspection
Costs to property owners

- Phone survey of 200 property owners
- Asked about repair costs to *prepare for or respond to* inspection
- 30% had no costs; mean $1726
- Mean costs of repairs = $2,618
- 44% of repairs replaced windows
Is the law protecting children?
Number of Children Lead Poisoned

- 1,698 (1999 study; first Coalition HUD grant)
- 1,293 (CPLP formed, local legislators propose state legislation)
- 1,179
- 1,019
- 900
- 675
- 425
- 325

- Coalitions hosted by RPCN
- Apr. – three lead bills drafted & introduced
- Dec. – City passes lead ordinance; County agrees to add lead inspections to QHI inspections/public assistance housing
- Jul. – Implementation begins on lead law & QHI inspections
- GRHF commits funding to lead prevention

- CPLP formed; HUD grant CGR Report
- April - County drops level of concern from 20 mg/dl to 15 mg/dl
- June - "Let's Make Lead History" Summit (500 people), county and city commit to changing policies
- HUD funded communications campaign begins

- Second Coalition HUD grant CGR Report
- Coalitions hosted by RPCN
- Jan. – three lead bills drafted & introduced
- Dec. – City drops lead ordinance; County agrees to add lead inspections to QHI inspections/public assistance housing

- GRHF commits funding to lead prevention
- Lead Safe Monroe County plan
- RCSD Lead Safe School Policy
- Third City HUD grant
What remains to be done?

- Evaluate impacts of law on high risk families
- Pass state lead law
- Provide funds for lead hazard control
- Educate property owners/parents
  - Request inspections as needed
  - Ongoing maintenance/cleaning
  - Lead safe work practices
  - New resources for owner occupants
- Continue testing children
Implications for other cities

- Costs less than expected
- Implementation faster than expected
- Targeted approach based on visual + dust wipes, interim controls, and periodic inspection appears viable
Lessons learned re: evaluation
For more information…

- City of Rochester
  - [http://lead.cityofrochester.gov](http://lead.cityofrochester.gov)
  - (585) 428-LEAD
- Coalition to Prevent Lead Poisoning
  - (585) 256-2260
  - [www.leadsafeby2010.org](http://www.leadsafeby2010.org)

Katrina_korfmacher@urmc.rochester.edu
Wayne County Prosecutor’s Office
Childhood Lead Poisoning Prevention Unit

Wayne County Prosecutor
Kym L. Worthy
Presented by: Lead Attorney Mary DuFour Morrow
WHY PROSECUTOR’S SHOULD ENFORCE THE LANDLORD PENALTY LAW:

- Growing evidence links childhood lead exposure to an increased risk of juvenile delinquency.
"Of all the causes of juvenile delinquency, lead exposure is perhaps the most preventable. These results should be a call to action for legislators to protect our children by requiring landlords to not simply disclose known instances of lead paint in their properties, but to remove it."
The Childhood Lead Poisoning Prevention Program:

- Collaborative effort that involves a close partnership with local health departments.
WHY ENFORCE THE LANDLORD PENALTY LAW?

- Prior to 2005, Wayne County landlords routinely ignored health department orders to remediate lead hazards.
- Administrative hearings were time-consuming and rarely resulted in remediation.
- Landlords paid relatively small fines but were not required to actually remediate the property.
THE LAW IS EFFECTIVE:

- As a direct result of enforcement of the LLPL, landlords have reduced lead hazards in 128 properties in Wayne County and the City of Detroit since we began enforcing the law.

- 44 of these properties were remediated *before* a child was poisoned in the property.
CASE EXAMPLES:

- One landlord ignored orders from the health department to reduce lead hazards in one unit of a multi-unit building for over 18 months.

- Once charged by the Prosecutor’s Office he:
Hired a certified lead professional to remediate the hazards in the unit where the EBL child resided;
Permitted the health department to perform risk assessments on 16 other units that housed families with children or pregnant women;
Hired a certified lead professional to remediate the hazards found in all 16 of those units;
Relocated all 16 families during the remediation;
Paid $10,000.00 into the Wayne County Environmental Trust Fund.
Another large landlord ignored an order from the health department to remediate a property in Highland Park that was found to have poisoned at least two children.
Once charged under the LLPL, he hired a certified lead professional to remediate the hazards in the charged property and agreed to provide the Prosecutor’s Office with:
THE LANDLORD PROVIDED:

- Disclosure of all properties he owned in Wayne County;
- Copies of rental agreements for those properties;
- Disclosure as to which of those properties housed families with children or pregnant women;
Hired a certified lead inspector/risk assessor to perform risk assessments on those properties (there were 26 properties total);
Provided the Prosecutor’s Office with copies of those risk assessments.
Hired a certified lead professional to remediate the hazards found in all 26 of those properties;
- Relocated each family during the remediation process.
- Provided copies of the clearance testing performed by a certified lead professional.
- Underwent an eight-hour lead safe work practice training course.
THE STATUTE

☐ A property manager, housing commission, or owner of a rental unit who rents or continues to rent a residential housing unit to a family with a minor child who is found to have 10 micrograms or more of lead per deciliter of venous blood is subject to the penalties provided under subsection (3) if all of the following apply.
(a) The property manager, housing commission, or owner of the rental unit has prior actual knowledge that the rental unit contains a lead-based paint hazard.

(b) At least ninety days have passed since the property manager, housing commission, or owner of the rental unit has actual knowledge of the lead paint hazard.

(c) the property manager, housing commission, or owner of the rental unit has not acted in good faith to reduce the lead paint hazards through interim controls or abatement or a combination of interim controls and abatement.
Penalties

- Up to 93 days imprisonment and/or up to a $5,000.00 fine for first-time offenders.

- Up to 93 days imprisonment and/or up to a $10,000.00 fine for repeat offenders.
Actual Knowledge

- A property manager, housing commission, or owner of the rental unit is presumed to have prior actual knowledge that a unit contains a lead-based paint hazards only if 1 of the following applies:
Actual Knowledge:

- (a) The property manager, housing commission, or owner of the rental unit signed an acknowledgement of the hazards as a result of a risk assessment under this chapter at the time the risk assessment was made.

- (b) The property manager, housing commission, or owner of the rental unit was served as a result of a risk assessment under this chapter with notice of the hazard by first-class mail and a return receipt of this service was obtained.
What this means . . .

- If you send the landlord a copy of the Risk Assessment or EBL Investigation Report by certified mail, and he or she signs a receipt for it, they will be presumed to have actual knowledge of the hazards and will have a difficult time proving otherwise.

- However, many times landlords will have someone else sign for the report, or they will simply not claim it.
PROOF OF SERVICE:

- Should include the date, time, location of service.
- Name and signature of person performing service.
- Attempt to get signature of owner acknowledging service.
A property manager, housing commission or owner cannot be held liable under the Landlord Penalty Law for hazards he or she did not know existed.

As a practical matter, it is very difficult to prove knowledge before a landlord has received the EBL Investigation Report.

For purposes of enforcing the Landlord Penalty Law, we assume that the landlord did not know of the hazards until we serve him or her with a copy of the EBL Investigation Report.
A Typical Case

- Health Department receives notice of an EBL Child and performs an EBL Investigation.
- The true owner of the property must be ascertained and served with a notice and copy of the EBL Investigation (minus HIPPA-protected information.)
- If the landlord fails to make a good faith effort to reduce the hazards within the 90 days permitted by statute, the case is referred to the Prosecutor’s Office.
- If there is sufficient evidence, the landlord will be charged under the statute.
Once charged . . .

- Once charged, landlords are usually eager to resolve the case and avoid a conviction on their record. At that point, we will enter into plea negotiations.
Typical Plea Bargain:

- Landlord must disclose all other rental properties he or she owns in Wayne County.
- Landlord must agree to hire a certified risk assessor to perform risk assessments of the other properties.
- If the other properties are found to have lead hazards, the landlord must hire a certified lead professional to remediate the hazards.
Typical Plea Bargain:

- The landlord must relocate the family while the work is being done.
- The landlord must hire an independent third party lead inspector or risk assessor to perform clearance testing on the other properties.
- The landlord must successfully complete an eight-hour Lead Safe Work Practices Training program.
SUCCESS DEPENDS ON:

- Positive results are strongly dependent upon a cooperative effort between the local health department and the local prosecutor’s office.
- Successful enforcement does require some extra effort on the part of EBL Investigators to ensure that a case will withstand the scrutiny of the court if prosecuted.
It is a criminal statute, thus, the Prosecutor bears the burden of proving the offense beyond a reasonable doubt.

Guilt beyond a reasonable doubt is the most difficult standard of proof in the law.
Affirmative Defenses:

- The property manager, housing commission, or owner of the rental unit may assert one or more of the following as an affirmative defense in a prosecution for violating this section, and has the burden on that defense by a preponderance of the evidence:
Affirmative Defenses:

(i) That the property manager, housing commission, or owner of the rental unit requested or contracted with a person having responsibility for maintaining the rental unit to reduce the hazard through interim controls or abatement and reasonably expected that the hazard would be reduced.
Affirmative Defenses:

☐ (j) that the tenant would not allow entry into or upon the premises where the hazard is located or otherwise interfered with correcting the hazard.
How to Build a Case for Prosecution:

- During the EBL Investigation – obtain copies of the lease or rental agreement (if there is one).

- Obtain as much information as possible about the landlord from the family of the EBL child. (E.g., length of tenancy, lease, proof of rental payments, landlord's name, address, how the rent is paid (mailed, picked up or dropped off?))
How to Build a Case . . .

- Make sure that all dust wipe samples or paint chips are properly identified and that the chain of custody is preserved.
How to Build a Case . . .

- Obtain as many contact numbers for the family of the EBL child as practical.
How to Build a case . . .

- Once you have served the landlord with the notice and report, the landlord has 90 days to make a good faith effort to reduce the hazards through either abatement, or interim controls, or a combination of abatement and interim controls.
Building Your Case

- After the 90 days has elapsed, the specific hazards cited in the original report must be re-assessed to determine whether or not the landlord has made a good faith effort to reduce them.
If it is determined that the landlord has failed to make a good faith effort to reduce the hazards, the matter may be referred to your local prosecutor and a warrant requested.
The Warrant Request

- Consult with your county prosecutor as to how he or she would like the case presented and to whom you should present the case. Typically, it will be the County Sheriff’s Office.

- At a minimum, the investigating agency will need the following:
  - A complete copy of the EBL Investigation or Risk Assessment Report.
  - A complete copy of all laboratory analysis.
  - A summary of the case.
FEEL FREE TO CALL ME:

- Mary Morrow
Wayne County Prosecutor’s Office
1441 St. Antoine, Room 1220
Detroit, MI 48226
(313) 224-7270 (office)
(313) 224-0974 (fax)
morrow@co.wayne.mi.us
ORDINANCE NUMBER O-19732 (New Series)

DATE OF FINAL PASSAGE APR 08 2008

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.
(O-2008-91)

(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 \( \mu g/ft^2 \)) for interior horizontal window surfaces, and four hundred micrograms per square foot (400 \( \mu g/ft^2 \)) 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 children’s 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_.

-PAGE 10 OF 37-
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

-PAGE 16 OF 37-
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 reinspect 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 re inspections;
(2) lead-safe work practice re inspections;
(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)*

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Typical Applications</strong></td>
<td>Dust removal and any abatement or interim control method disturbing no more than 2 square feet of painted surface per room.</td>
<td>Any interim control or abatement method disturbing between 2 and 10 square feet of painted surface per room.</td>
<td>Same as Level 2.</td>
<td>Any interim control or abatement method disturbing more than 10 square feet per room.</td>
</tr>
<tr>
<td><strong>Containment and Barrier System</strong></td>
<td>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.</td>
<td>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.</td>
<td>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.</td>
<td>Two layers of plastic on entire floor or isolate the work area. If entire unit is being treated, cleaned, and cleared, individual room door-ways 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.</td>
</tr>
<tr>
<td><strong>Time Limit Per Dwelling</strong></td>
<td>One work day.</td>
<td>One work day.</td>
<td>Five work days.</td>
<td>None.</td>
</tr>
<tr>
<td><strong>Warning Signs</strong></td>
<td>Required at entry to room but not on building (unless exterior work is also under way).</td>
<td>Same as Level 1.</td>
<td>Posted at main and secondary entryways, if resident will not be present to answer the door.</td>
<td>Posted at building exterior near main and secondary entryways, if resident will not be present to answer the door.</td>
</tr>
</tbody>
</table>
## APPENDIX “A”

### *INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)*

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ventilation System</strong></td>
<td>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).</td>
<td>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).</td>
<td>Same as Level 2.</td>
<td>Same as Level 2.</td>
</tr>
<tr>
<td><strong>Furniture</strong></td>
<td>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.</td>
<td>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.</td>
<td>Same as Level 2.</td>
<td>Same as Level 2.</td>
</tr>
</tbody>
</table>
**APPENDIX “A”**

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)*

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cleanup</strong> (See Chapter 14 of HUD Guidelines for further discussion of cleanup methods)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
<th>Level 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cleanup</td>
<td>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 lead paint contaminants inside dwelling overnight; transfer to a locked secure area at the end of each day.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>HEPA vacuum, wet wash, and HEPA vacuum all surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store lead paint contaminants inside dwelling overnight; use a secure locked area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>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 all surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store lead paint contaminants inside dwelling overnight; use a secure locked area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Full HEPA vacuum, wet wash, and HEPA vacuum cycle, as detailed in Chapter 14 of HUD Guidelines.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clearance Inspection</th>
<th>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</td>
</tr>
<tr>
<td></td>
<td>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</td>
</tr>
</tbody>
</table>

* 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
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)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typical Applications</td>
<td>Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.</td>
<td>Any interim control or abatement method disturbing between 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</td>
<td>Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</td>
</tr>
<tr>
<td>Time Limit Per Dwelling</td>
<td>One day.</td>
<td>None.</td>
<td>None.</td>
</tr>
</tbody>
</table>

-PAGE 34 OF 39-
<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Containment and Barrier System</strong></td>
<td>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.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
<tr>
<td><strong>Playground Equipment, Toys, Sandbox</strong></td>
<td>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.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
</tbody>
</table>
### EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Security</strong></td>
<td>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 <em>lead paint contaminants</em> before disposal.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
<tr>
<td><strong>Signs</strong></td>
<td>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).</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
<tr>
<td><strong>Weather</strong></td>
<td>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.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
<tr>
<td><strong>Cleanup</strong></td>
<td>Do not leave <em>lead paint contaminants</em> or plastic out overnight if work is not completed. Keep all <em>lead paint contaminants</em> in secured area until final disposal.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
</tbody>
</table>
**APPENDIX “A”**

**EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Level 1</th>
<th>Level 2</th>
<th>Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Porches</td>
<td>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.</td>
<td>Same as Level 1.</td>
<td>Same as Level 1.</td>
</tr>
<tr>
<td>Clearance Inspection</td>
<td>Visual Clearance Inspection</td>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>

* 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**

<table>
<thead>
<tr>
<th>Appropriate Applications</th>
<th>Any Window Treatment or Replacement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Limit Per Dwelling</td>
<td>None.</td>
</tr>
<tr>
<td>Containment and Barrier System</td>
<td>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.</td>
</tr>
</tbody>
</table>
## APPENDIX “A”

### WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION

<table>
<thead>
<tr>
<th>Appropriate Applications</th>
<th>Any Window Treatment or Replacement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signs</td>
<td>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.</td>
</tr>
<tr>
<td>Security</td>
<td>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 lead paint contaminants before disposal.</td>
</tr>
<tr>
<td>Weather</td>
<td>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.</td>
</tr>
<tr>
<td>Playground Equipment, Toys, Sandbox</td>
<td>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.</td>
</tr>
<tr>
<td>Cleaning</td>
<td>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 lead paint contaminants or plastic should be left out overnight if work is not completed. All lead paint contaminants must be kept in a secure area until final disposal.</td>
</tr>
<tr>
<td>Clearance Inspection</td>
<td>Clearance inspection required if work is performed from interior of dwelling unit and if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</td>
</tr>
</tbody>
</table>
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
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 __MAR 25 2008__.

ELIZABETH S. MALAND, City Clerk

By
Deputy City Clerk

Approved: __4-8-08__

(date)

JERRY SANDERS, Mayor

Vetoed: ________________

(date)

JERRY SANDERS, Mayor
LEAD ORDINANCE DEVELOPMENT AND ENFORCEMENT FOR TRUE PRIMARY PREVENTION

Baltimore - 2008
San Diego Stats

Population (8th largest City): 1,315,837
Pre-1978 Housing Units: 310,000
Area: 324 sq. mi.
Ave. Medium Income: $65,248
Ave. Cost of Home (7/2008): $365,000
Children 5 and under: 96,562
EBL Children 2006-2007 (>4.5): 1,545
Percent of Children Tested: < 11%
Lead Safe Neighborhoods Program (LSNP)

- LSNP created by City Council in April 2002 which included City’s first lead ordinance. LSNP consists of the following departments:
  - Environmental Services
  - Neighborhood Code Compliance
  - City Attorney’s Office
  - Development Services (building permits)
  - San Diego Housing Commission

- California Lead Law (SB460), Jan. 2003
- New Lead Hazard Prevention and Control Ordinance, May 2008
PROGRAMS/FUNDING SOURCES

- HUD Lead Hazard Control Grant
- HUD Lead Hazard Reduction Demonstration Grant
- HUD Healthy Homes Grant
- EPA Region 9 Lead Education and Outreach Grant
- EPA Lead Community Education and Training Grant
- Community Development Block Grant Funding
- Building Permit Funds - $120,000/year
- State Lead Enforcement grant
- General Fund
ORDINANCE DEVELOPMENT

- Taskforce consisted of various stakeholders and co-chaired by two councilmembers.
- Starting in Jan 2003, Taskforce looked at various ordinances and regulations at local, state, and federal level & coupled with ideas generated by subcommittee.
- Consensus driven process - successful on most issues in ordinance except the point of sale language.
Highlights of Ordinance

Lead Hazard Definition:

(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
Highlights of Ordinance

Lead Hazard Definition (continued):

(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 per CA Title 17 definitions.
Highlights of Ordinance

Renovation and Remodeling rule (Section 54.1005-1006)

- Renovators are required to use lead-safe work practices when lead concentrations equal or greater than 1000 ppm or 0.5 mg/cm² on all pre-1979 buildings and structures.
- Ordinance provides for very specific minimum work practices taken from the HUD Guidelines, Chapter 8 tables.
- Specifies when relocation of occupants is not required.
Highlights of Ordinance

Renovation and Remodeling rule (Section 54.1005-1006)

- Visual clearance is required for all work where lead paint is assumed or tested above the 1000 ppm or 0.5 mg/cm². Must use City form and maintain records.

- If contractor is disturbing lead paint at 5000 ppm or 1.0 mg/cm² or above, and they are disturbing over identified quantities, it requires lead dust clearance by state certified personnel.

- Ordinance also mirrors the federal pre-renovation notification (406b) to provide local enforcement authority.
Lead Safe Work Practices Enforcement

- Field NOV for administrative citations on the spot up to $1000 – civil penalties up to $250,000
- 1 full time inspector performing random inspections on specific permits – funding source from permit fees
- Compliance verification
Highlights of Ordinance

Lead hazards in housing (Section 54.1007)

- Presence of Lead Hazards constitutes substandard housing and property owners are required to correct lead hazards in pre-1979 residential housing
- Unlawful to maintain lead hazards

Relocation requirements (Section 54.1008)

- Identifies when relocation is required to protect occupants
Substandard Housing Enforcement

- After lead risk assessment, close case or issue NOV
- 30-90 day deadline for compliance
- Approval of owner work plan, abatement of lead hazard, and then clearance
- Penalties for missing deadline
Elevated Blood Lead Case Enforcement

- If Lead Hazards identified, issue Abatement Notice and Order
- 10 day to submit work plan and 30-90 Day Deadline for Compliance
- Non-compliance by deadlines will result in City performing abatement and subject to penalties of $2,000 per incident up to $200,000
Proactive Cases (self-referred) by canvassing high risk neighborhoods

- Letter Offering Grace Period with Guidance in Safe Work Practices
- Compliance Verification
- If visual compliance, close case. If hazard still exists, send notice requesting access to inspect
Highlights of Ordinance

Rental property lead visual inspection at turnover (Section 54.1009)

- Property owners are required to perform visual inspection and correction of presumed lead hazards prior to re-occupancy of a vacant pre-1978 rental unit.
- Maintain records for three years and provide upon request by City.
Highlights of Ordinance

Duty to Notify (Section 54.1010)

- Home improvement/water pressure equipment rental stores are required to post lead display and provide lead education material to customers provided by the City.
- Mirrors the federal lead property notification rule (1018) to provide local enforcement authority.
- State notification form identifying lead hazards must be provided to the City.
Highlights of Ordinance

Childcare Facility (Section 54.1011)
- Childcare facilities are required to obtain proof of blood lead testing at admission or within 30 days.

Enforcement Authority, Remedies, and Cost Recovery language (Section 54.1012-14)
- Provides specific language for enforcement authority, enforcement remedies and cost recovery associated with this ordinance.

Strict liability offense regardless of intent (Section 54.1015)
Highlights of Ordinance

- This new ordinance provides the City with additional enforcement opportunities to ensure lead hazards are not created or maintained.

- It sends a very clear and loud message to all of San Diego and surrounding communities about the importance of eliminating lead hazards from our environment.
COSTS

- Identified Lead Hazards abated at City cost of less than $1,000 per dwelling (inspect / monitor / communicate / investigate / litigate)
- Owner cost to abate: $500 – $5,000
KEY RESULTS

- Involvement by City Attorney
- Referrals to HUD Grant Program
- Lead Hazards Found in More than 70% of Cases (includes UWP Cases)
- Lead Hazard Abatement by Owner in more than 822 Housing Units (1/05 – 6/08)
- Active participation by key players such as apartment association, real estate association, home improvement, politicians, etc.
Conclusions and Recommendations

- Vigorous Enforcement is the Most Cost-Effective Way to Prevent Lead Poisoning
- Local ordinance development can have tremendous impact on lead problem-without enforcement
- Make Federal Grant Funds Available for State and/or Local Enforcement Programs
ANY QUESTIONS?

Alan Johanns
ajohanns@sandiego.gov
www.leadsafeneighborhoods.org