

Office of the City Manager

ACTION CALENDAR  
April 2, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development  
Kelly Wallace, Interim Director, Health, Housing, and Community Services  
Subject: Companion Report: Effective Enforcement of Safe Lead-Paint Practices

RECOMMENDATION

Based on the intent of the recommendation from the Community Environmental Advisory Commission (CEAC) for the City to expand enforcement of unsafe lead paint practices, refer to the City Manager to:

- Coordinate with the Alameda County Healthy Homes Program to clearly identify roles and responsibilities for expanding enforcement of unsafe lead practices, and to explore options for sharing resources that can support expanded local enforcement;
- Identify what resources, staff capacity, and program structure would be required to expand City enforcement of unsafe lead practices;
- Continue current work to educate building permit applicants and contractors about safe lead paint practices; train and certify all City of Berkeley Building and Housing Inspectors in lead paint safety; respond to, investigate, and enforce safe lead paint practices as needed; and administer the Public Health Division's Childhood Lead Poisoning Prevention Program; and
- Provide an update to City Council within one-year that identifies progress and next steps for expanding enforcement of unsafe lead practices

FISCAL IMPACTS OF RECOMMENDATION

Adopting the recommendation in the City Manager's companion report would not result in any immediate fiscal impacts, but may ultimately result in a need for additional resources in order to expand enforcement of unsafe lead practices. One of the objectives of the City Manager's recommendation is to identify what additional resources will be required, and to identify potential sources of those additional funds and technical assistance. Expanded enforcement and other related efforts are not possible without additional resources.

CURRENT SITUATION AND ITS EFFECTS

CEAC's recommendation is that the City Manager develop ordinances to add safe lead paint practice requirements to the Berkeley Municipal Code (BMC) to facilitate City

enforcement of those requirements, and to authorize the recovery of City costs and imposition of penalties for violations, which CEAC asserts would result in a net savings to the City.

Staff from the Planning Director's Office, the Building and Safety Division and Toxics Management Division, the Public Health and Environmental Health Divisions of HHCS, the Public Works Department, and the City Attorney's Office met several times to consider CEAC's recommendations and possible next steps. There was consensus that it is critical to protect Berkeley community members, particularly children, from the harmful effects of lead paint chips entering the environment. The challenge is identifying and securing the resources that would be required to expand and continually improve enforcement, outreach, and education.

The City already has authority under state law and the BMC to conduct enforcement of unsafe lead practices. Next steps are to determine resources and to refine City protocols for responding to reports of potential violations.

**CURRENT AUTHORITY TO ENFORCE AND LIMITATIONS TO ENFORCEMENT:**

Enforcement Authority Under State Law

State law provides the City with broad authority to require abatement of lead paint hazards and punish unsafe lead handling practices. The State Housing Law makes it unlawful for any dwelling unit to contain "lead hazards," which are defined to include "deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment." (Health & Safety Code, § 17920.10.) Statue Housing Law expressly authorizes city building and health departments to enforce its provisions and further authorizes cities to designate a department or office to carry out enforcement of the statute. (*Id.*, §§ 17960, 17961, 17964.)

The Housing Law provides that the City may issue notices to abate violations within 30 days, or within a shorter period of time if "deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure." (Health & Safety Code, § 17980.) The City may also seek to enjoin violations of the Housing Law in court and seek court orders to abate violations of the statute. (*Id.*, §§ 17980-17982.) Violations of the Housing Law may also be prosecuted as a misdemeanor. (*Id.*, § 17995.)

Similarly, state legislation implementing the federal Residential Lead-Based Paint Hazard Reduction Act charges the State Department of Health Services with enforcement authority, which can then be delegated to the local "health department, environmental agency, housing department, or building department of any city, county, or city and county." (Health & Safety Code, § 10520, 105251(c).) Among other things, the statute requires certification for lead abatement work, and prohibits construction work "on any residential or public building in a manner that creates a lead hazard." (*Id.*,

§§ 105254-105255.) The Residential Lead-Based Paint Hazard Reduction Act authorizes the State Department of Health Services or the local enforcement agency to issue administrative orders to abate lead hazards and makes the violation of such an order an infraction punishable by a fine not to exceed \$1,000 per violation. (*Id.*, § 105256.)

#### Enforcement Authority Under BMC

Under the BMC, the Environmental Health Division, the Health Officer, the Building and Safety Division, and the centralized Code Enforcement Unit have authority to seek abatement of lead paint hazards under various City ordinances as well as the authority to seek abatement of lead paint hazards as a nuisance. (See, e.g., BMC § 11.36.020.E [Environmental Health Code, designating the “keeping of any building . . . which on account of its dilapidated condition . . . may endanger the life or health of residents therein” as a health and safety hazard subject to abatement]; BMC § 13.79.060.C.7 [tenant protection provisions requiring landlords to perform repairs to minimize exposure to lead paint]; BMC Chapter 19.40 [Berkeley Housing Code defining nuisance as “whatever is dangerous to human life or detrimental to health, as determined by the health officer; whatever renders air . . . unwholesome or detrimental to the health of human beings, as determined by the health officer].) These provisions can be enforced through abatement orders and the City’s existing administrative citation process. In addition, the City Attorney is authorized to initiate civil actions to abate public nuisances attributable to lead based hazards. (BMC §§ 1.26.010-.020.)

#### City of Emeryville Approach

CEAC recommends that Berkeley adopt an ordinance based on one used in the City of Emeryville, which adopted its Lead-Safe Renovation, Repair and Painting (RRP) Ordinance 17-004 on May 2, 2017. The Emeryville ordinance requires that any contractor working on a structure which falls under the federal Lead-Based Paint Poisoning Prevention In Certain Residential Structures requirements (40 CFR §745.82) submits a statement under penalty of perjury, including a valid RRP certificate number, that they are properly trained and certified, and will comply with safe lead-based paint practices. In this respect Emeryville’s practices match those used in Berkeley, but cite federal rather than state requirements.

In Emeryville as in Berkeley, however, no permit is required for the majority of painting activities. Painting, sanding, surface restoration, and similar maintenance-based repair activities do not require City permits. Further, many permits are issued to property owners acting as “owner-builders;” such owner-builder permits are also exempt from California State Licensing Board requirements and from EPA Lead Safe RRP certification requirements.

When Emeryville staff observe a possible violation of safe paint practice requirements, they generally refer the matter to the state for follow-up enforcement.

*Role of Alameda County Healthy Homes Program*

The Alameda County Healthy Homes Program has funding for education and testing, through an annual fee of \$10 on all residential dwellings built before 1978. Berkeley was one of the first cities to participate in Healthy Homes, which is governed by a Joint Powers Authority (JPA). Berkeley's representative on the JPA is Councilmember Wengraf.

Despite collecting annual fees from Berkeley homeowners, Healthy Homes largely does not deploy its education and testing capacity in the City, as Berkeley receives funding from the state to support its own Childhood Lead Poisoning Prevention Program, in the Public Health Division.

More generally, throughout Alameda County the program provides customized allergen reduction services and minor home repairs to improve ventilation, in-home educational visits to reinforce asthma trigger reduction and injury prevention, lead-hazard control services, and assistance with other housing-related issues that impact health. Through the *No Cost Lead Paint Repair Funds* program, property owners in Alameda County can apply to receive funding to address lead hazards (qualification based on tenant's household income).

In the past, the Healthy Homes Program provided in-home consultations to identify lead hazards in the homes of Alameda County residents, including Berkeley residents. With reductions in funding in recent years, they have decreased capacity to provide this service.

Further, while in the past Alameda County Healthy Homes Program assisted the City of Berkeley in enforcement activities pertaining to unsafe lead work practices, it no longer enforces against such violations.

*CURRENT RESOURCES, STAFFING, AND APPROACH TO ENFORCEMENT*

The City currently works in numerous ways to promote safe lead paint practices and compliance with regulations, and to investigate alleged violations.

Planning's Building and Safety Division educates every permit applicant about lead safe work practices with flyers and guides titled "Regulations on Lead," "Lead Safe During Renovation," and "Renovate Right," and by affixing stamps to all construction drawings which notify applicants of their legal responsibility for following Renovation, Repair and Painting certification practices. At permit issuance applicants are required to sign a Lead Hazard Declaration, under penalty of perjury, confirming that they understand their responsibility to implement lead-safe work practices and that that any paint disturbing activities are to be performed by or supervised by RRP certified individuals. All City Building Inspectors have attended lead safety training and received RRP certification. When violations of safe lead paint practices are observed on permitted projects by

Building or Housing Inspectors, they issue Notices of Correction to require immediate redress of any issues. All City Housing Inspectors are also RRP certified and inspect for lead safe work practices during the housing compliance inspections.

Despite these efforts, Building and Safety staff note that the RRP certification requirement is no guarantee that safe practices are actually used on the job site. Many of the largest cases of unsafe practices observed in Berkeley in recent years occurred on projects where contractors held proper certifications yet chose not to utilize the more costly safe lead paint practices.

Planning's Toxics Management Division (TMD) responds to allegations of unsafe lead paint practices, including on projects which do not require building permits (which are the majority of house painting projects). When TMD staff observe potential lead paint contamination, the painting contractor is required to provide proof of current RRP certification, and if the contractor lacks certification they are informed that paint removal must cease. Paint chips are assumed to be leaded if a home was built before 1978. The site is inspected for visible signs of paint chip contamination and, if paint chips are found, the contractor will be instructed to immediately collect all paint chips and then to properly dispose of lead containing paint chips at the Alameda County Household Hazardous Waste collection location. The contractor must also provide disposal records. After the contractor cleans the site TMD staff do a follow-up site inspection to ensure the site is free of paint debris and the contractor is continuing to follow proper RRP requirements for any further painting activities.

The City of Berkeley Public Health Division's Childhood Lead Poisoning Prevention Program (CLPPP) provides education and outreach to community members and service providers supporting children, consultations for families who are concerned with their child's blood lead level, and public health nursing case management for children whose blood lead level falls within the California Department of Public Health's defined case range (over 5 micrograms per deciliter of blood, or lower levels if found in very young children or those in publicly funded programs for low income clients). Berkeley's CLPPP also coordinates with Alameda County Healthy Homes on lead education efforts such as the *No Cost Lead Paint Repair Funds* and community outreach efforts. For families that qualify for nursing case management services, an in-home consultation is conducted during the intake process. This includes an environmental visual review for issues that could negatively impact the health of the child and family members such as flaking and peeling paint in a house built before 1978. Education and referrals are provided when health and safety concerns are identified through the visit. Referrals to City of Berkeley programs have included the Rent Stabilization Board, the Rental Housing Safety Program, and TMD.

The City of Berkeley's approach to Code Enforcement is designed to encourage voluntary compliance, working with homeowners to address violations by making consistent progress in a financially feasible manner. Berkeley has consciously chosen

not to pursue a more punitive approach, because it is itself costly to administer and usually does not result in costs being fully recovered. Further, the burdens from a more punitive approach tend also to fall hardest on long-time and/or older homeowners who are least able to afford them. This explains why the City so rarely pursues nuisance penalties already available under the Municipal Code, as it largely proves counter-productive to the goal of achieving cooperative compliance.

### **PROPOSED NEXT STEPS**

Staff does not recommend drafting and adopting the two ordinances proposed by CEAC. The City already has authority to enforce lead paint requirements, and to levy fines and penalties as described above.

However, CEAC is correct that additional work is required to clearly articulate roles and responsibilities within the City for responding to concerns regarding unsafe lead practices and providing ongoing outreach and education. Additional resources are also required if enforcement and other activities are to be expanded. Here are two examples to further illustrate this point:

- While the Planning Department's Building and Safety Division regularly enforces safe practice requirements on projects with building permits, such projects represent a small fraction of maintenance-based house painting and similar repair work throughout the City. Additional efforts are required to address painting projects that are not subject to building permits.
- While the Planning Department's Toxics Management Division and the City's Public Health Division also respond to complaints regarding unsafe lead practices, neither division has sufficient resources or staff capacity to expand existing efforts.

Coordination with the County's Healthy Homes Program and discussions of the use of its Berkeley-specific resources must also be included in the development of an effective, comprehensive approach. Since cost-recovery through fines and penalties is not a practical method of funding comprehensive City enforcement work, a more thorough examination of staffing, costs and program structure would be required, as well as identification of an adequate revenue source.

### **BACKGROUND**

At its meeting of April 25, 2017, the City Council reviewed a proposal from CEAC to expand City enforcement of unsafe lead paint practices, particularly in households where children reside. The City Manager's April 25, 2017 companion report recommended a presentation to the City Council in coordination with the Alameda County Healthy Homes Programs to help educate Council and the community on existing efforts and potential next steps.

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Companion Report: Effective Enforcement of Safe Lead-Paint Practices

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On July 18, 2017, the City Council convened a Worksession at which Healthy Homes, CEAC, and City staff were represented. Council expressed the need for the City and partners to identify opportunities for improved coordination and enforcement.

The March 26, 2019 CEAC recommendations and this companion report from the City Manager represent an effort to make progress toward identifying the necessary coordination and resources to expand enforcement of unsafe lead practices.

ENVIRONMENTAL SUSTAINABILITY

The recommendation is consistent with the City's environmental sustainability goals.

RATIONALE FOR RECOMMENDATION

The City already has authority to enforce lead paint practices under the various regulations cited above, so no new ordinance would be required.

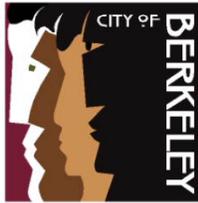
The City Manager's recommendation would set in motion steps to improve and clarify coordination with the Healthy Homes Program, identify resources and next steps required to expand enforcement and other activities, and return to Council with an update within one year.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7437  
Kelly Wallace, Interim Director, Health, Housing, and Community Services Department, 510-981-5107

Attachment 1: CEAC lead paint report, April 25, 2017

Attachment 2: City Manager lead paint Companion Report, April 25, 2017



Community Environmental Advisory Committee

ACTION CALENDAR  
April 25, 2017

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Michael Goldhaber, Chairperson, CEAC  
Subject: Berkeley Lead Poison Prevention and Control

RECOMMENDATION

Direct the City Manager to:

1. Implement an enforcement program as authorized by the state for lead paint hazards, at least when either:
  - a. A child under the age of four<sup>1</sup> occupies the residence or other building where lead paint hazard reduction practices are required; or
  - b. When a risk of soil contamination occurs as a result of failure to follow appropriate lead paint hazard reduction practices, including during remodels and demolition; and
2. Evaluate the program after one year of implementation and present the findings to the Community Environmental Advisory Commission, including total cost of the program, total value of fines enforced, and recent history of reported lead paint violations.<sup>2</sup>

SUMMARY

Lead is a very serious, permanently-damaging neurotoxin, especially for growing brains. Lead paint, banned federally only in 1978, is up to 60% pure lead. Most Berkeley housing was built before the ban. The city should enforce state standards for the proper treatment of lead paint so as to keep children safe. At present, Berkeley does not.

FISCAL IMPACTS OF RECOMMENDATION

Staff time to implement and evaluate program and costs related to enforcement. Penalties may offset some costs. In addition, CEAC would like to point out an example that Berkeley could follow:

The lead enforcement ordinance enacted by the City of San Diego implements a re-inspection fee, allowing the enforcer to assess a fee when re-inspecting a

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<sup>1</sup> A typical age for children to spend most of their play time outside the home and to be less likely to ingest dirt.

<sup>2</sup> In 2004, the City received a grant from the California Department of Health Services, Childhood Lead Poisoning Prevention Branch for funds to enforce lead hazard reduction compliance through June 30, 2006. In 2012, the City of Berkeley again received a grant to prevent and address lead hazards from unsafe renovations in Berkeley. The City of Berkeley has recognized how important lead hazard abatement is and previously applied for and received a grant for lead hazard enforcement.

building to determine compliance. Moreover, fees can be included in building permits and demolition/removal permits for the purpose of cost recovery.

#### CURRENT SITUATION AND ITS EFFECTS

At present, purely out of fiscal concerns, the City does not enforce State requirements to deal with existing lead paint in such a way as to mitigate possible harms. It is known that painters, even those trained and certified, do not always comply with the rules regarding lead. An unknown number of members of sensitive groups are therefore very likely exposed and can suffer permanent, possibly severe damage.

#### BACKGROUND

As recent national scandals remind us, such as in Flint, Michigan, lead is a neurotoxin and carcinogen that is harmful to everyone, especially infants, preschool children, and pregnant women. Even small amounts of lead can impact a child's learning ability, physical growth, and cause other long term issues. Aside from the tragic damage to children who are exposed to lead, the societal costs of lead poisoning are far from negligible. Although Oakland, California did not receive extensive media coverage, the lead contamination in some of its neighborhoods is far worse than that of Flint, Michigan.<sup>3</sup>

In 1978, lead was banned nationally in house paint, leaving 85% of Berkeley's current housing stock, which was built pre-1970, very likely to have lead. Lead paint, which is as much as 60% pure lead, remains in many older buildings; improper removal creates a lead hazard as defined by California Health and Safety Code §17920.<sup>4</sup>

State and Federal codes provide proper and safe procedures to remove lead paint and reduce exposure; these procedures help in reducing the release of lead paint dust or chips into living space and soils where children are at a high risk of being exposed to lead. California HSC 105255(c) authorizes the local enforcement agency to issue a cease and desist order if a lead hazard is determined to exist. Failure to comply with such an order is punishable with a fine not to exceed \$1,000. The local enforcement agency may also order the property owner to abate the lead hazard. Failure to comply is punishable with a fine not to exceed \$1,000. Subsequent violations are a misdemeanor punishable by \$5,000 fine or imprisonment for not more than 6 months. However, **there is currently no enforcement in the City of Berkeley** to ensure proper procedures are taken by workers, whether the workers even know about the procedures, or if the procedures are completely ignored, nor is there any type of recourse for those who report it.

In 2003, Senate Bill (SB) 460 took effect in California, amending State Housing Laws regarding lead hazards and enabling local jurisdictions to use any enforcement

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<sup>3</sup> Nathan McClintock, "Assessing soil lead contamination at multiple scales in Oakland, California: Implications for urban agriculture and environmental justice" Department of Geography, 507 McCone Hall, #4740, University of California, Berkeley, CA 94720, USA, 2012.

<sup>4</sup> Lead hazards are defined as a potential substandard building condition in California Department of Housing and Community Development Codes (California Health & Safety Code §17920.10). However, this designation of substandard-building condition should not be used as a reason to evict residents from their housing.

department to enforce the law. Local jurisdiction has not yet been exercised. Instead, residents continue to get ill from lead poisoning, as a dispute transpires between the city and state in regards to whose responsibility it is to enforce the law.

In 2004, the CEAC supported a staff report to the City Manager proposing a reduced enforcement plan for lead paint (Attachment 1). The City determined the economic environment were not conducive to initiating the program. In 2008 the CEAC evaluated the Alameda County Lead Poison Prevention Program (ACLPPP) and wrote the report intended for City Council (Attachment 2). The ACLPPP objected to the City Manager about the findings of the CEAC report. The CEAC report found the ACLPPP started as a successful program but due to underfunding, it had become ineffectual. The CEAC report did not go to Council. On October 13, 2015, the CEAC submitted a report to Council requesting a reduced lead paint enforcement program. The accompanying staff report recommended that CEAC review the county lead paint program and that Council should take no action at the time. The Council referred the report to the Agenda Committee for future scheduling.

The City of Berkeley Permit Service Center stamps all building permits that have plans with an electronic stamp that states:

*“Lead Hazard Warning: Due to the possible presence of lead-based paint, leadsafe work practices are required by law for all repairs that disturb paint in pre-1979 buildings. Failure to do so could create lead hazards that violate California Health and Safety Code, Sections 17920.10 and 105256 with potential fines for violations up to \$5,000 (Section [d] amended) or imprisonment for not more than 6 months in the county jail or both. For more information, visit [www.aclppp.org](http://www.aclppp.org)”*

Although the City is a member of a joint powers Lead Abatement District (LAD), the district has no enforcement powers, since it is funded by parcel fees, not taxes, and fees may not be used for enforcement. LAD correctly assumes that enforcement powers are within the authority of its member agencies. To explain, in 1991 the Cities of Berkeley, Alameda, and Oakland entered into an agreement to create an LAD, later joined by Emeryville. The member cities are severely underfunded<sup>5</sup> and provide outreach and education only when they receive lead hazard complaints. The City of Berkeley generally does not stop contractors from creating a lead hazard. When a lead hazard is reported as a complaint, no cease and desist orders are issued, allowing contractors and property owners to continue with violations. Rarely has any enforcement action been taken against a lead hazard using lead hazard laws. In the absence of a lead enforcement program, City inspectors who witness a lead hazard on the job are not required to abate the violation or issue any enforcement. It is crucial for the City of Berkeley to establish a local enforcement program that will reduce and ultimately prevent lead poisoning and environmental contamination.

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<sup>5</sup> Since LAD’s creation, the \$10 per pre-1978 dwelling fee has not been increased despite the Consumer Price Index rising by 76.8%. As a consequence, services provided by LAD have suffered dramatically, especially for lead abatement. LAD services are now mostly educational and are provided by Alameda County Healthy Homes Department (ACHHD). Currently, the ACHHD offers the City’s Public Health Division funding of around \$10,000 to assist the City’s Public Health division in casework management for high blood lead levels in children.

#### ENVIRONMENTAL SUSTAINABILITY

By far the most cost-effective way to prevent environmental contamination from improper removal of lead paint in renovations or demolitions is to ensure that proper procedures are followed, including by enforcement of existing state codes. Failure to employ proper procedures very likely will adversely impact the property, the soils, the workers and the tenants.

#### RATIONALE FOR RECOMMENDATION

Common sense requires the City enforce laws to prevent lead-paint contamination, especially when clear dangers to young children, who are otherwise likely to ingest lead in the course of normal play in exposed areas. Without enforcement, the natural inclination of many workers is to ignore or skirt sensible requirements in order to save time or money. The threat of enforcement and possible loss of certification or substantial fines can alter economic assumptions. Even one child's life ruined is too steep a price for saving the City enforcement costs.

#### ALTERNATIVE ACTIONS CONSIDERED

In 2003 the CEAC considered adopting these codes but the costs were considered too high. In 2008, the CEAC requested a pared-down version of the lead paint codes and council referred the recommendation to the budget process. CEAC also made a similar recommendation in 2015 and that was referred to the budget process. CEAC also considered merely posting notices of lead danger, which is already done. However, without enforcement, that is simply not enough.

On February 9, 2017, CEAC adopted this recommendation unanimously as follows: Motion/Seconded/Carried. Goldhaber/Ticconi. Ayes: Goldhaber, Varnhagen, Maslanka, Delfin-Polk and Ticconi. Noes: None. Absent: Kim Abstain: None.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Nabil Al-Hadithy, Hazardous Materials Manager, Toxics Management, 510-981-7461

#### Attachments:

1. June 4, 2004 Staff report to City Manager on Lead-Based Paint Mitigation Program.
2. February 2008 Draft CEAC report on Lead Poison Prevention Program.
3. October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control.

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Attachment 1



Planning and Development Department

June 4, 2004

MEMORANDUM

To: Philip Kamlarz, City Manager

From: Daniel S. Marks, Director of Planning and Development  
Nabil Al-Hadithy, on behalf of Lead Hazard Working Group 

Subject: Lead-Based Paint Mitigation Program

Senate Bill 460 (SB460) provides local jurisdictions with the authority to enforce codes and work practices regarding hazards from lead-based paint as established by Department of Health Services (DHS) *CCR Title 17, Housing Code* and Occupational Safety and Health codes. Implementation of these codes would create an intensive program that regulates lead hazards inside and outside buildings. The Toxics Management Division (TMD) and Health and Human Services' (HHS) Childhood Lead Poisoning Prevention program concur that lead can present a highly significant risk. HHS has an independent program that responds to children with known high lead blood levels. TMD has a program that responds to complaints prior to detection of high lead blood levels. The current TMD level of response, however, is far below what can be provided pursuant to SB460. As described in more detail below, while staff would like to do more, existing staff resources preclude establishment of a new program and increased enforcement. We would like to meet with you to discuss this further, after which a report can be prepared for the Community Environmental Advisory Commission and Councilmember Betty Olds (liaison with lead hazard joint powers association).

The TMD helped organize interdepartmental meetings to discuss the feasibility of responding to SB460. During these meetings, the City Attorney's office clarified that SB460 does not require local jurisdictions to conduct enforcement on lead hazards; rather it grants them authority, should the City choose to pursue this program.

The TMD analyzed the requirements for a lead-based paint mitigation program and outlined the attached detailed work program, which identifies response and enforcement responsibilities for staff from the following divisions and departments: TMD, Building and Safety, HHS, Housing, and Code Enforcement. The attached outline is significantly less than SB460 proposes, but meets the basic requirements of the SB460 program. Essentially, it does not require staff to purchase expensive equipment and be certified in various activities. The key to the proposed staff approach was to spread response and enforcement responsibilities between existing field staff, rather than have one department take on the entire program. Lead hazards, such as paint removal in violation of State codes, could be recognized in the field, stop work orders issued, information provided, and Notices of Violation issued if necessary by any field staff from the agencies listed above. Attachment 1 provides more information about the impact of the program to individual agencies.

Lead-Based Paint Mitigation Program  
Page 2

June 4, 2004

The estimated cost of this program in staff time is \$80,000 to \$120,000. This is equivalent to about 600 responses annually, some of which will take no more than 30 minutes to resolve, others will take 10 hours with enforcement. Existing staff cannot absorb the added work that would be generated by the new program. We are very concerned about taking on additional responsibilities that we believe we cannot fully carry out, and this expanded program would increase existing workloads. While we will continue to respond to complaints as much as possible, the proposed loss of 1 FTE to TMD in FY06 may mean that the current level of lead related responses, which is funded from the General Fund, will be curtailed in the future.

While the lead-hazard working group has concluded the program cannot be absorbed at this time, it recommends revisiting the issue if funds become available. In addition, we can provide more information about lead-based paint hazards to contractors and homeowners at the Permit Service Center.

The City's Childhood Lead Poisoning Prevention program in HHS will continue to facilitate lab reporting requirements as mandated by SB460 as well as help coordinate remediation and enforcement activities on cases that are associated with a child who has lead poisoning. HHS has also received a grant from DHS to develop the framework for a Lead Hazard Reduction Compliance and Enforcement Program. The first year of the three-year grant (\$15,000/year) is to fund planning a program for increased enforcement related to children with elevated blood levels.

SB460 Working Group included HHS, Housing, City Attorney, Planning, Code Enforcement, Building & Safety, and Toxics Management. Contacts include Vicki Alexander, Lyn Dailey, Alex Schneider, Wendy Cosin, Nabil Al-Hadithy, Drew Lerer, Greg Daniels, Joan MacQuarrie, Zach Cowan, and Carlos Romo.

**ATTACHMENT 1**

**Lead Based Paint Mitigation Program - Cost Impact to City of Berkeley**

**Housing.** It is anticipated that Housing may be adversely impacted when a tenant landlord dispute requires greater time to resolve than other lead-hazard responses. The number of complaints will depend on the amount of outreach and education on this subject. It is important to inform tenants and landlords of the limited scope of this program. Clearance testing and remediation will not normally be required and most cases will end when the housing inspector has agreed to a visual clean up of the hazard.

**Code Enforcement.** The additional work on Code Enforcement is not expected to be significant. Most cases will be identified in the field or by complaint response. Most of these cases will not be high risk and can be closed after a visual inspection.

**Permit Service Center.** There will be a new signature line required for most building contracts and in addition, the PSC will provide the developer with best management and safe work guidelines as well as a list of certified contractors. The additional workload on PSC is thus limited for a couple of minutes per building permit.

**Building & Safety.** When an inspector observes a lead hazard, it will not usually be a high-risk hazard and hence can be corrected quickly. If a hazard is observed during construction and also involves children, then a high-risk condition may be present. In such cases, the Building Official may be required to issue a stop work order and a notice of substandard conditions and coordinate with PHD, EHD, and Toxics.

**Environmental Health.** The EHD will be impacted when division field inspectors observe a lead hazard in their course of work. These hazards, handled as visual corrections, will involve additional work as will referrals from another agencies which have already identified as a high-risk situation, requiring higher standards for clean up or clearance testing.

**Public Health.** The PHD will incur more work as additional sites where children are affected by lead will be identified.

**Toxics Management.** TMD will correct most lead hazards to a visual standard in industry in the course of its inspections. Where TMD will incur more work is referrals of high-risk sites. These will be managed with higher clearance testing and possibly clean up of surfaces and soils. TMD will also get its usual complaint response for such items. TMD will also be providing technical assistance for other departments. Finally, TMD will provide the necessary leaflets for identification of lead hazards, best management and safe work practices and some training for other departments.

**City Attorney.** Assistance with write-up of new lead-hazard municipal code based on SB460.

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## **ATTACHMENT 2**

### **Senate Bill 460: Draft Outline of City of Berkeley Lead Based Paint Mitigation Program**

#### **Background**

The Childhood Lead Poisoning Prevention programs in place at the City of Berkeley and in Alameda County currently focus primarily on intervention when the Public Health Division (PHD) establishes a child lead poisoning case. SB 460 was written to give local jurisdictions the ability act proactively by preventing lead hazards from becoming lead poisoning cases. The City of Berkeley has had a limited lead hazard response for some years, through the Toxics Management Division. This document outlines an SB460 Lead Hazard Enforcement program that involves Health, Planning, Housing and Enforcement (481) departments.

Over the last year, several departments have met and agreed that even in an era of shrinking resources the pollution prevention goals of a lead enforcement program are necessary to consider. The goal is not to disproportionately impact any one division. This compromise creates a simple program where a large number of field staff and front desk staff, with minimal training, can provide education, mitigations and issue citations.

Code Enforcement will act as lead enforcement coordinating agency; but not all complaints or enforcements will be forwarded to Code Enforcement. Any cooperating agency taking a complaint call or finding a violation during their normal course of business is empowered to take corrective or enforcement actions and not involve Code Enforcement.

The Lead Enforcement program will require adoption of new municipal codes that will reference the relevant state codes and regulations. The proposed codes will deviate from the state in some areas where the City needs to simplify the program, such as assuming that all construction older than 1978 contains lead paint. These codes will be enforced administratively in most cases.

This proposed program outlined below attempts to break down the work expected for various City agencies.

#### **Lead Hazard Identification:**

Deteriorating lead based paint, lead contaminated dust, lead contaminated soil, or disturbing lead based paint without using safe work practices constitutes a lead hazard.

*For practical purposes, the City assumes that all structures built before 1978 contain lead-based paint. A contractor or property owner who disputes this may choose to conduct a lead paint investigation by state certified third party inspector/assessor.*

A lead hazard is present if any of the following occurs:

1. Uncontained lead chips or dust.
2. Use of the following prohibited methods:
  - Pressure washing without proper containment

~~Page 16 of 131~~

Open flame burning or torching  
Machine sanding or grinding without a HEPA exhaust tool  
Abrasive blasting or sandblasting  
Dry scraping

3. Work during adverse conditions which prohibit containment of lead chips and dust.
4. Work area not cleaned at end of each shift.

An inspector may issue a notice of violation (NOV) if a lead hazard is observed.

**Enforcement Response**

A. Work on pre-1978 owner-occupied properties by homeowner.

1. Primarily complaint driven.
  2. Must implement safe work practices according to BMPs.
  3. Must not create impact on children, pregnant women, neighbors or right of way.

*Inspector will distribute safe work practice leaflet and advise homeowner on corrections. Owner is required to clean up to a visual standard, see definition. Paint contaminated waste must be properly disposed of at Household Hazardous Waste facility and documentation made available to inspectors upon request.*

B. Exterior Work on Non-Owner Occupied Dwellings

1. Windows in work area must be covered with double-ply 6 mm poly to prevent dust entering building;
2. Occupants must be notified prior to commencement of work;
3. At least one lead safe entry way must be made available to occupants;
4. Workers must use proper personal protective equipment (PPE).
5. If the dwelling is a housing unit that receives federal assistance than the appropriate HUD Lead Safe Housing Rules must be followed.

*Inspector is required to issue an NOV if violations of the above are observed. In most cases, this requires a stop-work order issued by the inspector observing the violation. Penalties can be imposed if the violation is egregious or recurring. Worker protection issues should be referred to Cal OSHA.*

C. Interior Work on Non-Owner Occupied Property

1. Post "No Entry" signage in appropriate language
2. Close off work area by covering entryways with 6mm poly.
3. Remove furniture from work area.
4. Any item that cannot be removed should be wrapped in 6mm poly and sealed with duct tape.
5. Cover all carpets with 6mm poly.
6. Turn off all forced air HVAC.
7. Cover vents with 6mm poly.
8. Cover any gaps between boards or pipes in work area.
9. Clean up by HEPA vacuuming and triple rinse any solid non-porous surface with detergent and water.

10. Dispose of properly collected waste to household hazardous waste or hazardous waste contractor.

11. Retain shipping or other proof of proper disposal. Make available for City inspector on demand.

*If interior work is not carried out in the manner above, a stop work order in addition to the inspector issuing a NOV, will be ordered. The NOV will outline the work and timeline for corrections. For egregious or repeat violations, the inspector may impose a penalty*

**D. Existing Lead Hazard Conditions (Deteriorating Paint) - Rentals**

1. Inspectors will take action if they identify deteriorated paint in excess of 2 square feet in the interior, or 20 square feet on the exterior of a pre-1979 structure. Photograph for the record.

*In a dispute, the property owner may want to conduct a 3<sup>rd</sup> party investigation to determine if lead paint exists. If lead paint exists and a hazard is evident, then an NOV is issued and the owner must abate the hazard. Inspector may cite owners with egregious or recurring violations.*

If the violation is significant and if children are present the site should be referred to the TMD, Environmental Health Division (EHD), PHD, and the Building Official for a review of the case and necessary follow up.

*Serious visual contamination may require relocation and clearance before the dwelling can be reoccupied.*

**Notice of Violation**

The inspector will issue a Notice of Violation (NOV) to specify work to be done. An NOV will indicate the violation(s), and the corrective actions necessary and the time to comply. This suggests that there is follow-up by the inspector to confirm the corrections are done in a timely manner. The NOV may specify the requirement for the use of a state certified lead abatement contractor, the implementation of safe work practices, proper clean up procedures, and clearance testing. An NOV can be pre-formatted and check boxes will indicate the specific actions required. Alternatively, an NOV can be a written document to the violator. Failure to implement the NOV requirements within the specified time limit can result in citation and penalty.

**Visual Clearance**

Before completion of a job the inspector will insure that no paint debris, chips or dust is visible to the naked eye. If a neighbor's property has been contaminated then the inspector will use his/her judgment to discern between the responsible party's contamination and pre-existing contamination.

**Clearance Testing**

Interior clearance testing is a high priority activity for health professionals where there is a high risk of exposure to at risk individuals (pregnant women and children). Where a high risk

has been determined, clearance testing is recommended. The City may require a third party state certified inspector/assessor or clearance testing technician to conduct such tests. For purposes of this program, a clean up to visual clean up can be adopted for most sites that appear to be lower risk. Higher risk sites, such as a multiunit residential dwelling with children or where the lead paint has been powdered, will be referred to HHS or TMD for review and may require clearance testing.

**Other Duties**

**A. Permit Service Center**

The PSC will add a sign-off for contractors on permits that may create lead hazards such as demolition work. The contractor will be advised of the City's requirements and will provide best management practices (BMPs) and list of certified lead paint or other appropriate contractors.

**B. TMD, Building Official, and EHD.**

TMD, Building Official, and EHD would take on high risk lead enforcement referrals from other departments to consider requirements for clean up, clearance testing, and appropriate enforcement avenues. The City will use the services of the County lead program, in-house expertise, as well as third party consultants to make these determinations. Responsible party pays for third party consultants.

**Questions**

A. Should City invest in XRF? No. Even though this tool will provide a quick and cheap turnover for lead determination, it was determined that the staff time for operating and maintaining is too costly. The responsible party would either assume lead is present in a pre-1978 property or conduct a lead investigation by a state certified third party inspector.

Note: TMD posed this question to the Alameda County Childhood Lead Poisoning Prevention Program and the EHD posed the question to several county Environmental Health Divisions. They strongly advised against the city purchase of an XRF. The California Department of Health services has yet to authorize the use of an XRF to conduct clearance testing or soil sampling.

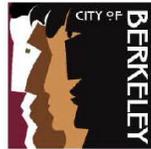
B. Should City invest in HEPA vacuum for the Tool Lending Library? No. The City should not purchase and maintain HEPA vacuums. Again this gives a great service to the community but it requires training and proper disposal of lead dust.

Note: Alameda County provides this service currently to the Berkeley Community. At this time there is no waiting period for their use. They currently maintain 8 HEPA vacuums to loan to the public.

C. Under what conditions, if any, shall the City require a lead certified painting contractor or certified inspector/assessor to conduct clearance sampling?

TMD in cooperation with PHD and EHD will make this decision on a case-by-case basis. Factors that influence the need for clearance is if children or pregnant woman are occupants, the extent of the contamination and the compliance history of the violator.

Attachment 2



Community Environmental Advisory Commission

ACTION CALENDAR  
February, 2008

To: Honorable Mayor and  
Members of the City Council

From: Community Environmental Advisory Commission (CEAC)

Submitted by: Nabil A Al-Hadithy, Secretary, CEAC

Subject: City of Berkeley Lead Poison Prevention Program

RECOMMENDATION

CEAC recommends that :

- i. City Manager evaluates the effectiveness of the County Lead Poison Prevention Program (ACLPPP) and prepares a report to Council. If the report finds the program ineffective, the City must consider an alternative program such as a City lead poison prevention, education, and enforcement program in the Toxics Management Division.
- ii. Council approve a half time equivalent position in the mid term budget for Toxics Management Division to re-establish the Lead Poison Prevention Program and to service equipment to test for lead in toys, lunchboxes etc.

CURRENT SITUATION AND ITS EFFECTS

Millions of children have some elevated lead level due to exposure from lead paint in homes older than 1979. Poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death. Health experts say there is no lower acceptable level of lead body burden.

City staff and the CEAC have studied the ACLPP Program over the past two years and found the services offered to the City have declined severely because of the Howard Jarvis proposition (Prop 218). The table below shows the decreased level of services provided to the City, based on input from the Alameda County LPPP.

The Joint Powers Association (JPA) exists only for the Cities of Oakland, Emeryville, Berkeley, and Alameda. The rest of county does not pay a \$10 per parcel as a property tax. The taxes collected since 1991 have not increased with cost of living and no longer pay for a reasonable level of service.

The JPA only requires a notification from the City to withdraw from the agreement.

City Lead Poison Prevention Program  
 Page 2 of 3

February , 2008

CSA Funded Services in City of Berkeley	FY 03-04 Provided		FY 04-05 Provided		FY 05-06 Provided	FY 06-07 Projected Without Fee Increase
Comprehensive Site Visit with Lead Evaluation and Lab Analysis	184		134- error		Eliminated	Eliminated
	101 Risk Asses.	83 Clearances.	47 Risk Asses.	91 Clearance	Eliminated	
Basic Site Visit and/or Test Kit (In House Consultation)	N/A		N/A		110	At Risk
Lead Safe Painting Prep Kit	410		135		66	At Risk
Lead Safe Painting Class	3		2		3	At Risk
Technical Assistance to property Owners with lead Poisoned child*	25		32		32	At Risk

\* Represents the total number for all four CSA Cities. Risk Asses is the performance of a detailed risk assessment. Clearances refers to work provided to clear lead paint. At Risk means that the services are only provided to children identified in the Health & Human Services as having high blood lead.

**BACKGROUND**

The adverse health effects of lead on children are one of the most severe public health impacts Berkeley faces. Berkeley has an older housing stock and the majority of housing units are considered to have some lead paint. Improper management or removal of the paint, or even natural aging and erosion of the paint, results in exposure to children and the environment. Normal weathering of outdoor lead paint results in leaching of lead into garden soils. Many homes have lead levels in soils within 3 feet of a lead paint exterior at or above hazardous waste levels. These soils present additional health impacts to children and adults.

In 2003, the legislature passed a law to make sure that children were protected from lead paint. This law allows environmental and other agencies to issue a cease and desist order and enforce against anyone creating a lead health hazard. It also allows municipalities to abate or otherwise correct the hazard. The City considered this law but decided on a fiscal conservative decision to delay the decision until the City budget improved. Staff has not considered this vital human health problem since 2003.

Recently, ACLPPP, assisted by member cities, approved hiring of a contractor to conduct a survey to gauge the support for two options that would increase the fee from \$10, per year per unit to \$30. The findings were that a \$30 increase was unlikely to win a 66.7% vote of the electorate.

City Lead Poison Prevention Program  
Page 3 of 3

February , 2008

On March 1, 2007, the Community Environmental Advisory Commission voted to fund a ¼ FTE to reestablish the Lead Poison Prevention Program Toxics Management Division that was cut over the past few years as a general fund cost saving.

The CEAC action was delayed to take input from council members. We received additional input to address other lead poison issues such as toxic toys. Since most inexpensive test sticks that test for lead are based on a colorimetric evaluation of a chemical reaction, it has been generally assumed that these tools do not work. Hence, we updated the CEAC position to include equipment for TMD staff and enough time to test non paint toxic issues. This requires an additional half FTE to include use of equipment to test toys, lunchboxes etc.

RATIONALE FOR RECOMMENDATION

The City has not voluntarily returned to the lead poison prevention issues it initiated in 2003 and we are learning that lead poison is much worse for human health and is now found in many more media, other than older paint. Waiting any longer would be to accept the adverse health effects on children and others.

FISCAL IMPACT

The cost of equipment and half time position would require a restoration of \$65,000 to TMD from General Funds.

### Attachment 3

October 13, 2015 CEAC and Staff reports on Berkeley Lead Poison Prevention and Control (Items 10a and 10b from the City Council Regular Meeting Agenda):

#### Action Calendar – New Business

10. a. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10a\\_Berkeley\\_Lead\\_Poison\\_CEAC.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10a_Berkeley_Lead_Poison_CEAC.aspx) )

**From: Community Environmental Advisory Commission**

**Recommendation:** Adopt a Resolution directing the City Manager to (1) implement an enforcement program per SB 460 of 2002 for lead paint hazards; (2) annually remind pediatricians and other medical providers to regularly test children between the ages of one and six for blood lead levels, and to report all blood lead levels above 5 microgram per deciliter, or if there is an increase of 1 microgram per deciliter to City Public Health for further investigation; and (3) evaluate the program after a year of implementation and present the findings to the Community Environmental Advisory Commission (CEAC).

**Financial Implications:** See report

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7400

b. [Berkeley Lead Poison Prevention and Control](#)

( [http://www.cityofberkeley.info/Clerk/City\\_Council/2015/10\\_Oct/Documents/2015-10-13\\_Item\\_10b\\_Berkeley\\_Lead\\_Poison\\_CM.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/10_Oct/Documents/2015-10-13_Item_10b_Berkeley_Lead_Poison_CM.aspx) )

**From: City Manager**

**Recommendation:** Refer to the Community Environmental Advisory Commission (CEAC) a request to conduct a thorough review of the Alameda County Healthy Homes Department (ACHHD) Lead Poisoning Prevention Program performance measures and budget for 2010-2015 for their services in Berkeley as well as their projected activities and budget for the 2015/16 year. Take no action at this time on CEAC's recommendation in the October 13, 2015 report to implement an enforcement program per SB 460 of 2002 for lead paint hazards. In lieu of CEAC's second recommendation:

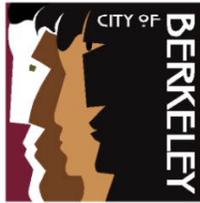
A. Annually remind Berkeley health care providers of the importance of regularly screening children between the ages of 6 months and 6 years for risk of lead poisoning, and obtaining blood lead levels at 12 and 24 months of age for those at risk, in accordance with guidelines of the American Academy of Pediatrics (AAP), Centers for Disease Control and Prevention (CDC), and California Department of Public Health (CDPH) Childhood Lead Poisoning Prevention Branch (CLPPB).

B. Continue providing public health lead poisoning prevention information, education, and evaluation by a Public Health Nurse for families of all children whose blood lead level exceeds the CDC's reference level (currently 5 µg/dL).

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400





Office of the City Manager

ACTION CALENDAR  
April 25, 2017

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Carol Johnson, Director, Planning and Development Department  
Subject: Companion Report: Berkeley Lead Poison Prevention and Control

RECOMMENDATION

Refer to the City Manager the proposal from the Community Environmental Advisory Commission (CEAC) to evaluate the costs and feasibility of the lead paint enforcement proposal. In addition, staff will communicate with the Alameda County Healthy Homes Department on alternative ways to address enforcement and cleanup associated with lead paint hazards, and will work with Alameda County Healthy Homes Department to schedule a presentation before the City Council.

FISCAL IMPACTS OF RECOMMENDATION

The proposal is complex and not clearly defined. Staff need time to evaluate a cost effective program. Staff will report back to Council and CEAC within 90 days.

CURRENT SITUATION AND ITS EFFECTS

The CEAC proposes to establish an enforcement program for lead paint hazards, which are recognized as an important public health concern. Currently, lead paint violations are being handled either as a complaint response where staff give information and advice, or during inspections. Inspection staff has training on lead paint hazards and the City issues notices on permits to comply with lead paint laws.

The City rarely takes enforcement action on lead paint violators. Alameda County Healthy Homes Department is not authorized to enforce lead paint violations, and the U.S. Environmental Protection Agency (EPA) only issues violations to large contractors in the Bay Area.

The City relies on technical assistance and educational materials from the Alameda County Healthy Homes Department. If inspection staff finds lead paint hazards, they identify the hazard and require corrections during building and housing inspections. Lead paint enforcement is rarely done by the City or the EPA. The Alameda County Healthy Homes Department runs a lead paint advisory and assistance program funded by a special assessment for each unit in the cities of Oakland, Berkeley, Alameda and Emeryville, which was authorized by a joint powers agreement enacted in 1991.

The Alameda County Lead Poisoning Prevention Program was created in 1991 as a joint powers authority, prior to the state lead paint codes of SB 460 of 2002. Since 1991, the County program has not increased the \$10 per residential unit assessment fee to keep up with inflation.

On March 7, 2017 the Healthy Homes Department of Alameda County proposed to the City of Emeryville a simple enforcement process that does not require collection of evidence and laboratory analyses. The County proposes that a contractor without a Renovation, Repair and Painting Certification (RRP), that is working on a home constructed prior to 1979, will be in immediate violation and subject to a City citation. A contractor may choose to take representative samples of paint from the pre-1979 home to determine that it is not leaded paint. Homeowners are encouraged to attend RRP classes, but are not required to hold an RRP certification. Berkeley could adopt a similar ordinance to make it easier to issue citations to contractors for violations of these requirements.

#### BACKGROUND

The CEAC proposal would have staff take enforcement action if a child aged four years or less resides at the location of the lead paint hazard, to limit the impact on staff time. In general, the at-risk population from lead exposure is not limited to children aged four and under. Pregnant women, children under six, and people with compromised immunity such as the sick and elderly are all at risk.

Staff requests time to review appropriate enforcement actions and make recommendations on appropriate parameters for enforcement.

#### ENVIRONMENTAL SUSTAINABILITY

A properly outlined lead paint enforcement protocol will result better compliance with state laws and this will contribute to a continuation of the reduction in childhood lead poisoning.

#### RATIONALE FOR RECOMMENDATION

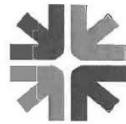
While well-motivated, the CEAC recommendation for an immediate penalties for lead paint violations requires more analysis, within the larger context of the City budget and referral prioritization processes. To enact any such program, the City would need better defined roles among City departments which could potentially conduct enforcement activities, a fully developed program budget, and an enacted fee structure to allow the City to recoup its costs.

#### CONTACT PERSON

Carol Johnson, Director, Planning and Development Department, 510-981-7401  
Nabil Al-Hadithy, Hazardous Materials Manager, Planning and Development, 510 981 7461

#### Attachment:

1. Alameda County Proposal for Lead Enforcement Ordinance to the City of Emeryville, March 7, 2017.



City of Emeryville  
CALIFORNIA

MEMORANDUM

**DATE:** March 7, 2017  
**TO:** Carolyn Lehr, City Manager  
**FROM:** Vice Mayor John J. Bauters  
Sheri Hartz, City Clerk  
**SUBJECT:** Discussion Regarding Whether To Consider The Addition Of A  
Proposed Ordinance Related To Lead Safety

**RECOMMENDATION**

This item has been placed on the agenda at the request of Vice Mayor Bauters and is for discussion only. Following its discussion and consideration, Council may either take no action or may direct staff to bring the item forward for action at a subsequent meeting. Since the potential action contemplates either a new ordinance or the amendment of an existing ordinance, it would come back for a first reading and introduction at a future meeting to be determined, and then for second reading and adoption at the meeting following that.

**BACKGROUND**

At the City Council regular meeting on January 17, 2017, Vice Mayor Bauters requested and received majority support to add a presentation on lead safety by the Alameda County Healthy Homes Department to the March 7<sup>th</sup> agenda. He also requested a companion item for the Council to consider and determine whether it wishes to direct staff to prepare an ordinance or ordinance amendment related to lead safety regulations. This is that item.

**DISCUSSION**

As stated above, this item is meant for discussion only and no staff analysis has been performed at this time. Vice Mayor Bauters has submitted draft language that he proposes could be added to the Emeryville Municipal Code, along with other materials that are included as attachments to this staff report.

Included with the draft language submitted are some additional points that Vice Mayor Bauters requests be incorporated into the legislation, pending Council's concurrence.

If approved, Vice Mayor Bauters is recommending that the new requirements not be implemented for one year in order to allow sufficient time for owners of subject properties to be notified and provided with information, to ensure that any projects

Discussion - Proposed Ordinance Related To Lead Safety  
City Council Meeting | March 7, 2017  
Page 2 of 2

already in process are not delayed, and to give renovators the opportunity to get the necessary training in advance, if desired.

The draft ordinance references the Code of Federal Regulations where the full rule is located. The section that applies is 40 CFR 745, Part E, which can be found here:

[40 CFR Part 745, Subpart E - Residential Property Renovation](#)

**FISCAL IMPACT**

Fiscal impact, if any, is not known at this time.

**PREPARED BY:** Sheri Hartz, City Clerk

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Carolyn Lehr, City Manager

**ATTACHMENTS**

1. 2014 Letter from the EPA, Region 9, to local jurisdictions regarding the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule
2. RRP Certified Renovator Training Information
3. Draft Language for possible inclusion into Emeryville's Municipal Code

Proposed addition to the Emeryville Municipal Code:

**Lead-Safe Renovation, Repair and Painting Certification Required.** No renovation of a building, facility or other structure shall be initiated within the city if such renovation is regulated under 40 CFR §745.82, unless the applicant for the renovation complies with all of the following:

- (1) submits and complies with a sworn written statement, on a form prescribed by the Building Code Inspector, stating that:
  - a. individuals performing the renovation are properly trained in accordance with 40 CFR Part 745, Subpart E;
  - b. renovators and firms performing the renovation are certified in accordance with 40 CFR Part 745, Subpart E; and
  - c. the work practices in 40 CFR 745.85 will be followed during the renovation; and
- (2) submits a copy of the certifications issued to renovators and firms performing renovations pursuant to 40 CFR Part 745, Subpart E.

Additional Recommendations:

1. Delay the date of effectiveness to May 1, 2018. The purpose would be to allow ample time for property owners, contractors and others impacted by this legislation to acquire any necessary certification prior to putting forth a project application.
2. Provide explicitly that any application for a renovation of a structure covered by the ordinance that was received prior to the date of effectiveness be exempted from this requirement, even if the actual renovation itself takes place after the date of effectiveness.
3. Require that the Building & Planning Division post and share information about this ordinance in City Hall, with relevant associations or trades, and with any person who inquires about renovations to a structure subject to the ordinance between the date of adoption and the date of effectiveness.
4. Instruct staff to mail a courtesy copy of the ordinance to the registered property owners of all residential structures constructed prior to 1978 within 120 days of adoption.
5. Coordinate 1-2 additional RRP Trainings with the Alameda County Healthy Homes Department so that interested parties can receive this training when the ordinance takes effect and help publicize the training on city media.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Building Official

Dear

On April 22, 2008, the U.S. Environmental Protection Agency (EPA) published a final regulation, the Lead-Based Paint Renovation, Repair and Painting (RRP) Rule, aimed at protecting the public from lead-based paint hazards associated with renovation, repair and painting activities. These activities can create hazardous lead dust when surfaces with lead paint, even from many decades ago, are disturbed. The rule requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized state), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. These requirements became fully effective April 22, 2010.

EPA and the 14 authorized states have certified more than 135,000 renovation firms that are qualified to conduct lead-safe renovations. EPA has accredited 566 RRP training providers, who have trained more than 600,000 individuals in lead-safe work practices. Despite these successes, EPA is concerned that there is a lack of public awareness of the benefits and requirements of the regulation. Many homeowners and property owners are still unaware of the dangers of lead contaminated dust that renovations can generate and many contractors continue to operate out of compliance with the regulation.

One initiative that EPA has begun to address this issue is to work with local building permitting officials to educate them about the rule and to seek their assistance in increasing compliance with the regulation. EPA is requesting permitting officials to require proof of RRP firm certification as a condition of issuing a permit for renovations of homes built before 1978. This simple requirement for renovators seeking permits to conduct renovations in pre-1978 housing benefits both consumers and contractors. Contractors benefit by our providing a fair and level playing field for contractors who are complying with the law by being certified. Homeowners and their families benefit by the reduction of lead contaminated dust generated during renovations.

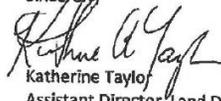
It is important to note that EPA is not requesting that building codes be updated to include the lead-safe work practices from the EPA RRP regulation, nor is EPA asking code officials to enforce or interpret the EPA RRP regulations. EPA is solely responsible for providing detailed guidance to contractors who are seeking training, certification or clarifications on when and how the RRP rule is applicable.

One way to easily alert contractors to this requirement is to provide an additional box to check on an application for a permit to renovate, repair or paint a pre-1978 residence, childcare facility or preschool, which requests verification of a contractor's certified status before issuing a permit.

*Printed on Recycled Paper*

Please let us know whether you are interested in working with us on this matter. Feel free to call our Regional Lead Coordinator, Nancy Kain (415-947-4280) or [kain.nancy@epa.gov](mailto:kain.nancy@epa.gov), with your comments and questions. Thank you for your consideration.

Sincerely,



Katherine Taylor  
Assistant Director, Land Division

