
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 6, 2008

IBA Report Number: 08-22

City Council Docket Date: March 11, 2008

Item Number: 330 and 331

Lead Hazard Prevention and Control Ordinance

OVERVIEW

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

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

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

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

FISCAL/POLICY DISCUSSION

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

Both of the proposed ordinances would do the following:

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

[SIGNED]

Tom Haynes
Fiscal & Policy Analyst

[SIGNED]

APPROVED: Andrea Tevlin
Independent Budget Analyst