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January 3, 2019

The Honorable Mayor Toni N. Harp  
City of New Haven  
165 Church Street  
New Haven, CT 06510

Dear Mayor Harp,

We write to request that you appoint a lead poisoning advisory committee, with the approval of the Board of Alders, to provide direction and oversight to the Health Department regarding inadequacies and deficiencies in the Health Department's policy and practice for the protection of children from life-long cognitive, neurological, and behavioral damages caused by lead paint poisoning.

Section 16-67 of the City Code requires that the Mayor appoint such a committee, with the Board of Alders' approval, with ten members including health care providers, health department officials, employees of other city agencies, and representatives of legal services and human resources. The requirement for the advisory committee was first enacted in 1974 with the stated purpose to advise and consult with the Director of the Board of Health. In 1990, the original advisory committee requirement was deleted and replaced by a far more specific and meaningful directive and has since been amended to specifically reference the Livable City Initiative. In its present form, the law states:

The mayor shall appoint a lead poisoning advisory committee with the board of aldermen's approval. The committee shall advance the development and adoption of policies, programs and procedures that will result in the article's effective enforcement. The committee shall serve as a vehicle to promote and coordinate lead poisoning prevention and abatement efforts involving health care providers, the health department, the housing department, the building division of the Livable City Initiative and the judicial system. The committee shall consist of ten (10) members including health care providers, health department officials, representatives of the city's Livable City Initiative and its building division, and representatives of legal services and human resources. The advisory committee shall elect a chairperson who will preside at its meetings. See attachment.

To date, this legally required lead poisoning advisory committee has neither been appointed, nor approved by the Board of Alders. It is needed now, more than ever, to address serious operational problems within that New Haven Health Department. We note that the city law requires the participation of "legal services." As such, the plain language and aldermanic intent was to include a representative of an organization that provides free legal aid to low income

individuals to enable equal access to justice and policy advocacy for the voices and perspectives of those members of the community most impacted by lead poisoning. We would be honored to be appointed to fulfill this position.

The public record is clear that there are widespread inadequacies and inefficiencies in the Health Department policy and protocols, including:

- Utilizing paper files, rather than computerized records;
- Not utilizing proper protocols to reach families after being notified of a child with lead poisoning;
- Not conducting timely inspections when a child has been identified as lead poisoned;
- Not conducting thorough inspections which by law must include: the interior of the unit, interior common areas, the exterior, and the soil;
- Not requiring landlords to post notices in common areas once lead hazards have been identified in any unit;

Not requiring inspection of other units in the premises in which

- Not requiring landlords to submit timely lead abatement plans for the proper abatement of the lead hazards;
- Not requiring landlords to complete abatement in a timely fashion;
- Not utilizing fines and criminal prosecution to ensure timely abatement by landlords;
- Not relocating lead poisoned children to lead safe premises when abatement can not be completed expeditiously;
- Not taking over and ensuring completion of abatement when landlord compliance is not forthcoming;
- Not processing efficiently applications for federal abatement funds;
- Not conducting proper and accurate clearances of post-abatement lead hazards;
- Not ensuring that properties are not re-rented without proper abatement; and
- Not posting lead management plans on the land record.

The seriousness of the problem is undeniable. Lead poisoning at the levels protected by city law, i.e., the Centers for Disease Control standard of 5 µg/dl, causes permanent cognitive, neurological, and behavioral health damage to young children. Tragically, lead paint poisoning predominantly harms low-income children of color.

The scope of the problem is alarming. Although we do not have access to the data which should be fully reviewed by the advisory committee, the public record demonstrates the City's failure to protect children at every stage of the lead abatement process. We believe that in 2017, for example, approximately 200 children in New Haven were reported to the Health Department as having lead poisoning and that required abatement of lead hazards pursuant to city law. City clerk records indicate that the Health Department failed to inspect all of the homes of these children and has posted releases indicating abatement of only around one quarter of these properties.

In response to the revelation of these systemic deficiencies, New Haven Legal Assistance (NHLAA) suggested that the City establish a working group to collaboratively fulfill a joint mission to protect children by providing guidance and oversight to the Health Department. NHLAA obtained a commitment from both a nationally renowned non-profit organization specializing in lead poisoning policy and prevention best practices and Columbia University Professor Emily Benfer, the nation's preeminent legal scholar on lead policy and practice, to volunteer time to serve on such working group. Special Assistant to the Mayor Michael Harris convened a meeting of Chief of Staff Tomas Reyes, Community Services Administration Director Dr. Dakibu Mulay, Health Department Director Dr. Byron Kennedy, Catherine Klinger and Wesley Stewart of the Green and Health Homes Initiative, and myself. This working group seems to have stalled as Michael Harris has departed your administration.

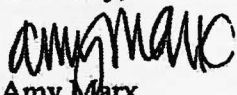
As you are aware, NHLAA has represented five families before three different judges, each of whom issued judicial orders to protect young children from irreparable harm from lead poisoning as required by city law. In each case, the judges ordered abatement of the children's apartments and relocation of the children to hotels, admonishing the Health Department to do better to protect our children.

We firmly believe that it is far more constructive to spend time, and City resources, resolving important issues collaboratively and seeking to avoid future litigation for other families. We are optimistic that a working group of professionals knowledgeable about lead paint poisoning and abatement will not only fix the problems outlined above, but we could even collaborate to advance a lead safety program that could stand out as one of the best in the nation.

We are copying this letter to President Tyisha Walker-Myers, the President of the Board of Alders, for her guidance and participation, given that the Board of Alders set in place the requirement for the advisory committee and the composition of such committee must be approved by the Board of Alders. We are also sharing this letter with the Aldermanic Chairs of the City Services and Environmental Policy Committee, Human Services Committee, and Public Safety Committee as background for a forthcoming request for an aldermanic workshop for further discussion of this matter.

We look forward to hearing from you.

Sincerely,

  
Amy Marx  
Attorney-at-Law

cc. John Rose, Corporation Counsel  
Tyisha Walker-Myers, President of the Board of Alders  
Salvatore DeCola, Chair, City Services and Environmental Policy Committee  
Darryl Brackeen, Jr., Chair, Human Services Committee  
Gerald Antunes, Public Safety Committee

### ARTICLE III. - LEAD PAINT

#### Sec. 16-61. - Definitions.

As used in this article, the following terms shall have the meanings ascribed herein:

- (a) *Department* shall mean the New Haven Health Department.
- (b) *Director of public health* shall mean the legally designated health authority of the city, or his/her designee.
- (c) *Dwelling* shall mean every building or shelter used or intended for human habitation, including exterior surfaces and all common areas thereof, and the exterior of any other structure located within the same lot, even if not used for human habitation.
- (d) *Dwelling unit* shall mean a room or group of rooms within a dwelling arranged for use as a single household by one (1) or more individuals living together who share living and sleeping facilities.
- (e) *Lead abatement plan* shall mean a written plan that identifies the location of lead-based paint and describes how all lead-based painted surfaces will be abated and how the environment, health, and safety will be protected. The plan also identifies the location of soil containing lead and describes sampling protocol used and abatement options.
- (f) *Lead based paint* shall mean:
  - (1) Any paint offered for sale for use on or in a residential dwelling which contains more than 0.06 percent lead by weight as measured by atomic absorption spectrophotometry, graphite furnace atomic absorption spectrophotometry, or inductively coupled plasma atomic emission spectrophotometry, by a laboratory approved by the State of Connecticut Department of Public Health for lead analysis.
  - (2) Any dried film of paint containing an amount equal to or greater than 0.50 percent lead by dry weight as measured by atomic absorption spectrophotometry, graphite furnace atomic absorption spectrophotometry, or inductively coupled plasma atomic emission spectrophotometry, by a laboratory approved by the State of Connecticut Department of Public Health for lead analysis, or a level equal to or greater than 1.0 milligrams lead per square centimeter of surface as measured on site by a X-ray fluorescence analyzer or other equipment deemed sufficiently accurate and reliable by the State of Connecticut Commissioner of Public Health.
- (g) *Lead poisoning* shall mean a blood lead concentration equal to or greater than twenty (20) micrograms per deciliter of whole blood, or any other abnormal body burden of lead as defined by the Centers for Disease Control and Prevention.
- (h) *Occupant* shall mean any person over one (1) year of age living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.
- (i) *Operator* shall mean any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.
- (j) *Owner* shall mean any person who, alone or jointly or severally with others:
  - (1) Has legal title to any dwelling unit with or without accompanying actual possession thereof; or
  - (2) Has charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

Any such person representing the owner shall be bound to comply with this article, and all rules and regulations adopted pursuant thereto, to the same extent as if he/she was the owner.



- (k) *Person* shall mean and include any individual, firm, corporation, association, partnership or any other business concern.
- (l) *Premises* shall mean a platted or unplatted lot or parcel of land, or part thereof, either occupied or unoccupied by any structure, including any building or structure on it.

**Sec. 16-62. - Prohibited use of lead paint.**

Lead-based paint, as defined in this article, shall not be used on any exterior surface or any wall, ceiling, floor, interior woodwork, nor on or around the interior or exterior surface of any door, window, fixture, stairs, railing or porch on any dwelling, or dwelling unit, or any building intended or used, in whole or part, for human habitation or occupancy.

**Sec. 16-63. - Maintenance.**

Interior and exterior surfaces of walls, ceilings, floors, interior woodwork, doors, windows, fixtures, stairs, railings and porches of all structures shall be kept free of cracked, chipped, blistered, flaking, loose and peeling paint.

**Sec. 16-64. - Hazardous conditions; declaration of emergency.**

Where the director of public health (hereinafter the "director") finds any of the following he shall issue an order to the owner of the premises or the occupant of any dwelling unit therein who possesses hazardous personal property to eliminate the hazard in accordance with methods prescribed in section 56-65:

- (1) That the presence of lead paint upon or in any premises creates a health hazard to children.
- (2) The presence of lead-based paint in the dwelling unit of a child with lead poisoning, as defined in section 16-61 in the dwelling unit of a child whose blood lead is twenty five (25) micrograms or more per one (1) deciliter of whole blood, or any other dwelling unit in the same building (including all staircases, hallways and porches);
- (3) That the presence of cracked, chipped, blistered, flaking, loose or peeling paint constitutes a health hazard.

**Sec. 16-65. - Removal of lead paint.**

- (a) Where the director determines that the presence of lead paint upon any interior or exterior premises creates a health hazard to children, he shall issue an order to the owner to eliminate the hazard. Lead paint shall be completely removed from any surface which can be accessible to children. Cracked, chipped, blistered or peeling paint shall be completely removed. The lead paint ordered to be removed to the base surface shall be removed under such safety conditions as may be approved by the department or otherwise repaired as the department requires. In lieu of removal of lead paint, the accessible surface shall be covered with an approved durable material. Repainting a surface with a nonlead paint without the complete removal of the existing lead paint shall not be deemed to be satisfactory compliance with this section.
- (b) The methods used for the removal of lead paint shall not present a health hazard from fumes, dust or vapors by inhalation or absorption through the skin and mucous membranes, and shall be in

accordance with federal, state and local rules and regulations, and safety standards and practices. The director has the authority to prescribe and determine such methods. Additional alternate safety methods authorized by state law shall be enforced. Tenants are to be informed of the increased danger to children that may occur during the removal of lead paint, and are to be advised to exclude the children from the site for the duration of the work, and until dust and debris have been cleaned completely from all surfaces.

- (c) The owner of premises found to be in violation of section 16-64 shall submit a written lead abatement plan to the city health director within five (5) working days of notification of inspection results.

**Sec. 16-66. - Notice of violation and duties of the director of health.**

- (a) Notices of this article's violations shall:
  - (1) Be sent by certified mail as soon as practicable after detection of the violation;
  - (2) Include a statement of the detected violations;
  - (3) Require that repairs begin within seven (7) days from receipt of notice, or at such time as the director shall deem necessary, and shall be completed within a reasonable time as determined by the director;
  - (4) Be served upon the owner, his/her agent, or the occupant as the case may require; provided that such notice shall be deemed to be properly served upon such owner, agent, or occupant if a copy of the notice is served upon him/her personally, or if a copy of it is sent by registered or certified mail to his/her last known address; or if he/she is served with such notice by any other method authorized or required under this state's laws;
  - (5) Contain an outline of remedial action, which if taken, will effect compliance with this article's provisions, and with rules and regulations adopted pursuant thereto; and
  - (6) Be filed with the city clerk in the city's land records within five (5) days of the issuance of such notice. Upon compliance with the remedial action prescribed in said notice, the director shall file a notice with the city clerk stating that the required remedial action has been taken, and that the premises are no longer in violation of this article. Such compliance shall be recorded in the city's land records.
- (b) The residents of a premises shall be notified that a lead poisoning hazard as defined above has been detected within the premises, and informed that all children within the premises should be tested for lead poisoning.
- (c) No dwelling unit, which is in violation of this article, shall be rented to a new tenant until the director finds that acceptable repairs have been made in compliance with this article.
- (d) All city-owned and leased dwelling units shall be inspected for the presence of lead-based paint, as defined in this article, in any interior or exterior area. All federally and state owned and leased dwelling units shall be subject to this article. Any violations shall be eliminated in accordance with it.
- (e) When any premises has not been repaired in accordance with this article, the director is authorized to enter upon the premises to make repairs, or order them to be made to eradicate lead paint poisoning hazards. The owner shall be financially liable for all costs in connection with such repairs, and such costs shall be a lien upon the property. The director is authorized to apply for federal and other funds to reimburse the city for costs in cases where such reimbursement is authorized by law.
- (f) The director shall have the authority to apply for, accept, receive and administer funds, grants or gifts from public or private agencies, including the federal government, to carry out any of the functions found in this article. Upon receiving the funds, the director shall deposit them with the city's

controller. The funds are to be held in a special account established for the department's lead paint control activities.

- (g) Where lead paint poisoning hazards are found in owner-occupied premises, and the owner(s) presents satisfactory evidence of his/her inability to pay for the cost of repairs required under this article, the director is authorized to enter upon the premises, and to make or cause such necessary repairs to be made. The City of New Haven shall attempt to recoup all costs from such property owner(s).

#### **Sec. 16-67. - Advisory board.**

The mayor shall appoint a lead poisoning advisory committee with the board of aldermen's approval. The committee shall advance the development and adoption of policies, programs and procedures that will result in this article's effective enforcement. The committee shall serve as a vehicle to promote and coordinate lead poisoning prevention and abatement efforts involving health care providers, the health department, the housing department, the building division of the Livable City Initiative and the judicial system. The committee shall consist of ten (10) members including health care providers, health department officials, representatives of the city's Livable City Initiative and its building division, and representatives of legal services and human resources. The advisory committee shall elect a chairperson who will preside at its meetings.

#### **Sec. 16-68. - Penalty.**

Any person convicted of violating this article shall be punished by a fine up to the maximum amount authorized by state statutes or this Code. Each day's failure to comply with this article shall constitute a separate violation.

#### **Sec. 16-69. - Appeal.**

- (a) Pursuant to Conn. General Statutes section 19a-229 as amended from time to time, any person aggrieved by an order issued by the city's health director may appeal to the Commissioner of Public Health not later than three (3) business days after the date of such person's receipt of such order. The commissioner shall thereupon immediately notify the health director, and examine into the merits of such case. The commissioner may vacate, modify or affirm such challenged order.
- (b) Notwithstanding the requirements of subsection (a) above, any person aggrieved by an order regarding lead paint abatement under Conn. General Statutes section 19a-111c as amended from time to time, may appeal to the Commissioner not later than three (3) business days after the receipt of such order.

#### **Secs. 16-70—16-90. - Reserved.**