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April 29, 2019

Lead Safe Cleveland Coalition Police Subcommittee
c/o Enterprise Community Partners
1360 East 9th Street, Suite 510
Cleveland, Ohio 44114

Sent via email to wcheairs@enterprisecommunity.org

Re: Opt-Out of the Lead Safe Cleveland Policy Subcommittee

To Whom It May Concern:

A lead safe housing mandate is a legislative solution to begin addressing Cleveland's lead poisoning crisis. Under a lead safe housing mandate, key properties will be tested for lead hazards *before* a child becomes sick, replacing the outdated reactionary testing method under which a property is only tested *after* a child becomes irreparably poisoned. A mandatory lead safe housing standard is the nationally-recognized approach for decreasing lead poisoning cases.

I have been involved with drafting and researching a lead safe housing mandate since 2017. As an attorney at the Legal Aid Society of Cleveland, I helped draft an initial lead safe housing bill that was proposed in August 2017. As an attorney in private practice, I continued to research and update the legislation on behalf of Cleveland Lead Advocates for Safe Housing (CLASH).

Throughout this time period, Cleveland leadership has declined to publicly support a lead safe housing mandate. However, with the conclusion of the Lead Safe Cleveland Coalition (LSCC) policy recommendation process, I am encouraged that LSCC is poised to endorse a lead safe housing mandate. Moreover, it seems that LSCC is prepared to work together to propose and implement a bill similar to the ones I have helped research and draft.

I applaud LSCC for its progress and adoption of this gold-standard approach to preventing lead poisoning. Nevertheless, at this time, I am unable to endorse the LSCC Policy Recommendations as I do not believe that the recommendations, as written, will adequately protect Cleveland's children from lead poisoning. As a result, I am opting out of supporting the LSCC policy recommendations.

As an attorney I cannot endorse the recommendations without seeing the proposed legislative wording used to implement them. But more importantly, I believe there are key deficiencies in the proposed recommendations as well as recommendations that may be contrary to the interest of building a sustainable, equitable, and effective lead safe housing mandate.

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I. The LSCC recommendations fail to include daycares as properties subject to the lead safe housing mandate.

Requiring daycares to be lead safe is a critical component of protecting children from lead poisoning in pre-1978 properties. In particular, home day cares are common and widely used within the City of Cleveland, particularly for children aged 0-6, who are at the highest risk of lead poisoning. As provided for in the CLASH legislation, any registered daycare should have to provide evidence that the property is lead safe.

II. The LSCC recommendations do not adequately provide protections to Cleveland tenants.

As part of the research and drafting process in CLASH's legislation, we identified a number of critical tenant protections and tenant resources that are missing from the LSCC recommendations. I believe such measures are critical to the success of any lead safe housing mandate and are directly tied to increasing the safety and health of Cleveland's children.

First, the LSCC recommendations do not indicate that failure to certify the property as lead safe would be grounds for rent depositing in housing court. Instead Recommendation 27 says that LSCC will continue to "explore" rent depositing as part of "future policy recommendations." This is not sufficient. Rent depositing is one of the most powerful tools we can give to average citizens to help them enforce the lead safe housing law. We already know that enforcing a city-wide lead safe housing mandate will be challenging. We should give legal tools to empower average citizens to hold their landlords accountable to a lead safe standard. The rent-depositing process is a well-established, viable option to allow tenants to self-enforce the lead safe housing mandate.

Second, the LSCC recommendations fail to require disclosures that I believe are critical to increasing citizen awareness of lead poisoning. The CLASH legislation requires that the result of any lead risk assessment or clearance exam be provided to the tenants. The CLASH legislation also requires disclosure of the lead safe status at the point of advertising. Neither of these disclosures are addressed in the LSCC recommendations.

Third, CLASH is encouraged by the inclusion of a statutory damages clause that addresses the failure to provide newly-mandated disclosures at the point of lease. CLASH would also encourage LSCC to add statutory penalties to other provisions, such as the EPA-required disclosure codified at 240.06(b). Statutory penalties will give tools to tenants and the attorneys that represent them, particularly if Council creates and expands a right to counsel program. Without statutory penalties, it is nearly impossible for tenants or attorneys to prove damages and enforce the disclosure requirements.

Fourth, CLASH's legislation would codify protections for tenants at risk of temporary displacement due to lead safe renovations. These renovations, when necessary, typically take 3-5 days. LSCC Recommendation 24 addresses an "action team" to respond to displacement, but this is not a substitute for codified protections that ensure a tenant has options if they are temporarily removed from a home.

Finally, CLASH's legislation also provided a desirable protection for landlords. CLASH provided a safe harbor for landlords who do the right thing: proof of lead safety entitles the owner to a

rebuttable presumption that a child poisoned while in contact on the property was not poisoned by the lead safe property. I believe this will be an effective carrot to encourage landlord participation in the lead safe program.

III. The LSCC recommendations do not provide adequate transparency and accountability mechanisms. Oversight should include quarterly, not annual, public reports.

In Recommendation 8, LSCC indicates interest in annual monitoring and public reporting. While I certainly wants “regular monitoring” and “public reporting,” I am not satisfied with this recommendation as written. Annual reporting is not adequate, particularly given the rapid work that will need to be conducted while transitioning from a voluntary to a mandatory lead-safe system. Moreover, given city-wide interest in increased accountability and transparency when it comes to lead poisoning, I believe a public board is an important part of the oversight structure. Because of these concerns, the CLASH proposal outlined a public Lead Advisory Board with required quarterly public reporting from key City departments and quarterly public meetings. Private oversight and annual report-outs are not sufficient.

IV. The LSCC recommendations decrease public control over critical spending, by recommending that the “Lead Safe Home Fund” be operated by a third party.

In the legislation that I helped to draft, CLASH identified the need for a publicly run Lead Assessment and Remediation Fund which would administer funds to support landlords in testing and remediating their properties. The LSCC recommendations envision a “Lead Safe Home Fund” with similar goals. However, the LSCC recommendations state that this fund should be “operated by an independent third party.” Given that millions of dollars in public money, as well as significant private contributions may flow through this fund, I am concerned that moving it to private model will remove badly needed transparency and public oversight from the fund.¹

V. Relying exclusively on clearance exams rather than full lead risk assessments removes the opportunity for landlords and tenants to learn where lead hazards are on their property

The CLASH recommendation requires that at least one lead risk assessment take place on the property. By comparison, LSCC’s recommendations imply that a clearance examination would always be sufficient to prove lead safety, even if there is no lead risk assessment to clear. A clearance examination is less comprehensive test which provides limited specific information to landlords or tenants about where, exactly, lead-based paint hazards are on the property. CLASH

¹ Moreover, according to my records, the phrase “independent third party” was not included in the recommendations when the LSCC policy committee members voted to approve the provision. The recommendation that was voted upon was worded as follows: “Seed a Lead Safe Home Fund, prioritized by need but still widely accessible, with a non-federal city appropriation. Fund to support: remediation subsidies (from interim controls to full abatement), inspection subsidies, transitional housing support, training support for inspectors and contractors.” The phrase “independent third party” seems to have been added later.

supports requiring at least an initial lead risk assessment so that owners and tenants alike are informed about the surfaces that currently pose lead hazards or may pose lead hazards in the future.

VI. The LSCC recommendations fail to consider important provisions that could improve the efficacy of the legislation.

As part of drafting the Legal Aid and CLASH versions of a lead safe housing mandate, I identified some small provisions that could make the bill more effective.

For instance, LSCC has not considered a conflict of interest policy between privately hired lead risk assessors and/or clearance technicians and the property owner. I believe a conflict of interest policy will be an important part of moving from a public lead program administrated by Building and Housing to a private lead risk assessment or clearance exam model.

Additionally, I am not aware of LSCC considering a possible exemption for rentals between family members. In our research, we determined that focusing limited initial resources on arms-length rentals would be the most effective way to protect children from lead poisoning as family ties were more likely to ensure the properties were already maintained in better condition. This discussion could be aided by the research conducted by CWRU as we learn more about the type of mom-and-pop landlords in Cleveland.

VII. Ambiguities in the proposed LSCC recommendations raise concern about the specific implementation process.

Recommendations are not the same as drafted legislation. Recommendations can raise ambiguities because they are not as specific as drafted legislation would be. A number of such ambiguous statements appear in the recommendations.

For instance, Recommendation 1 states that an exemption may be allowed for “rental units that are already required to be lead safe under federal law.” I am concerned that this recommendation may allow for Housing Choice Voucher Program units to be exempted from the City’s lead safe standard. Although the HCVP program has its own standards for lead safety, I have seen instances in which the HCVP testing process was inadequate and an HCVP unit poisoned a child.

Recommendation 1 also states that “fully renovated and/or majorly rehabbed rental units that have passed an initial clearance examination” could be fully exempted from the lead safe standard. It is unclear if this refers to a lead free standard or, if not, what the standard “fully renovated and/or majorly rehabbed” refers to. Moreover, it’s not clear why these properties should be fully exempted from the program overall rather than the during the initial two-year cycle.

Similar to the legislation I helped to draft, Recommendation 3 lays out a “ramp-up” period before any homes are subject to an enforceable mandate. Under the CLASH legislation the transition to an enforcement period takes place on March 1, 2021 to coincide with the annual renewal of the rental registry. However, the proposed LSCC recommendations use a quarterly implementation cycle with new homes being required to be lead safe every quarter for a two-year “phase in” period. At this time, I need more information to evaluate this proposal. The rental registry renews on a March 1 to March 1 basis and I want to make sure that any quarterly implementation process is effective and equitable to Cleveland landlords.

VIII. Conclusion

Overall, I am encouraged by the progress made by the Lead Safe Cleveland Coalition. I believe the issues I've outlined here are important and will improve the bill overall. We all want to see Cleveland succeed at tackling lead poisoning. We all want to see Cleveland's children succeed.

Thank you for your time and consideration of this feedback.

Sincerely,

/s/ Rebecca Maurer

Rebecca Maurer