

**Apartment Association of Greater Philadelphia
Testimony before the Philadelphia City Council Committee on Public
Health and Human Services
On City Council Bill Number 100011
Lead Paint Disclosure and Certification
June 7, 2011**

I. Introduction

Good afternoon Councilwoman Tasco and members of the Committee. Thank you for this opportunity to testify on behalf of the Apartment Association of Greater Philadelphia. My name is Christine Young Gertz. I am the Government Affairs Director for AAGP.

The Apartment Association is a not for profit trade organization whose members are multi-family rental owners, managers and developers. Our members' properties are typically larger apartment communities. They represent roughly 140 thousand rental homes in this five county area. Approximately 40,000 of those homes are in Philadelphia. Our members provide vital housing to Philadelphians from all walks of life.

AAGP members are apartment industry leaders who know the importance of practicing responsible fiscal and property management. We stress professionalism and education. Members know delivering a good product - quality rental housing- is possible only by running their businesses according to the highest operational and service standards. They provide quality, affordable housing and try to minimize the impact of cost increases on their residents

I am here to present AAGP's position on the proposed bill.

It is unnecessary, in light of the current effective laws on the federal and local levels that have caused dramatic reductions in lead exposure to children. Additionally, it

casts too wide a net and places superfluous, expensive regulatory burdens on every faction of the City's rental community including students, seniors, singles living alone and families without children.

The well intentioned but imprudent legislation will hurt low and moderate income renters by removing affordable rental housing from the rental market. Rental housing for all low and moderate income renters will be much more expensive and much harder to find. The bill's broad-sweeping mandate presents the least cost effective way of addressing the goal of eliminating cases of elevated blood lead levels in children, which have already been dramatically reduced in recent years and whose numbers continue to plummet.

There are a myriad of federal and local laws already in place that have significantly reduced the number of cases of elevated blood lead levels in children. They cover all environmental lead paint exposure issues as well as notification, education and disclosure requirements. The proposed lead paint disclosure bill was introduced without regard to these well established, effective laws.

Moreover, this bill ignores the comprehensive new federal regulations governing procedures for conducting virtually all renovation, repair and painting projects in pre1978 housing. The new regulations went in to effect last year and are expected to provide even greater protections from lead hazards.

Established law and the new Federal Renovation, Repair and Painting regulations (often referred to as RRP regs) cover all the ground this bill purportedly intends to go. The effects of the new federal RRP regulations have barely had a chance to surface, but their across-the -board mandates are expected to significantly contribute

to our progress in reaching the nationwide goal of reducing the number of cases of elevated blood lead levels in children to zero.

II. Current law contains effective, successful protection from lead paint exposure hazards.

It is important to consider in detail the entire combination of laws already on the books, which have successfully and significantly reduced the incidences of blood lead levels (BLL) in children. Nationwide, blood levels have fallen more than 90%. In Philadelphia, in 2009 3 % of children tested at ages 1 and 2 had elevated blood lead levels, down from 22 percent a decade before.

The country's concerted lead poisoning prevention policy on reducing children's BLL is one of the most successful public health initiatives in our history.

The Philadelphia Citizens for Children and Youth (PCCY) has emphatically stated "Philadelphia's success in getting the lead out of homes that have poisoned children has been remarkable" (see *Getting the Lead Out, The Philadelphia Story*, 2006, Part One published by PCCY). Of those children screened the number identified as lead poisoned decreased from 11% in 1993 to 1.8% in 2006. The definition of lead poisoning changed in 2005 to include children with blood lead levels less than 9 micrograms per deciliter of blood on two tests in a three month period (in previous years the definition included only children with blood levels greater than 19mcg/dl), yet the number of instances of elevated BLL's continue to show extraordinary decline.

The City's proposed Lead Paint Disclosure Bill would require certification from rental owners that their rental property is either lead free or lead safe. But there are already ample notice, disclosure and certification requirements in current City law.

The Philadelphia Health Code already requires clear warnings and education about lead hazards. Lessors of residential housing constructed prior to 1978 must disclose the absence or presence of lead-based paint or lead-based paint hazards. Section 6-803 of the Code requires this disclosure to take one of two forms prescribed in the Code: lessors must produce the results of a comprehensive lead inspection and risk assessment by a certified lead inspector, or provide a multi-lingual form provided by the Philadelphia Department of Health. The Department of Health form must contain a specifically worded statement and it includes a warning that most housing built in Philadelphia before 1978 contains dangerous lead paint. The required statement further asserts that, without a comprehensive lead inspection conducted by a certified lead inspector showing there is no lead paint or there are no lead-based paint hazards, "you can assume this property likely contains lead-based paint."

The Health Code also requires lessors to provide the lessee with a lead hazard information pamphlet as prescribed or approved by the Health Department, in order to educate residents on the hazards of lead.

Additionally, the current Philadelphia Health Code already requires every residential lease for pre-1978 housing, whether oral or written, to provide a ten day period (unless the parties agree to a different period of time), during which the lessee may obtain a comprehensive lead inspection and risk assessment from a certified lead inspector. If the inspection reveals lead-based paint or hazards, the lessee may

terminate the lease within two business days. Lessees renewing their leases also have the right to obtain an inspection or risk assessment. Renewing lessees have ten days to notify the lessor in writing of their intention to terminate the lease if such a hazard is found.

Along with these disclosure, notification and education requirements, the City's Health Code requires a lessee to confirm, in writing on a certification of disclosure form provided by the Department of Health, that he or she has received the written disclosure of lead-based paint or hazards, has received and read the lead warning statement, has received the lead hazard information pamphlet, and has been provided the ten day period before becoming obligated under the lease agreement.

The Health Department is not the only division of City Government already protecting residents from lead hazards that may be present in rental residences. The City's Property Maintenance Code requires all lessors to obtain from the Department of Licenses and Inspections a Certificate of Rental Suitability and give it to lessees at the start of every new tenancy. The Certificate requires an acknowledgment on the part of the rental owner of his or her obligation to provide a habitable apartment. The Certificate will not be issued if there are outstanding L & I violations. A habitable apartment is one where conditions vital to the life, health and safety of the tenant are provided. See *Pugh v. Holmes*, 486 Pa.272| 405 A.2d 897 (Pa. 1979). That includes the conditions of painted services, which must be free of chipping paint. The law prohibits L & I from issuing a Certificate if there are L & I Code violations, including lead hazards such as chipping paint. Rental owners are prohibited from collecting rent, or proceeding with evictions if necessary, if no Certificate has been issued. PM 102.6.4.1.

These prohibitions are, as you can imagine, steadfast incentives for landlords to obtain the Certificate.

The City Property Maintenance Code also requires landlords to provide tenants with the guidebook, "Partners for Good Housing" at the start of the tenancy. The book outlines the responsibilities of owners, tenants and landlords for maintaining houses and apartments in a safe and clean condition. It informs tenants of City law that prohibits lead paint from remaining on interior surfaces of any dwelling occupied by children when the Department of Public Health determines that its presence creates a health hazard.

Laws on the federal level include the Lead –Based Paint Poisoning Prevention Act, lead gasoline phase-out laws, the residential lead paint ban, a ban on lead in plumbing, the Lead Contamination Control Act, and the ban on lead solder in food cans, all of which have contributed to eliminating lead hazards in our environment.

Long established Federal regulations also require disclosure, notice, and education. Federal regulations require lessors to disclose the presence of any known lead-based paint hazards and their locations, and the condition of painted surfaces. Lessors must provide lessees with an EPA approved lead hazard information pamphlet, "Protect Your Family from Lead in Your Home (EPA #747-K-94001). Lessors must also disclose to agents and lessees the existence of lead based paint and/or hazards and the existence of any available records or reports pertaining to the lead-based paint and/or lead-based paint hazards, and any additional information available concerning the hazards. This includes records pertaining to common areas. 40 CFR Ch 1 §745.113.

Additionally, as I mentioned, new Federal Renovation Repair and Painting regulations strictly control the procedures for renovating, repairing and painting residences and child care facilities so as to eliminate the possibility of releasing lead dust to the environment. These rules, which went in to effect just last year, are a significant addition to the regulatory protections now in place.

Current HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing include a discussion about several studies that have found projects involving the removal of deteriorated lead-based paint by scraping, sanding or other methods aggravated the problem of increased lead exposures. The new RRP regulations are expected to eliminate this major source of lead dust in the environment. The new regulations are the definitive addition to the myriad of protections in place and will reduce even further, if not eliminate, the chance for exposure to lead dust, which is the most common cause of lead poisoning. The new RRP rules, given time to make an impact, will assuredly provide the greatest level of protection from lead hazards in residences.

III. The proposed Bill poses a significant economic threat to all rental properties and threatens to further reduce the number of affordable rental properties in Philadelphia, but there is no proof it will have any additional effect on the problem it purports to address.

Aside from the abundant rules and regulations already in effect and already doing the job, the economic realities of the bill's mandates and their detrimental impact on the availability of quality low and moderate rental housing must be considered.

The vast majority of housing in Philadelphia was built prior to 1978. Consequently most of the rental housing in the City will be affected by the bill, whether there are children present or not.

In a study to look at the economic impact of this bill conducted by the Anderson Economic Group of Chicago, commissioned by the Apartment Association and HAPCO, it was estimated that repairs for lead safe certification would likely cost between 6,000 and 20,000 dollars for mostly privately owned low-income rental housing, depending on the condition of the property and the extent of lead contamination present, regardless of whether children live on the property. Additional ongoing costs for recertification and repairs would follow. Many owners will be unable to pay those costs and will be forced to raise rents or take their property off the rental market. It is estimated that rents will rise from \$150 to \$500 per month for several years.

But, rent increases notwithstanding, the bill would likely cause a severe disruption in the availability of privately owned low-income rental units. Approximately 21,000 to 52,000 units would come off the rental market for some period of time, and some would be permanently removed from the market. This will surely make the already severely limited number of decent low and moderate income rental units even scarcer, and will potentially cause the number of abandoned properties to soar in the City.

Moreover, the study notes these added, needless extensive regulations for all rental properties, regardless of the presence or absence of children, will significantly add to the devaluation of property values. For some properties the cost of required repairs could exceed the market value of the property. In many cases rental owners will be unable to finance the expensive repairs. Commercial loans for property purchases or

improvements hinge on the requirements of lending institutions for a certain level of net operating income. An owner's ability to handle expenses and raise capital for improvements and major maintenance is directly related to the health of this income. In short, the more major expenses and regulatory burdens a property presents, the less its value, and the less likely financial institutions are willing to loan capital. This is especially significant today, in the wake of the housing crisis, when credit markets for the rental industry have dwindled. Property owners who are not able to finance required major repairs through cash flow might be forced to keep their properties off the rental market, or self-fund. For smaller investors if self funding is not possible, the temptation might be to forego compliance with regulations altogether and surreptitiously rent their properties. The stock of quality, affordable housing would therefore be depleted even further.

While there may be a number of children with unacceptable blood lead levels, and we all agree any number is too high, there is a significant question as to how many of those children live in rental housing as opposed to privately owned residences, and realistically how many would therefore be affected by this bill. The question is an important one because of the significant costs the bill will impose on Philadelphia's entire rental community with no assurance that it will reach those it is intended to help. But it will most assuredly negatively affect a large part of Philadelphia's rental community where there are no children present. The grave threat to the financial stability of rental owners is clear. Proper consideration must be given to the consequences these enormous costs would bring to all rental owners.

IV. Conclusion

The unintended consequences of this unnecessary bill will have a far reaching, detrimental effect on every kind of rental home in the City. It adds another mandate to existing laws that prohibit exposure to lead paint and hazards. No one has demonstrated the superfluous requirement of another certificate will do anything to improve on the substantial progress existing laws have already achieved in eliminating cases of elevated blood lead levels in children. The bill's mandates will only serve to drive costs up, discourage future investment in all types of affordable rental housing and reduce the number of decent, affordable rental housing for the entire population of Philadelphia renters.

I respectfully urge the Committee to refrain from placing additional burdens on Philadelphia's rental community. The City agencies responsible for reducing the danger of lead to our children already have ample authority and tools for doing the job.

Thank you very much for your time today. I will be happy to answer any questions.

Respectfully submitted,
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