CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

PUBLIC LEGAL OPINION

TO: Mayor Sheng Thao
Council President Nikki Fortunato Bas
Members of the City Council
City Administrator Jestin D. Johnson

FROM: City Attorney Barbara J. Parker

DATE: December 4, 2024

RE: **Permissible Uses of the City of Oakland's Lead Paint Settlement Funds**

Dear Mayor Thao, Council President Fortunato Bas, Councilmembers, and City Administrator Johnson:

Several Councilmembers and other City officials have asked questions regarding permissible uses of the City of Oakland's ("City" or "Oakland") lead paint abatement dollars. This public legal opinion outlines the current agreements that govern the City's lead paint abatement funds and explains the restrictions on those funds.

This opinion is public because it summarizes agreements and information already in the public record and does not contain confidential legal advice. Like all public legal opinions, this opinion will be posted on the City Attorney's website at: https://www.oaklandcityattorney.org.

I. LEAD PAINT SETTLEMENT BACKGROUND

In July 2019, after nearly 20 years of hard-fought litigation, Oakland and nine other cities and counties secured a $305 million settlement from lead paint manufacturers to clean up lead paint that poisons tens of thousands of children across California each year ("Settlement Agreement"). The Settlement Agreement requires that the public entities make reasonable efforts to ensure the funds are used "to address public health hazards, bodily injury, personal injuries, and property damage related to Lead Paint." The separate agreement with the ten litigating cities and counties ("Jurisdictional MOU"), awarded approximately $24 million to Alameda County ("County" or "Alameda") and Oakland to jointly be held in a trust account with the County treasury until the City and County could reach a separate agreement regarding the disposition of the funds.

In 2021, the City issued a report titled Racial Equity Impact Analysis: Eliminating Lead Paint Hazards in Oakland & Alameda County. That report provides a framework regarding how to allocate the $24 million to the City and County. In December 2021, the City and County entered into a partial settlement and disposition of lead paint settlement funds ("County/City MOU"), which provides that the City would initially receive 20% (approximately $4.8 million) to fund

development of an Equity Based Lead Program to implement the recommendations outlined in the Equity Impact Analysis. The City and County still need to negotiate the disposition of the remainder of the City's allocation (40% of the funds), after the parties engage in development of the Equity Based Lead Program. In June 2024, the City Administrator presented to the City Council a report providing an update on the work to establish an Equitable Lead Hazard Abatement Program and a Proactive Rental Inspection Program.

II. PERMISSIBLE USES OF THE SETTLEMENT FUNDS

1. The City must use the settlement funds to address issues related to lead paint.

The Settlement Agreement with the paint companies, the Jurisdictional MOU, and the City/County MOU all require that Oakland and the County "make reasonable efforts to ensure that the [Settlement Funds are] used to address public health hazards, bodily injury, personal injuries, and property damage related to Lead Paint….Such efforts include but are not limited to: (1) developing or enhancing programs that abate Lead Paint from housing, particularly housing occupied by low-income individuals; (2) providing services to individuals, particularly children, who have been exposed to Lead Paint; (3) educating the public about hazards caused by Lead Paint, and the best means of avoiding exposure to and remediating the harms caused by Lead Paint, including the availability of funding for lead abatement…."

Lead Paint is defined in the Settlement Agreement to mean "pigments, paints, and coatings of any kind containing any lead, and all hazards and risks related to pigments, paints, and coatings containing any lead applied in or on properties in the Prosecuting Jurisdictions, including, but not limited to, lead dust and lead in soil in or immediately around such properties, as well as the advertising, promotion, formulation, manufacture, distribution, labeling, marketing, sale, or use of such products."

The limitation of the funds is clear: Oakland must take reasonable efforts to ensure the funding is used on lead paint remediation and lead paint health hazards, and no separate agreements or contracts for use of the funds can override this limitation.

2. The City must use its initial distribution to develop an Equity Based Lead Program.

Our agreement with the County further provides that the City will use its partial disposition of the settlement funds for the development of an Equity Based Lead Program. The negotiation and distribution of the remainder of the City's allocation is dependent on initial development of this program.

In the event that City seeks to remediate lead paint hazards within the allowed uses of the main Settlement Agreement and Jurisdictional MOU, but outside the scope of an Equity Based Lead Program, the City would need to renegotiate its MOU with the County. A renegotiated agreement would need to be approved by City Council and the Board of Supervisors, and the City Council would need to re-appropriate the funds received from the County, accordingly.

III. CONCLUSION

Pursuant to the agreements governing the distribution of settlement funds, the City must make reasonable efforts to use its lead paint funds for purposes related to lead paint abatement and specifically for the development of an Equity Based Lead Program.

Respectfully,

Barbara J. Parker

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