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ADDRESSING OHIO'S LANDLORD-TENANT LAW AND FAIR HOUSING PROTECTIONS WITHIN THE CONTEXT OF TOLEDO'S LEAD-SAFE ORDINANCE

What Today's Presentation Covers:

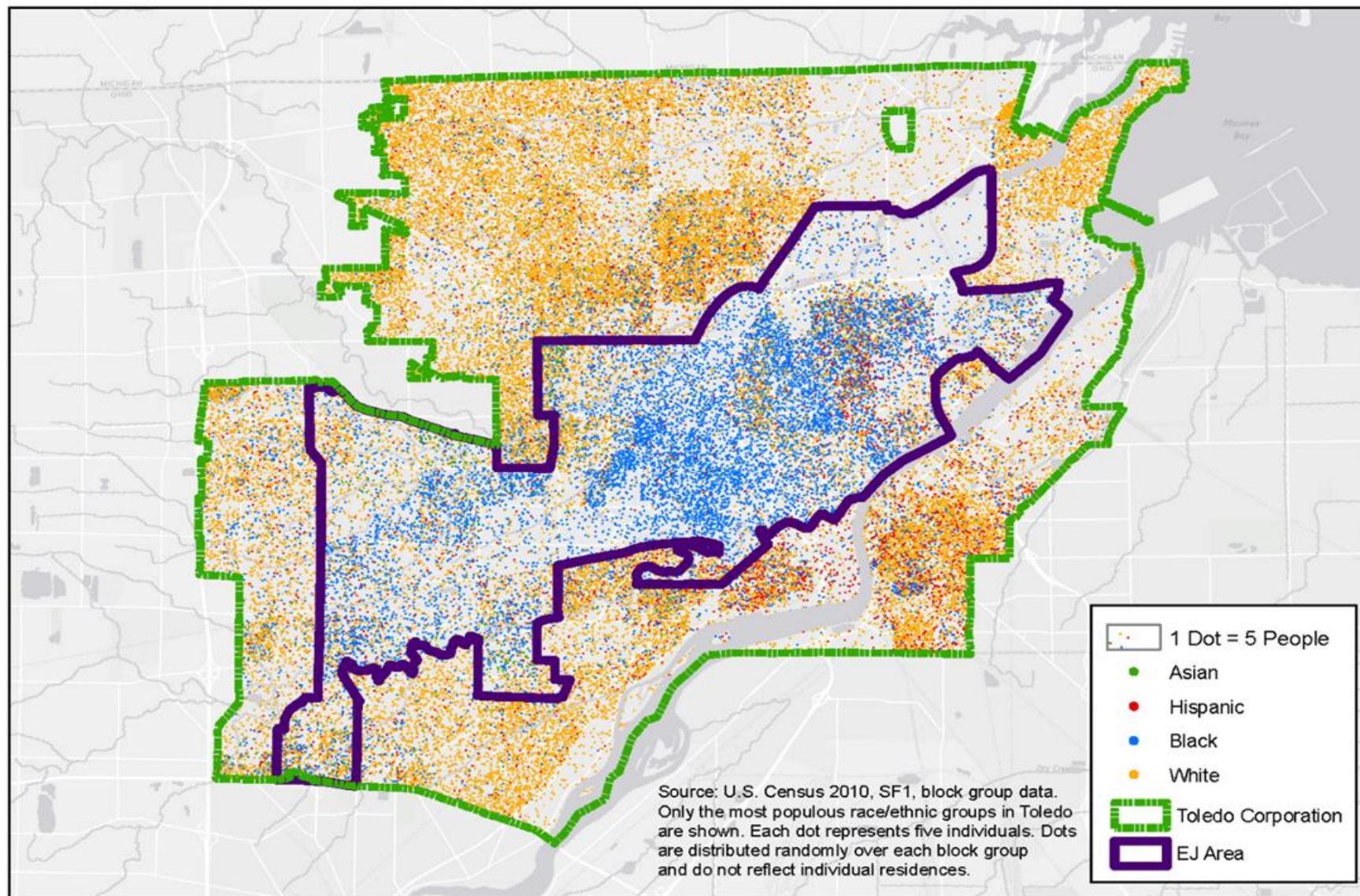
- ▶ Toledo's Lead Poisoning Problem
- ▶ Ohio's Landlord-Tenant Act & Toledo's Lead Safe Ordinance
- ▶ "Rent escrow" & other potential remedies available for tenants confronting lead hazards
- ▶ Fair Housing Protections within the context of Toledo's Lead Safe Ordinance



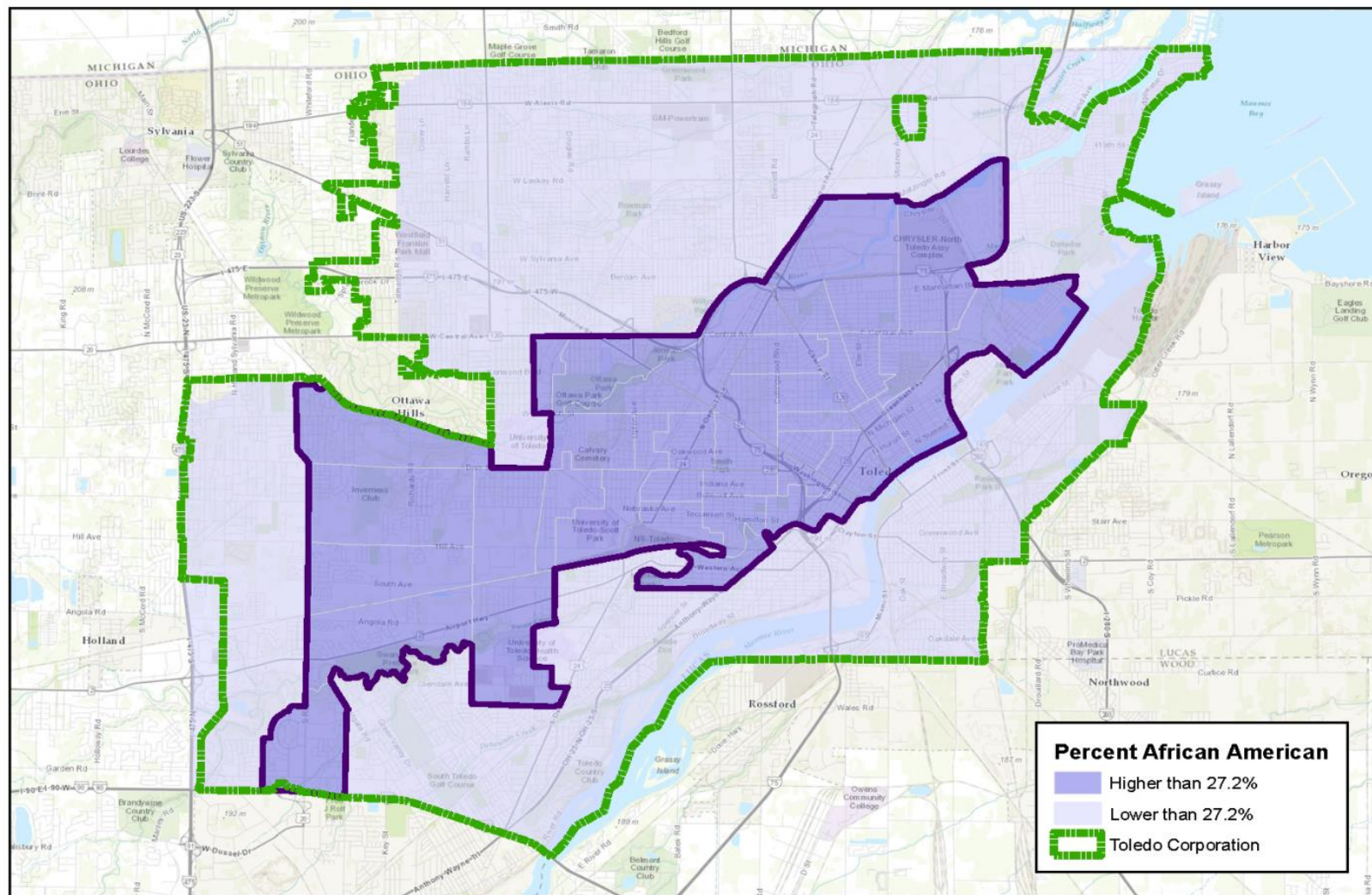
The Need to Address Lead Poisoning

- Lead poisoning causes cognitive damage and behavioral problems, which means a child is more likely to require special education, be incarcerated, and have difficulty obtaining employment.
- This not only impacts a child and their family, but it is a burden we all bear when it comes to special education and incarceration costs.
- Toledo's Lead Safe ordinance is also about **equity**. The patterns of lead poisoning reveal stark racial and economic disparities, **primarily impacting African American children in low-income neighborhoods**. Lead paint is more common in older and lower value homes, which means those residing in the urban core are at higher risk.
- Passing the Lead Safe ordinance means our community has taken a stand to protect those who are most vulnerable and ensure everyone has access to safe and healthy housing regardless of who they are or where they live.

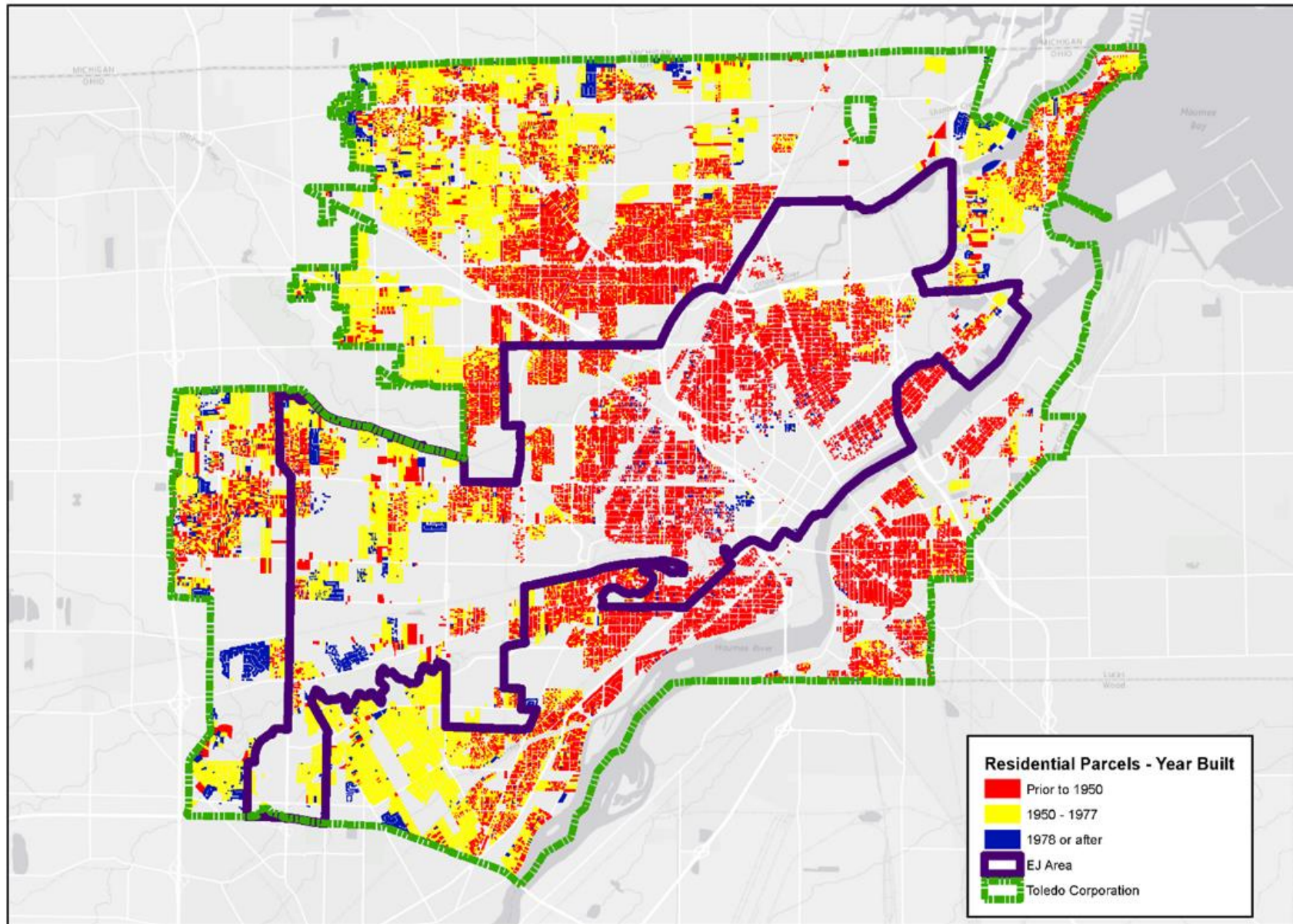
Toledo Population Density by Race and Ethnicity



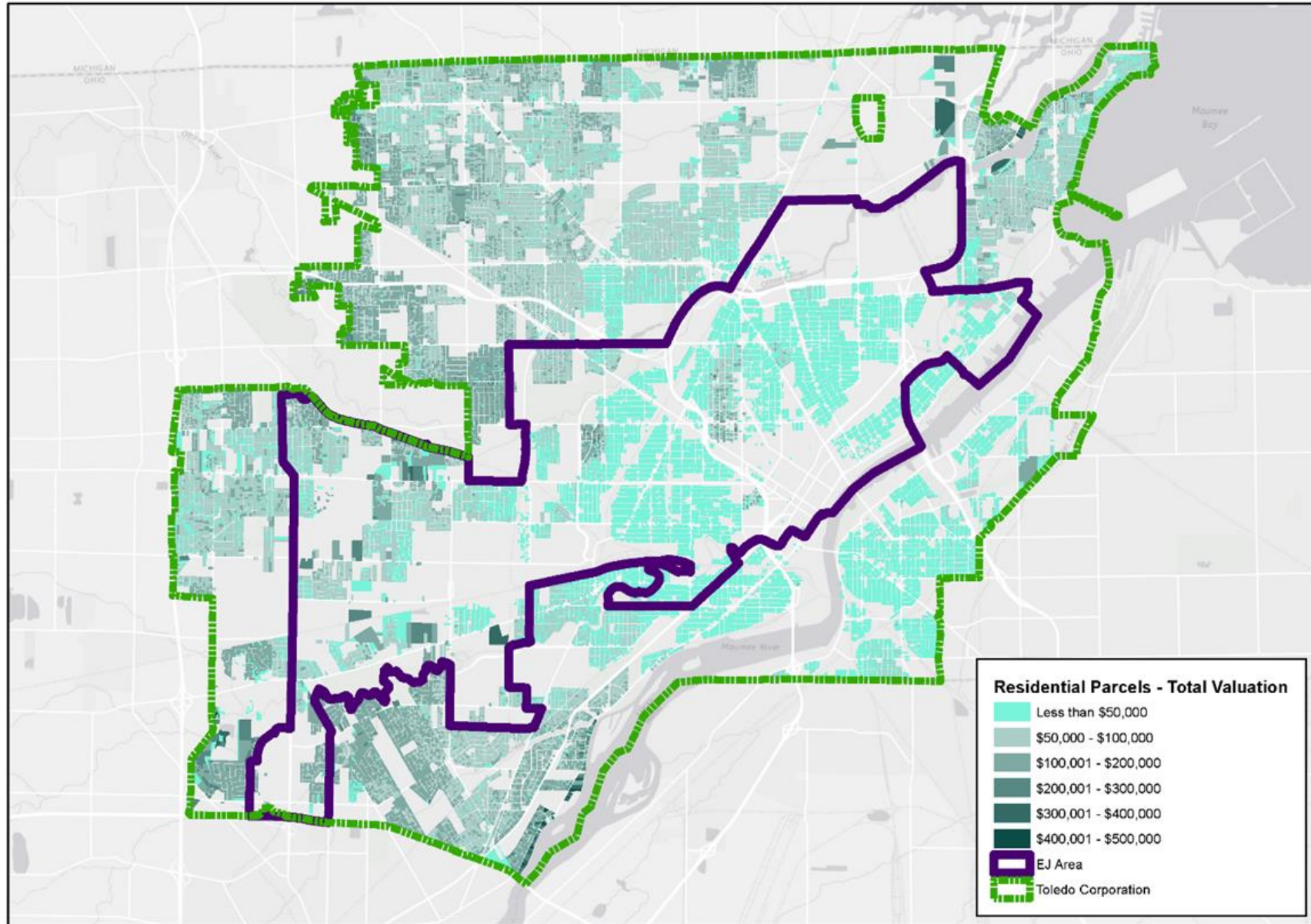
Environmental Justice Population: Census Tracts with a Higher Percentage of African Americans than Toledo City Overall (27.2%)



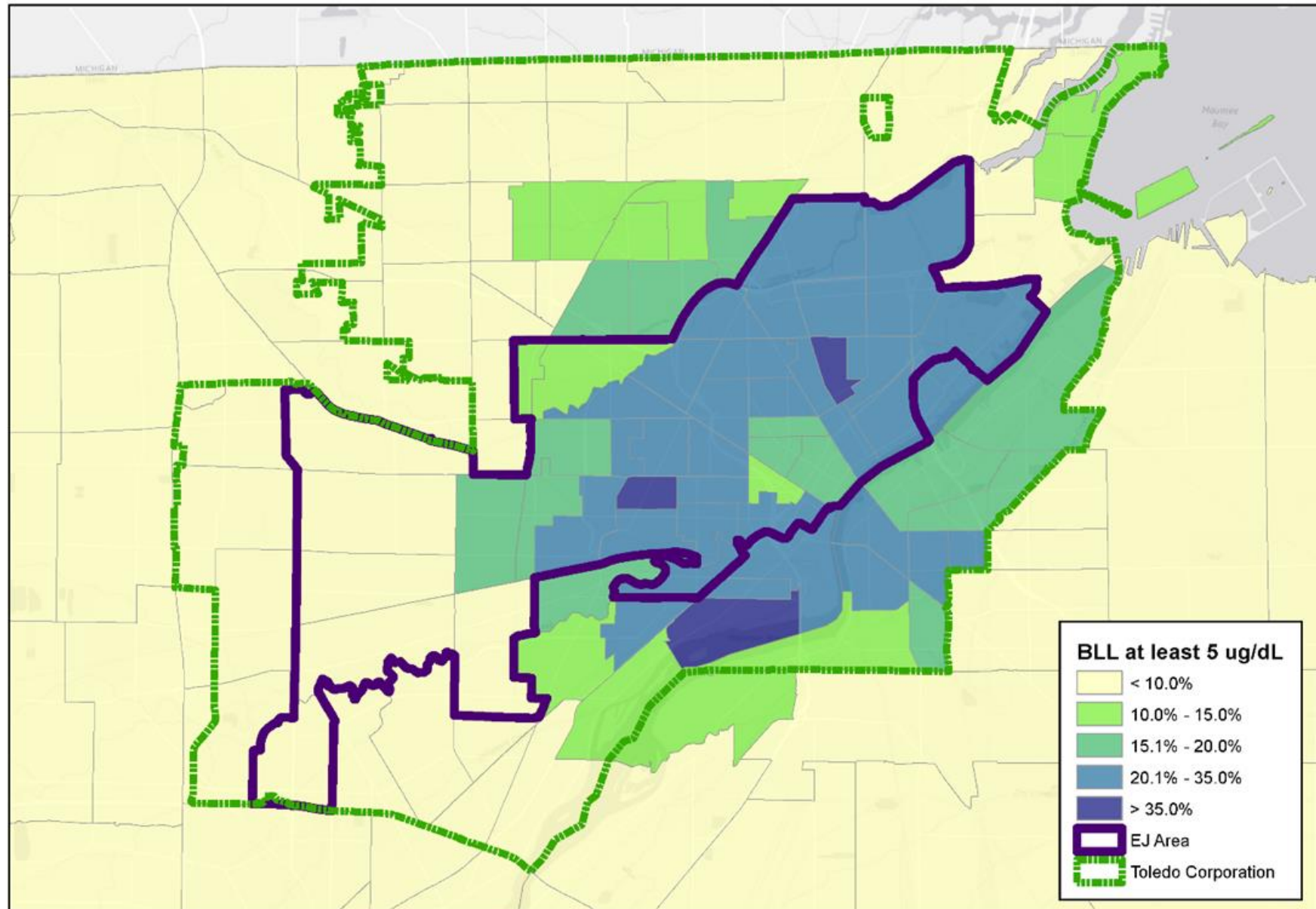
Age of Structures on Toledo Residential Properties, by Parcel



Assessed Value of Toledo Residential Properties, by Parcel



Ohio Department of Health Probabilities that a Child Is Lead Poisoned, by Census Tract



100



The Ohio Landlord-Tenant Act: O.R.C. Chapter 5321

- ▶ § 5321.01 – Definitions
- ▶ § 5321.03 – Actions for possession by landlord
 - ▶ See *also* O.R.C. Chapter 1923
- ▶ § 5321.04 – Landlord obligations
- ▶ § 5321.05 – Tenant obligations
- ▶ § 5321.07 – Remedies for Tenants if Landlord fails to fulfill duties
 - ▶ Outlines “rent escrow” process, as well as other remedies

Definition of “Tenant” and “Landlord” - § 5321.01

- ▶ **A Tenant** is a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others. R.C. 5321.01 (A)
- ▶ **A Landlord** is the owner, lessor or sublessor of residential premises, **or** any person that the owner, lessor or sublessor authorizes to manage the premises or to receive rent from a tenant under a rental agreement. R.C. 5321.01 (B)
- ▶ **Residential premises** are “a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant.” R.C. 5321.01 (C)
- ▶ **Rental agreement** means any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, amount of rent charged or paid, or any other provisions concerning the use and occupancy of residential premises by one of the parties. R.C. 5321.01 (D)

Property managers = landlords

- ▶ "Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, **or** any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

R.C. 5321.04(A)

- **Imposes several duties onto all Landlords, including:**
 - Complying with the requirements of **all** applicable building, **housing**, health, and safety codes *that materially affect health and safety*;
 - Making *all repairs and doing whatever is reasonably necessary* to put and keep the premises in **fit and habitable** condition;
 - Keeping **all common areas** of the premises in a **safe and sanitary** condition;
 - Maintaining in *good and safe working order and condition* all electrical, plumbing, sanitary, heating, **ventilating**, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord;

Landlord's Statutory Obligations

Toledo's Lead Safe Ordinance

TMC Chapter 1760

- Applies to all rental properties constructed prior to 1978 that are *either* **single-family homes** or **rentals with four (4) units or less.**
- Requires applicable rental properties to be free of:
 - (1) Deteriorated Paint Condition,
 - (2) Lead Dust Condition, or
 - (3) Bare Soil Condition.
- Outlines requirements for obtaining Lead-Safe Certificate (TMC 1760.04)
- Prohibits retaliatory action toward "an occupant, lessee, or tenant" for reporting non-compliance or suspected lead-based paint hazards (TMC 1760.10)
- Provides additional protections for tenants (TMC 1760.11)

Toledo's Lead Safe Ordinance

► Deteriorated Paint Condition

► "Deteriorated Paint Condition" means any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking, or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of chewing. (TMC 1760.02(4)).



Toledo's Lead Safe Ordinance

► Lead Dust Condition

► "Lead Dust Condition" means surface dust (visible or invisible) that contains a mass-per-area concentration of lead equal to or exceeding current US EPA Hazard Standards and Clearance Levels based on wipe samples. (TMC 1760.02(12)).



Toledo's Lead Safe Ordinance

► Bare Soil Condition

► "Bare Soil Condition" means bare or exposed soil within the "Dripline." (TMC 1760.02(2)).

► "Dripline" means the area within three (3) feet surrounding the perimeter of a building. (TMC 1760.02(6)).



Landlords cannot abuse the right of access R.C. 5321.04(A)(7)

- ▶ Minimum of 24 hours notice, except in emergency situations
- ▶ Reasons: inspect the premises, make ordinary, necessary, or agreed repairs, decorations, alterations, or improvements, deliver parcels that are too large for the tenant's mail facilities, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. R.C. 5321.05(B).
- ▶ Potential available legal remedies if violation occurs:
 - ▶ trespass, invasion of privacy, 5321.04, and/or attorneys fees.

Landlords cannot take retaliatory action

R.C. 5321.02 - State Law

- ▶ A landlord may not retaliate against a tenant by **increasing the tenant's rent, decreasing services** that are due to the tenant, **or bringing or threatening to bring an action for possession** of the tenant's premises because:
 - ▶ (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;
 - ▶ (2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code;
 - ▶ (3) The tenant joined with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.

Landlords cannot take retaliatory action

TMC 1760.10 - Local Lead-Safe Law

- ▶ It is unlawful for an Owner, or any person acting on behalf of an Owner, to take any retaliatory action toward an occupant, lessee, or tenant who reports a failure of the Owner to obtain a Lead-Safe Certificate, **or** who reports suspected lead-based paint hazards to the Owner or to the City, **or** reports other issues suggesting non-compliance with this Chapter or the City Building or Housing Code.
- ▶ **Retaliatory actions include**, but are not limited to, **any actions that materially alter the terms of the tenancy** (including unsupported rent increases and non-renewals) **or interfere with the occupants' use of the property**.

Landlords cannot take retaliatory action

TMC 1760.11 (c) - Local Lead Safe Law

- ▶ No Owner **without good cause** to evict a tenant may cause a tenant to be evicted because the Owner does not wish to comply with the requirements of this Chapter.
- ▶ No Owner **without good cause** may refuse to renew a month-to-month or other periodic tenancy because the Owner does not wish to comply with the requirements of this Chapter.

Fair Housing within the context of Toledo's Lead Safe Ordinance

Housing discrimination is defined as any attempt to prohibit or limit free and fair housing choice.

A person or entity who has violated a fair housing statute has committed housing discrimination.

- ▶ The term **“fair housing”** means freedom of housing choice - the right and ability to choose where one wants to live.
- ▶ The term is often used interchangeably with the term **“equal housing opportunity”** suggesting that all persons must have equal access to housing opportunities.

Protected Classes

Protected classes are classifications of groups protected by fair housing statutes.

Everyone is a member of a protected class.

- ▶ Race
- ▶ Color
- ▶ National Origin
- ▶ Religion
- ▶ Sex (includes sexual orientation and gender identity)
- ▶ Familial Status (Families with children)
- ▶ Disability
- ▶ Military Status*
- ▶ Source of Income**
- ▶ Immigration Status**

* State Protection

** Local Protection

Familial Status Definition

- One or more individuals under the age of 18 being domiciled with a parent
- A person having legal custody of such individual(s), or
- The designee of such parent or legal custodian
- Also included is any person who is pregnant or who is about to secure legal custody of someone under the age of 18

Familial Status Discrimination

- Refusing to rent to families with children; “adults only”
- Dictating sleeping arrangements; requiring that children of opposite sex have separate bedrooms
- Limiting access to amenities (ex. pool)
- Charging fees or utilities based on the number of people in the household
- Prohibiting tricycles, swing sets, or children playing
- Requiring that families with children only live in certain areas of an
 - apartment complex (ex. first floor)

Source of Income Protection in the City of Toledo

- Housing providers must consider all legal, reliable sources of income such as Social Security, disability and military benefits, and Housing Choice Vouchers
- “No Section 8” is not permitted
- Tenants are still required to pay rent and fees in full
- Tenants will have to meet the housing provider’s eligibility criteria, which may include proof of income
- Income eligibility requirements should apply to the portion of rent the Tenant is responsible for, NOT the full monthly rental amount

Under R.C. 5321.05, Tenants must:

Pay rent in full and on time

Keep unit clean and safe

Properly dispose of trash and garbage

Keep appliances clean and in good working order

Use electrical and plumbing fixtures properly

Not cause unreasonable damages

Not allow guests or visitors to cause damages

Not disturb other tenants

Permit landlord access with 24 hours notice unless good reason exists not to

Not possess or use drugs

Not allow a guest to possess or use drugs

“Rent escrow”

R.C. 5321.07

Ohio law does not allow you to put your rent in escrow if your landlord only has *three or fewer rental properties*, AND they gave you *written notice* of that when you signed your lease and moved in.

- Your rent **must** be current to file rent escrow.
- You **must** put your rent in escrow **on time at the beginning of each month** until the escrow case is resolved.
- You **must** give your landlord written notice of the repairs that are needed in your home or apartment.
 - You **must** (typically) allow the landlord 30 days after providing written notice to make requested repairs before you can file and put your rent in escrow

Additional remedies for tenants other than Rent Escrow

A common misunderstanding is that Tenants are limited to “rent escrow.” However. . .

"R.C. 5321.07 should not be construed as the exclusive remedy for tenants aggrieved by a landlord's breach of duty." *Miller v. Ritchie*, 45 Ohio St. 3d 222 (1989)

Additional remedies for Tenants (continued)

- ▶ **Paying rent does not waive the breach of the condition**

- ▶ "a tenant does not waive the right to recover damages for a landlord's breach of duty to maintain rental property when, as happened here, the tenant pays rent and tries to persuade the landlord to make repairs rather than pursue R.C. 5321.07 remedies." *Miller v. Ritchie*, 45 Ohio St. 3d 222 (1989)

- ▶ **Acceptance of defective condition does not relieve the landlord of their duty to maintain the rental property.**

- ▶ "a tenant's acquiescence in the defective condition of an apartment does not relieve the landlord of the duty to maintain the apartment in conformance with R.C. 5321.04....The Landlords and Tenants Act prohibits any agreement between the landlord and tenant which purports to waive the landlord's duty to maintain the premises and any agreement that purports to waive the tenant's right or ability to bring an action for damages. R.C. 5321.13; 5321.06." *Miller v. Ritchie*, 45 Ohio St. 3d 222 (1989)

Help with landlord-tenant disputes



LANDLORD TENANT DISPUTES
CAN BE EXPENSIVE AND TIME
CONSUMING...



...BUT ASSERTING YOUR RIGHTS
AS A TENANT IS IMPORTANT...



...THE FAIR HOUSING CENTER'S
**HOUSING CONDITIONS
PROGRAM** IS HERE TO HELP!

Thank you

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