

# Ordinance 2023-21

*BOROUGH OF HIGHTSTOWN  
COUNTY OF MERCER  
STATE OF NEW JERSEY*

**AN ORDINANCE ESTABLISHING CERTAIN REGULATIONS AND AMENDING AND SUPPLEMENTING ARTICLE 13-4, ENTITLED “ADDITIONAL HOUSING STANDARDS FOR RENTAL UNITS,” OF CHAPTER 13, “HOUSING,” OF “THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN,” IN ORDER TO ESTABLISH A NEW SECTION 13-4-11 THEREOF TO BE KNOWN AS “LEAD-BASED PAINT INSPECTION FOR RESIDENTIAL RENTAL DWELLINGS.”**

**WHEREAS**, the Mayor and Council wish to revise “The Revised General Ordinances of the Borough of Hightstown” (the “Borough Code”), in order to establish certain regulations relating to lead-based paint inspections for residential rental dwellings.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Hightstown in the County of Mercer and State of New Jersey, as follows:

1. That Article 13-4, entitled “Additional Housing Standards for Rental Units,” of Chapter 13, “Housing,” of the Borough Code, is hereby established to read as follows:

## **Chapter 13. Housing**

### **Article 13-4. Additional Housing Standards for Rental Units**

#### **§ 13-4-1. Lead-Based Paint Inspection for Residential Rental Dwellings.**

##### **A. Definitions.**

##### **BOROUGH CODE ENFORCEMENT OFFICER**

The Borough Code Enforcement Housing Officer or designee.

##### **DUST WIPE SAMPLING**

A sample collected by wiping a representative surface and tested, in accordance with a method approved by the United States Department of Housing and Urban Development (HUD) and as conducted pursuant to N.J.A.C 5:28A-2.3.

##### **LEAD ABATEMENT**

Measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner of Community Affairs in compliance with standards promulgated by the appropriate federal agencies.

##### **LEAD ABATEMENT CONTRACTOR**

A firm certified by the New Jersey Department of Health to perform lead abatement or interim control work pursuant to N.J.A.C 5:17.

##### **LEAD ABATEMENT WORKER**

An individual certified by the New Jersey Department of Health to perform lead abatement work pursuant to N.J.A.C 8:62.

**LEAD-BASED PAINT**

Paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight, or such other level as may be established by Federal law.

**LEAD-BASED PAINT HAZARD**

Any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present on surfaces would result in adverse human health effects.

**LEAD EVALUATION CONTRACTOR**

A person certified by the New Jersey Department of Community Affairs to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:171.1 et seq.

**LEAD INSPECTOR/RISK ASSESSOR**

An individual certified by the New Jersey Department of Health to perform lead inspection and risk assessment work pursuant to N.J.A.C. 8:62. This includes the ability to perform dust wipe sampling.

**LEAD-FREE CERTIFICATION**

The certificate issued in accordance with N.J.A.C. 5:17, which states that there is no lead-based paint or that the dwelling has undergone lead abatement, in accordance with N.J.A.C. 5:17.

**LEAD-SAFE CERTIFICATION**

The certification issued pursuant to N.J.A.C. 5:28A, which confirms that a periodic lead-based paint inspection was performed, and no lead-based paint hazards were found. This certification is valid for two years from the date of issuance, in accordance with N.J.A.C. 5:28A-2.4.

**LEAD FREE**

A dwelling that has been found to have no outstanding lead-based paint hazards. It does not mean that the dwelling is certified to be lead free.

**LEAD SAFE**

A dwelling that has been found to have no outstanding lead-based paint hazards. It does not mean that the dwelling is certified to be lead free.

**MUNICIPAL LEAD INSPECTOR**

A lead evaluation contractor retained by the Borough.

**PERIODIC LEAD-BASED PAINT INSPECTION**

The initial inspection of all applicable dwelling units at the earlier of two years from the effective date of P.L. 2021, c. 182, (July 22, 2022)(N.J.S.A. 52:27D-437.6), or tenant turnover and , thereafter, the earlier of three years or upon tenant turnover, consistent with

N.J.A.C 5:28A-2.1, for the purposes of identifying lead-based paint hazards in dwellings subject to this Article.

## **REMEDIATION**

Interim controls or lead abatement work undertaken in conformance with this Article to address lead-based paint hazards.

## **TENANT TURNOVER**

The time at which all existing occupants vacate a dwelling unit and all new tenants move into the dwelling unit or the time at which a new tenant enters a vacant dwelling unit.

## **VISUAL ASSESSMENT**

A visual examination for deteriorated paint or visible surface dust, debris, or residue, and as conducted pursuant to N.J.A.C. 5:28A-2.3.

### **B. Applicability.**

- (1) All rental single-family, two-family, and multiple dwelling units must be inspected for lead-based paint hazards in accordance with this Article except for the following:
  - (a) Dwellings constructed during or after 1978.
  - (b) Single-family and two-family seasonal rental dwelling units that are rented for less than six months duration each year by tenants that do not have consecutive lease renewals.
  - (c) Dwelling units that have been certified to be free of lead-based paint pursuant to N.J.A.C. 5:17.
  - (d) Multiple rental dwelling units constructed prior to 1978 that have been registered with the Department of Community Affairs for at least 10 years and have no outstanding paint violations from the most recent cyclical inspection.

### **C. Lead-Based Paint Inspections.**

- (1) All applicable inspections shall apply to interior spaces within dwellings. This is interpreted to include any common areas that tenants of a rental dwelling have access to, including hallways and basements, in two-family and multiple dwelling rentals. Dust wipe samplings are required for all lead-based paint inspections.
- (2) Initial Inspection. The owner shall have every dwelling unit as defined under this Article, inspected for lead-based paint hazards upon tenant turnover or within two years of the effective date of P.L. 2021, c.182, July 22, 2022, whichever is sooner. The first inspection must take place no later than July 22, 2024.
- (3) Subsequent Inspection. After initial inspection, the owner shall have all such dwelling units inspected for lead-based paint hazards every three years or upon

tenant turnover after 2 years. An inspection shall not be required at tenant turnover, if it occurs within the two years of a valid lead-safe certification for the dwelling unit.

- (4) Every owner of a dwelling unit subject to this Article shall be responsible for obtaining the required inspection. The owner is to directly hire and pay for the lead evaluation contractor to conduct the periodic lead-based paint inspections for lead-based paint. Inspections shall be conducted pursuant to N.J.A.C. 5:28A-2.3.
- (5) The Code Enforcement Office will provide a list of lead evaluation contractors certified by the New Jersey Department of Community Affairs to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:171.1 et seq. to owners who request it.

#### **D. Borough Facilitated Inspection.**

A municipal lead inspector designated by the Borough shall be authorized and empowered to conduct periodic lead-based paint inspections for all applicable rental dwelling units in accordance with N.J.S.A 52:27D-437.16 and N.J.A.C. 5:28A-1.1 et seq.

- (1) Notice of Inspection.
  - (a) Request for Borough facilitated initial inspections must be submitted in writing by the property owner prior to April 1, 2024 or a minimum of 20 business days prior to the scheduled date of tenant turnover. It is the responsibility of the property owner to schedule inspections.
  - (b) Request for Borough facilitated periodic inspections must be submitted in writing by the property owner a minimum of 20 business days prior to the scheduled date of tenant turnover or expiration of the required three year inspection period.
- (2) Inspection fees.
  - (a) \$500 base fee for a one bedroom dwelling plus \$50 for each additional bedroom in the unit plus a 15% administration fee.
  - (b) Inspection fees shall not apply if the property owner hires a private lead evaluation contractor who meets the qualifications of the New Jersey Department of Community Affairs.
- (3) Every inspection for which the landlord, tenant, owner or agent has failed to provide access for inspection shall be deemed a failed inspection and the inspection fees shall be forfeited. If an owner desires to cancel an inspection, a written notice of cancellation must be provided to the Borough a minimum of 48 business hours in advance of the scheduled inspection. Business hours are Monday - Friday, 8:30 AM through 4:30 PM, excluding holidays.

#### **E. Owner Option to Designate a Private Lead Evaluation Contractor.**

- (1) A dwelling owner or landlord may hire a private lead evaluation contractor certified to provide lead paint inspections services in accordance with N.J.S.A. 52:27D-437.1 et seq., to conduct lead paint inspections and provide lead-safe or lead-free certificates in lieu of obtaining a Borough facilitated inspection. Dust wipe samplings are required for all lead-based paint inspections.
- (2) The Borough retains the authority to prohibit an owner from directly hiring a private lead evaluation contractor to conduct a periodic lead-based pain inspection where:
  - (a) The owner previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection and failed to have the inspection completed.
  - (b) The Borough determines there is a conflict of interest between the owner and their lead evaluation contractor of choice.
- (3) If the Borough restricts the owner from directly hiring a private lead evaluation contractor, the Borough shall provide written notice to the owner that a Borough facilitated inspection is required with applicable fees.

**F. Lead Safe Certificate.**

If no lead-based paint hazards are identified upon inspection, the Licensed Lead Inspector/Risk Assessor or Contractor shall certify the dwelling as lead-safe on the form prescribed from the Department of Community Affairs.

- (1) A lead-safe certificate shall be valid for two years from the date of issuance.
  - (a) If, during the two-year certification period, a lead evaluation contractor, lead inspector/risk assessor, or a local health department conducts an independent inspection or risk assessment and determines that there is lead-based paint hazard, the lead-safe certification issued pursuant to this Article in accordance with N.J.A.C. 5:28A shall be invalid.
  - (b) The lead-safe certification shall not exempt the dwelling from any other law that would require a lead inspection/risk assessment.
- (2) Filing fee for certifications issued following inspections.
  - (a) Lead-safe or lead-free certification: \$50 per dwelling unit.  
  
This fee shall include a \$20 per unit assessment in accordance with N.J.S.A. 52:27D-437.16(h).
  - (b) Lead-safe or lead-free certifications dated prior to the effective date of Section 13-4-11 shall be assessed a fee of \$20 per unit In accordance with N.J.S.A. 52:27D-437.16(h).

- (3) A copy of the lead-safe certificate shall be filed with the Borough Code Enforcement Officer.

**G. Identification of a Lead-Based Paint Hazard.**

- (1) If lead-based paint hazards are identified upon inspection, the inspector shall notify the Department of Community Affairs for review of the findings, in accordance with the Lead Hazard Control Assistance Act.
- (2) If the lead-based paint hazard is identified in an inspection of one of the dwelling units in a building consisting of two or more dwelling units, then the lead contractor shall inspect the remainder of the building's dwelling units, with the exception of those dwelling units that have been certified to be free of lead-based paint or which have a valid lead-safe certification.

**H. Responsibility for Remediation of Lead-Based Paint Hazards.**

The owner of the dwelling unit shall be responsible for remediation of the lead-based paint hazard. Remediation and any re-inspections required following remediation must be conducted consistent with N.J.A.C. 5:28A-2.5. Documentation of such remediation shall be provided to the Borough Code Enforcement Officer.

**I. Owner Responsibility.**

- (1) The owner of the dwelling that is subject to this Article shall provide the tenant and Borough evidence of a valid lead-safe certification obtained pursuant to this Article at the time of tenant turnover. The owner shall also affix a copy of any such certification as an exhibit to the tenant's lease.
- (2) The owner shall notify the Borough in writing to schedule the lead paint hazard inspection.
- (3) The owner of a multiple dwelling that is subject to this Article shall provide evidence of the most recent tenant turnover, at the time of any cyclical inspection performed pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.
- (4) The owner of a dwelling that is subject to this Article shall maintain a record of the lead-safe certification, which shall include the name or names of a unit's tenants, if the inspection was conducted during a period of tenancy.
- (5) The owner of any dwelling subject to this Article shall inform the Borough Code Enforcement Officer of all tenant turnover activity to ensure any required inspection may be scheduled.
- (6) The owner of a dwelling shall provide a copy of this Article, and any lead-safe certifications issued pursuant thereto, along with the accompanying guidance document, "Lead-Based Paint in Rental Dwellings," to any prospective owners of the dwelling during a real estate transaction, settlement, or closing.




**J. Violations and Penalties.**

- (1) Pursuant to N.J.S.A. 52:27D-437.6 and N.J.A.C. 5-28A-4.1, the Borough Code Enforcement Officer is authorized to conduct investigations and issue penalties in order to enforce an owner's failure to comply with this Article.
  - (2) A property owner/landlord shall comply with the requirements of P.L. 2021, c. 182 and this chapter. If a Borough Code Enforcement Officer determines that a property owner has failed to comply with the inspection requirements of this chapter, the property owner shall be given a thirty-day notice to cure any violation by ordering the necessary inspection or by initiating any required remediation. If the dwelling owner has not cured the violation within 30 days, the owner shall be subject to a penalty not to exceed \$1,000 per week until the required inspection has been conducted or remediation efforts initiated. Remediation efforts shall be considered to be initiated when the dwelling owner has hired a lead abatement contractor or other qualified party to perform lead-hazard control methods.
  - (3) Any other violation of the provisions of this chapter shall be subject to a fine of not less than \$50 nor more than \$500 for each offense.
2. That all parts and provisions of any Ordinance which are inconsistent with the provisions of this Ordinance shall be repealed to the extent of such inconsistency.
  3. That the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.
  4. That this Ordinance shall take effect upon final passage and publication in accordance with the law.

Introduced: December 4, 2023

Adopted: December 18, 2023

ATTEST:

  
MARGARET RIGGIO  
MUNICIPAL CLERK

  
SUSAN BLUTH  
MAYOR