

**ORDINANCE 2023-01**

**AN ORDINANCE BY THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE BOROUGH CODE SO AS TO AMEND CHAPTER 189, RENTAL PROPERTY, SO AS TO CREATE A NEW ARTICLE II, LEAD-BASED PAINT INSPECTIONS**

**WHEREAS**, pursuant to P.L. 2021, c.182, all municipalities are now required to inspect every single-family, two-family, and multiple rental dwelling located within the municipality at tenant turnover for lead-based paint hazards; and

**WHEREAS**, the Borough desires to amend the Borough Code to require inspections for lead-based paint in residential rental dwellings in accordance with P.L. 2021, c. 182.

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** That the governing body hereby amends Chapter 189, Rental Property, so as to create a new Article I, entitled “Seasonal Rentals,” which shall encompass the existing §§189-1 through -5.

**SECTION 2.** That the governing body hereby amends Chapter 189, Rental Property, so as to create a new Article II, entitled “Lead-based Paint Inspections” as follows:

**ARTICLE II Lead-Based Paint Inspections**

**§ 189-6 Definitions.**

**Lead Abatement** – Measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner, State, Department of Community Affairs in compliance with standards promulgated by the appropriate federal agencies.

**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.

**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. 5:17-1.1 et seq.

**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 in surfaces that would result in adverse human health effects.

**Tenant turnover** – The time at which all existing occupants vacate a dwelling unit and all



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new tenants move into the dwelling unit.

**Borough Inspector** - The Borough Code Enforcement Officer or other employee or agent of the Borough that is licensed as an individual lead inspector and risk assessor by the New Jersey Department of Health.

**Visual Assessment** – A visual examination for deteriorated paint or visible surface dust, debris, or residue.

**§ 189-7 Inspections; Remediation; Certification**

A. Initial inspection. Every single-family, two-family, or multiple rental dwelling unit offered for rental must be inspected for lead-based paint by July 24, 2024 or upon tenant turnover, whichever is earlier.

1. Either a Borough Inspector or, a lead evaluation contractor retained by the Borough, shall inspect every single-family, two-family, or multiple rental dwelling located in the Borough of Bay Head for lead-based paint hazards through visual assessment and dust wipe sampling in accordance with N.J.S.A. 52:27D-437.1 et seq.

2. In lieu of having the dwelling inspected by the Borough's lead evaluator, a dwelling owner or landlord may directly hire a private lead evaluation contractor who is certified to provide lead paint inspection services by the Department of Community Affairs to perform the lead-based paint inspection in accordance with N.J.S.A. 52:27D-437.1 et seq.

B. Periodic Inspection Procedure. Every single-family, two-family, or multiple rental dwelling unit offered for rental shall be required to obtain an inspection of the unit for lead-based paint hazards every three (3) years, or at tenant turnover, whichever is earlier, except that an inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification, which are valid for two years.

1. If the lead-safe certification has expired, and there is tenant turnover, a re-inspection will be required prior to the expiration of the three (3) year period from the last inspection.

C. Exceptions. A dwelling unit in a single-family, two-family, or multiple rental dwelling shall not be subject to inspection and evaluation for the presence of lead-based paint hazards if the unit:

(1) Has been certified to be free of lead-based paint;

(2) Was constructed during or after 1978;

(3) Is in a multiple dwelling that has been registered with the Department of Community Affairs as a multiple dwelling for at least ten (10) years, either under the current or a previous owner, and has no outstanding lead violations from the most recent cyclical



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inspection performed on the multiple dwelling under the “Hotel and Multiple Dwelling Law,” N.J.S.A. 55:13A-1 et seq.;

- (4) Is a single-family or two-family seasonal rental dwelling which is rented for less than six months duration each year by tenants that do not have consecutive lease renewals; or
- (5) Has a valid lead-safe certification.

- D. Lead-safe Certification. If no lead-based paint hazards are identified, then the Borough’s lead evaluator or Borough Inspector shall certify the dwelling as lead-safe on a form prescribed by the Department of Community Affairs, which shall be valid for two (2) years.
- E. Remediation of hazard. If lead-based paint hazards are identified, then the owner, landlord, and/or agent of the non-exempt dwelling shall remediate the lead-based paint hazard using lead abatement or lead-based control methods in accordance with N.J.S.A. 52:27D-437.16(d). Upon the remediation of the lead-based paint hazard, the Borough Inspector or Borough’s lead evaluation contractor shall conduct an additional inspection of the unit to certify that the hazard no longer exists.

**§ 189-8 Requirements of Property owner**

- A. Pursuant to N.J.S.A. 52:27D-437.16(e), property owners on non-exempt dwelling units shall:
  - (1) Provide evidence of valid lead-safe certification and the most recent tenant turnover at the time of the cyclical inspection;
  - (2) Provide evidence of a valid lead-safe certification to new tenants of the property at the time of tenant turnover, unless not required to have had an inspection by a lead evaluation contractor or permanent local agency pursuant to this Article.
  - (3) Maintain records of lead-safe certification, which shall include name(s) of the unit tenant(s), if inspection was conducted during a period of tenancy.

**§ 189-9 Fees**

- A. Notwithstanding any other fees due pursuant to this Chapter, a fee in the amount of \$200.00 shall be paid for each lead-based paint inspection. Said fee shall be dedicated to meeting the costs of implementing and enforcing this Article and shall not be used for any other purpose. Alternatively, a dwelling owner or landlord may directly hire a private lead evaluation contractor who is certified to provide lead paint inspection services by the Department of Community Affairs to satisfy the requirements of this Article, in which case no additional Lead-Based Paint inspection fee shall be paid.
- B. The fee for the filing of a lead-safe certification or lead-free certification shall be \$50.
- C. In a common interest community, any inspection fee charged shall be the responsibility of the

unit owner and not the homeowners' association, unless the association is the owner of the unit.

D. In accordance with N.J.S.A. 52:27D-437.16(h), an additional fee of \$20.00 per dwelling unit inspected by the Borough's lead evaluation contractor, Borough Inspector or the owner's private lead evaluation contractor shall be addressed for the purpose of the Lead Hazard Control Assistance Act, unless the owner demonstrates that the Department of Community Affairs has already assessed an additional inspection fee of \$20.00. The fees collected pursuant to this subsection shall be deposited into the Lead Hazard Control Assistance Fund.

**§ 189-10 Record keeping**

The Borough shall:

- A. Retain a copy of any lead-safe certifications for a property in the Borough.
- B. Maintain an inspection schedule of properties, any lead-based paint hazards in a non-exempt dwelling, and any remediation initiated.

**§ 189-11 Violations and Penalties**

In accordance with N.J.S.A. 52:27D-437.19, the penalties for a violation of this Article shall be as follows:

- a If a property owner has failed to conduct the required inspection or initiate any remediation efforts, the owner shall be given 30 days to cure the violation.
- b If the property owner has not cured the violation after 30 days, the property owner shall be subject to a penalty not to exceed \$1,000 per week until the required inspection has been conducted or remediation efforts have been initiated.

**SECTION 3.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 4.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 5.** This ordinance shall take effect after second reading and publication as required by law.

**ATTEST:**

**APPROVED:**

**Patricia M. Applegate, Municipal Clerk**

**William W. Curtis, Mayor**

**Introduced on First Reading:  
Introduced on Second Reading:  
Approved on Second Reading:**

**February 6, 2023  
March 6, 2023  
March 6, 2023**



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