

## ORDINANCE 1-24

### AN ORDINANCE OF THE TOWNSHIP OF BRICK, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING CHAPTER 225 TO ESTABLISH REQUIREMENTS AND FEES APPLICABLE TO LEAD PAINT INSEPCIONS FOR RENTAL PROPERTIES IN ACCORDANCE WITH P.L. 2021, C.182.

**WHEREAS**, on July 22, 2022, P.L. 2021, C 182, N. J. S.A. 52:27D-437.16, et. seq., went into effect requiring periodic inspections of all non-exempt rental dwellings constructed prior to 1978 for the lead-based paint hazards and to receive a lead-safe certification; and

**WHEREAS**, P.L. 2021, C. 182 authorizes municipalities to perform lead-based paint inspections and to establish fees applicable for those inspections; and

**WHEREAS**, adoption of this Ordinance is intended to implement P.L. 2021, C. 182 and regulations codified in N. J. S. A. 52:27D-437.16, et. seq., and N. J. A. C. 5:28A.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Council of Township of Brick, County of Ocean, State of New Jersey that Chapter 225 is hereby amended to establish requirements and fees applicable to lead paint inspections for rental properties.

**SECTION 1.** The Township Council of the Township of Brick does hereby amend Chapter 225 to adopt Article V captioned "Lead Based Paint Hazards" and to establish regulations and fees applicable to lead paint inspections for rental properties in accordance with P.L. 2021, C.182, N.J.S.A. 52:27D-437.16, et. seq. The amendments to Article 225 shall read as follows:

#### ARTICLE V Lead Based Paint Hazards

##### § 225-28. Statutory Authority.

This article is enacted pursuant to P.L. 2021, c. 182, and shall be interpreted and enforced to the same extent as that legislation, any amendments, or supplements thereto, the companion regulations set forth at N.J.A.C. 5:28A-1.1 et seq., and other associated regulatory or judicial authority.

##### § 225-29. Definitions.

For the purposes of this article, the following words and terms have the meanings set forth below, unless the context clearly indicates otherwise:

DCA — The New Jersey Department of Community

Affairs. DOH — The New Jersey Department of Health.

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.

DWELLING — A building containing a room or rooms, or suite, apartment, unit, or space, that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

DWELLING UNIT — A unit within a building that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

INTERIM CONTROLS — A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-

based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it defined pursuant to 42 U.S.C. § 4851b and the regulations adopted pursuant thereto.

**LEAD ABATEMENT** — A set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards adopted pursuant to N.J.A.C. 5:17.

**LEAD ABATEMENT CONTRACTOR** — A firm certified by DCA to perform remediation through 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 EVALUATION CONTRACTOR** — A firm certified by DCA to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:17. This includes the ability to perform dust- wipe sampling.

**LEAD INSPECTOR/RISK ASSESSOR** — An individual certified by DOH 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-BASED HAZARD CONTROL METHODS** — Interim control as defined above.

**LEAD-BASED PAINT** — Paint or other surface coating material that contains lead in excess of 1.0 milligram per centimeter squared or in excess of 0.5% 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 lead-contaminated paint that is deteriorated or present on surfaces that would result in adverse human health effects.

**LEAD-FREE** — That a dwelling has been certified to have no lead-based paint or has undergone lead abatement in accordance with N.J.A.C. 5:17.

**LEAD-FREE CERTIFICATION** — The certification issued pursuant to N.J.A.C. 5:28A, which confirms that a periodic lead-based paint inspection was performed and that no lead-based paint hazards were found.

**LEAD-SAFE** — That a dwelling has been found to have no outstanding lead-based paint hazards but does not mean that the dwelling is certified as lead-free.

**MULTIPLE DWELLING** — 1) Any building or structure and any land appurtenant thereto and any portion thereof in which three or more dwelling units are occupied or intended to be occupied by three or more persons living independently of each other; 2) any group of 10 or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two dwelling units are occupied, or intended to be occupied, by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. Buildings or structures excluded pursuant to N.J.S.A. 55:13A-3(k) are not included in this definition.

**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), 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 and N.J.A.C. 5:28A 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 and this article.

### **§ 225-30. Required inspections.**

- A. Initial inspections. At tenant turnover, or within two years of July 22, 2022 (the effective date of P.L. 2021, c. 182), whichever is sooner, every single-family, two-family, and multiple rental dwelling subject to this article located within the Township

shall be inspected for lead- based paint hazards.

- B. Periodic inspections. After the initial inspection, all dwelling units shall be inspected for lead-based paint hazards the earlier of every three years or upon 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 for the dwelling unit. Periodic lead-based paint shall be counted from the most recent periodic lead-based paint inspection which resulted in a valid lead-safe certification.
- C. Dwelling owners or landlords may satisfy the requirements of this section by hiring a lead evaluation contractor certified to provide lead paint inspection services by the Department of Community Affairs ("DCA").

**§ 225-41. Method of inspection.**

- A. Visual assessments. Periodic lead-based paint inspections may be performed through visual assessment if, according to the central lead screening database maintained by DOH, or other data deemed appropriate by DOH, the Township of Brick is a municipality in which less than 3% of children tested, six years of age or younger, have a blood lead level greater than or equal to five ug/dL.
  - (1) Pursuant to N.J.A.C. 5:28A-2.3(a)1, for visual assessments, dwellings must be examined in accordance with the guidelines and regulations promulgated by the United States Department of Housing and Urban Development ("HUD") set forth at 42 U.S.C. § 4851b for deteriorated paint or visible surface dust, debris, or residue on all painted building components, especially any walls, window, trim, and surfaces that experience friction or impact.
- B. Dust wipe sampling. Dust wipe sampling is required if, according to the central lead screening database maintained by DOH, or other data deemed appropriate by DOH, the Township of Brick becomes a municipality in which 3% or more of children tested, six years of age or younger, have a blood lead level greater than or equal to five u.g/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16.
  - (1) Pursuant to N.J.A.C. 5:28A-2.3(b)1, dust wipe sampling must be performed by the collection of samples from the wiping of representative surfaces, including floors, interior windowsills, and other similar surfaces, and tested in accordance with methods approved by HUD.
  - (2) Pursuant to N.J.A.C. 5:28A-2.3(b)2, a visual assessment, conducted in accordance with Subsection A, may be undertaken during a dust wipe sampling.

**§ 225-32. Remediation; certification.**

- A. If an inspection determines that a lead-based paint hazard exists, then the owner of the dwelling unit must remediate the lead-based paint hazard by using abatement or lead-based paint hazard control methods approved in accordance with the provisions of the Lead Hazard Control Assistance Act, N.J.S.A. 52:27D-437.1 et seq. A follow-up inspection is required to certify that the hazard has been properly remediated.
  - (1) If hazard controls are employed, the follow-up inspection must be conducted using dust wipe sampling. If the follow-up inspection shows that the hazard is no longer present, the unit must be certified as lead-safe pursuant to the lead-safe certification requirements set forth in N.J.A.C. 5:28A-2.4.
  - (2) If abatement is utilized, and a lead abatement clearance certificate has been issued in accordance with N.J.A.C. 5:17, then the lead-free certificate issued at the final clearance inspection shall exempt the dwelling from future periodic lead-based paint inspections.
  - (3) To the extent dust wipe sampling is required as part of the remediation process, the owner must have such testing performed by a licensed contractor.
- B. If an inspection determines that no lead-based paint hazard exists or following remediation of a lead-based paint hazard, the Township shall certify the dwelling

unit as lead-safe on a form prescribed by DCA. This certification shall be valid for two years. If the inspection was conducted by a lead evaluation contractor, the contractor must provide a copy of the lead-safe certificate to the owner and the Township.

- C. If a lead hazard is identified in an inspection of one of the dwelling units in a building consisting of two or three dwelling units, then the remainder of the building's dwelling units shall be inspected for lead hazards, except for dwelling units that have been certified to be free of lead-based paint. These additional inspections are subject to fees.
- D. If an inspection determines that a lead-based paint hazard exists, then the Township or its designee shall notify the Commissioner of DCA.

### **§ 225-33. Exemptions.**

The following dwelling units in a single-family, two-family, or multiple rental dwelling are not subject to inspection and evaluation for the presence of lead-based paint hazards:

- A. Dwelling units that have been certified to be free of lead-based paint pursuant to N.J.A.C. 5:17.
- B. Dwelling units constructed during or after 1978.
- C. Single-family and two-family seasonal rental dwellings rented for less than six months in duration each year by tenants that do not have consecutive lease renewals.
- D. Multiple rental dwelling units constructed prior to 1978 that have been registered with the DCA for at least 10 years and have no outstanding paint violations from the most recent cyclical inspection performed on the dwelling pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. and N.J.A.C. 5:10.
  - (1) All multiple dwelling units constructed prior to 1978 that have been registered with the DCA for at least 10 years and that have a current certificate of inspection issued by DCA.
  - (2) All multiple dwelling units constructed prior to 1978 that have been registered with DCA for at least 10 years with open inspections that have no violations for paint.
- E. Dwelling units in a multiple dwelling that has been registered with the Department of Community Affairs as a multiple dwelling for at least 10 years, either under the current or a previous owner, and has no outstanding lead violations from the most recent cyclical inspection performed under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.
- F. Dwellings that have a valid lead-safe certification issued in accordance with this article and N.J.A.C. 5:28A. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4.

### **§ 225-34. Enforcement.**

- A. The Division of Code Enforcement is charged with enforcing the provisions of this article. In carrying out this function, the Division may consult with all appropriate federal, state, county, and local agencies concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in such dwellings, methods of detection of lead in such dwellings, and standards for the repair of such dwellings concerning lead paint.
- B. Compliance with this chapter is a precondition to obtaining a rental certificate of occupancy pursuant to Article II of Chapter 225.

### **§ 225-35. Fees.**

- A. In cases where visual inspections are sufficient pursuant to § 225-41A, the

inspection fees are as follows:

- (1) Inspections conducted as part of the rental certification process under Article II of Chapter 225: \$25, plus an additional \$20 per unit inspected for deposit into the Lead Hazard Control Assistance Fund established pursuant to N.J.S.A. 52:27D-437.4. The \$20 surcharge does not apply where the unit owner demonstrates that the DCA has already assessed such a surcharge pursuant to N.J.S.A. 52:27D-437.10.
  - (2) Other inspections: \$50, plus an additional \$20 per unit inspected for deposit into the Lead Hazard Control Assistance Fund established pursuant to N.J.S.A. 52:27D-437.4. The \$20 surcharge does not apply where the unit owner demonstrates that the DCA has already assessed such a surcharge pursuant to N.J.S.A. 52:27D-437.10.
- B. Inspection fees charged for dwellings units in a common interest community are the responsibility of the unit owners, not homeowners' associations, unless the dwellings are association-owned.
- C. Fees collected must be dedicated to covering the costs of implementing and enforcing this article and must not be used for any other purpose.

**§ 225-36. Recordkeeping.**

- A. The Division of Code Enforcement shall maintain a record of all dwellings subject to this article, including all current information on inspection schedules, inspection results, and tenant turnover.
- B. The Division of Code Enforcement shall also maintain a record of all lead-safe certifications issued pursuant to this article and all lead-free certifications issued pursuant to N.J.A.C. 5:17. Any time a lead evaluation contractor performs the inspection, the lead evaluation contractor must provide to the Division of Code Enforcement copies of any lead-safe certifications issued.
- C. Owners of dwellings subject to this chapter shall comply with the recordkeeping requirements imposed pursuant to N.J.A.C. 5:28A-3.1.

**§ 225-37. Investigations; violations and penalties.**

- A. The Division of Code Enforcement is authorized to conduct investigations and issue penalties to enforce a property owner's failure to comply with this article.
- B. Offending owners have 30 days to cure any violation by conducting the required inspection or initiating any required remediation efforts.
- C. If the dwelling owner has not cured the violation or initiated remediation efforts within 30 days, the owner shall be subject to a penalty of \$1,000 per week until the required inspection has been conducted or the remediation efforts have been initiated.
- D. For the purposes of this provision, remediation efforts are deemed to have been initiated when the owner has hired a lead abatement contractor or other qualified party to perform lead hazard control methods.
- E. Failure to conduct the required inspection, or remediate a lead-based paint hazard, shall constitute a violation of the International Property Maintenance Code adopted pursuant to Article I of Chapter 225, and any unpaid penalties imposed for such violations may be assessed as liens against the subject property pursuant to § 225-11.

**SECTION 2.** All ordinances or parts thereof, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of their inconsistencies.

**SECTION 3.** In the event any section, part or provision of this Ordinance shall be held unconstitutional or invalid by any Court, such holding shall not affect the

validity of this Ordinance or any remaining part of this Ordinance other than the part held unconstitutional or invalid.

**SECTION 4.** This ordinance shall take effect after second reading and publication as required by law.

PASSED: February 27, 2024  
ADOPTED: March 12th, 2024

SIGNED: \_\_\_\_\_  
LISA CRATE  
MAYOR

\_\_\_\_\_  
VINCE MINICHINO  
COUNCIL PRESIDENT

ATTEST: \_\_\_\_\_  
LYNNETTE A. IANNARONE  
TOWNSHIP CLERK