

**TOWNSHIP OF BURLINGTON**

**ORDINANCE**

**2023-OR-028**

**ORDINANCE OF THE TOWNSHIP OF BURLINGTON  
ADDING CHAPTER 319 TO THE CODE ENTITLED  
"LEAD-BASED PAINT INSPECTIONS"**

**WHEREAS**, pursuant to N.J.S.A. 52:27D-437.16 the Legislature has determined that in the interest of furthering the public health, safety, and welfare each municipality is required to inspect every non-exempt single-family, two-family and multiple rental dwelling for lead-based paint hazards at tenant turnover or by July 22, 2024, whichever is earlier; and

**WHEREAS**, the Department of Community Affairs has promulgated implementing regulations at N.J.A.C. 5:28A-1.1 et seq.; and

**WHEREAS**, pursuant to the implementing regulations the Township is eligible to have dwellings inspected for lead-based paint hazards by utilization of a visual assessment.

**NOW, THEREFORE, BE IT ORDAINED and ENACTED** by the Township Council of the Township of Burlington, that Chapter 319 "Lead Based Paint Inspections" is added to the Code as follows:

**SECTION ONE. Definitions.**

In addition to the definitions set forth hereinafter, the regulations in N.J.A.C. 5:28A-1.2 are incorporated herein.

COMMISSIONER means the Commissioner of the Department of Community Affairs.

DEPARTMENT means the Department of Community Affairs.

DIRECTOR means the Director of the Department of Licensing and Inspection or the Director's designee.

DUST WIPE SAMPLING means 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 means 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 means 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 means 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 is defined pursuant to 42 U.S.C. § 4851b and the regulations adopted pursuant thereto.

LEAD ABATEMENT means a set of measures designed to permanently eliminate lead-based paint hazards, in accordance with the standards established by the Commissioner at N.J.A.C. 5:17.

LEAD-FREE CERTIFICATION means 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 means the certification issued pursuant to this chapter, 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 means 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 SAFE means that a dwelling has been found to have no outstanding lead-based paint hazards. It does not mean that the dwelling is certified to be lead free.

MULTIPLE DWELLING means 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. It also means any group of ten 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. Multiple dwelling does not include those buildings and structures that are excluded pursuant to N.J.S.A. 55:13A-3(k).

PERIODIC LEAD-BASED PAINT INSPECTION means the initial inspection of all applicable dwelling units at the earlier of two years from 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.

REMEDIATION means interim controls or lead abatement work undertaken in conformance with this chapter to address lead-based paint hazards.

TENANT TURNOVER means 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 means 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.

## **SECTION TWO. Lead-based paint inspections.**

- a. The Director shall cause to be inspected by visual assessment every

single-family, two-family, and multiple rental dwelling unit for lead-based hazards at tenant turnover or by July 22, 2024, unless the dwelling unit is exempt. Thereafter, all such units shall be inspected every three years or upon tenant turnover, whichever is earlier, except that an inspection shall not be required at tenant turnover if the dwelling owner has a valid lead-safe certification for the dwelling unit.

The inspection shall be performed by a municipal employee who is qualified to perform a lead evaluation inspection, or by means of a shared service with another municipality, or by municipal contract with a lead evaluation contractor, certified to provide lead inspection services by the Department.

b. The dwelling owner or landlord may choose to have the inspection performed by directly hiring a lead evaluation contractor who is certified to provide lead paint inspection services by the Department.

The Director shall have the authority to conduct inspections or investigations of landlords or owners that directly hire lead evaluation contractors to ensure that the required periodic lead-based paint inspections are being performed as required.

The Director may prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection where an owner, who previously chose to hire a lead evaluation contractor to conduct the inspection, failed to have the inspection completed, or the Director determines that there is a conflict of interest between the owner and the lead evaluation contractor of choice.

c. The next periodic lead-based paint inspection shall be counted from the most recent periodic lead-based paint inspection that resulted in a valid lead-safe certification.

d. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4.

### **SECTION THREE. Exemptions from Lead-Based Paint Inspections.**

A rental dwelling unit shall not be subject to inspection and evaluation for the presence of lead-based paint hazards if the unit: (1) was constructed during or after 1978; (2) is a single-family or two-family seasonal rental dwelling that is rented for less than six months duration each year by tenants that do not have consecutive lease renewals; (3) has been certified to be free of lead-based paint pursuant to N.J.A.C. 5:17; (4) is in a multiple dwelling constructed prior to 1978 that has been (a) registered with the Department for at least ten years, and has no outstanding paint violations from the most recent cyclical inspection performed on the multiple 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, or (b) has been registered with the Department for at least ten years and has a current certificate of inspection issued by the Bureau of Housing Inspection, or (c) has been registered with the Department for at least ten years with open inspections that have no violations for paint; or (5) has a valid lead-safe certification, which lead-safe certification is valid for two years from the date of issuance.

### **SECTION FOUR. Lead-safe certification.**

If the inspection results in a finding that no lead-based paint hazard exists in a dwelling unit or following remediation, then the Director or the lead evaluation contractor shall certify the dwelling unit as lead-safe on a form prescribed by the Department. The lead-safe certification provided to the property owner shall be valid for two years.

### **SECTION FIVE. Remediation.**

a. If the inspection results in finding that a lead-based paint hazard exists in a dwelling unit, then the owner shall remediate the lead-based paint hazard by using abatement or interim controls. The owner shall choose the appropriate remediation mechanism.

b. Interim controls shall be performed in accordance with the requirements of the United States Department of Housing and Urban

Development at 42 U.S.C. § 4851b and detailed within the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Abatement work shall be performed in accordance with the requirements in the Lead Hazard Evaluation and Abatement Regulations in N.J.A.C. 5:17.

c. Upon conclusion of the remediation, the following procedure shall be utilized:

1. If the owner utilized interim controls for remediation, a qualified municipal employee or lead evaluation contractor shall conduct an additional inspection within 60 days of the initial inspection by using dust wipe sampling. If the inspection shows that the hazard no longer exists, the Director or the lead evaluation contractor shall certify the unit as lead-safe on the form prescribed by the Department. The certification shall be valid for a period of two years from the date of issuance.

2. If the owner utilized abatement for remediation, and a lead abatement clearance certificate has been issued by the Director 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 periodical lead-based paint inspections.

**SECTION SIX. Property owner responsibilities.**

Unless subject to an exemption, a property owner shall: (1) provide evidence of a valid lead-safe certification as well as evidence of the most recent tenant turnover at the time of the cyclical inspection carried out under the "Hotel and Multiple Dwelling Law," N.J.S.A. 55:13A-1 et seq.; (2) provide evidence of a valid lead-safe certification to new tenants of the property at the time of tenant turnover, and affix a copy of such certification as an exhibit to the lease provided to the tenant(s); and maintain a record of the lead-safe certification which shall include the name or names of the unit's tenant or tenants, if the inspection was conducted during a period of tenancy.

**SECTION SEVEN. Recordkeeping.**

The Director shall cause to be maintained a current record of all inspection schedules, inspection results, and tenant turnover for all dwellings which are required to have lead-based paint inspections. The Director shall also maintain a record of all lead-free certifications.

**SECTION EIGHT. Fees.**

a. All fees shall be dedicated to meeting the costs of implementing and enforcing the regulation of lead-based paint hazards and shall be paid in advance.

b. A fee in the amount of \$200.00 shall be paid for each lead-based paint visual assessment inspection performed by the Township. Where dust wipe sampling shall be required the owner shall pay for all additional costs.

c. The fee for the filing of a lead-safe certification shall be \$50.00.

d. For each inspection an additional fee of \$20.00 per unit shall be assessed for the purposes of the "Lead Hazard Control Assistance Act," N.J.S.A. 52:27D-437.1 et al., unless the unit owner demonstrates that the Department of Community Affairs has already assessed the additional \$20.00 inspection fee pursuant to N.J.S.A. 52:27D-437.10. This fee shall be deposited in the "Lead Hazard Control Assistance Fund."

e. 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, with the exception of dwelling units that have been certified to be free of lead-based paint. Fees for additional inspections shall be charged in accordance with section 2b.

f. In a common interest community, payment of any inspection fee shall be the responsibility of the unit owner and not the homeowner's association, unless the association is the owner of the unit.

**SECTION NINE.            Violations and penalties.**

If the Director determines that a property owner has failed to comply with a provision of N.J.S.A. 52:27D-437.16 et seq. with respect to a rental dwelling unit owned by the property owner, the property owner shall be given thirty (30) days written notice to cure any violation by conducting the required inspection or initiating any required remediation efforts. 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. Remediation efforts shall be considered to be initiated when the owner has provided proof of hiring a lead abatement contractor or other qualified party to perform lead-hazard control methods.

This Ordinance was introduced at a meeting of the Township Council in the Township of Burlington held on July 25, 2023, and will be considered for final passage after a public hearing held at a Regular Meeting of the Township Council to be held on August 8, 2023, at the Township Municipal Building, Burlington Township, New Jersey at 7:00 p.m.

This will certify that the foregoing Ordinance was passed by a majority of the Burlington Township Council on August 8, 2023.

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Mary E. Field  
Municipal Clerk

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Robert W. Jung  
President of Council