

2023-05

BOROUGH OF DUNELLEN

Adopted March 6, 2023

**AN ORDINANCE BY THE BOROUGH OF DUNELLEN,
MIDDLESEX COUNTY, NEW JERSEY, AMENDING
CHAPTER 217, “PROPERTY MAINTENANCE,” TO ADD
ARTICLE IV, TITLED “LEAD-BASED PAINT INSPECTION.”**

WHEREAS, the Borough maintains Borough Code Chapter 217, entitled “Property Maintenance”; and,

WHEREAS, pursuant to P.L. 2021, c.182 (N.J.S.A. 52:27D-437.6), all municipalities are required to inspect every single-family, two (2) family, and multiple rental dwelling located within the municipality at tenant turnover for lead-based paint hazards; and,

WHEREAS, the Department of Community Affairs has proposed regulations to implement P.L. 2021, c.182 (N.J.S.A. 52:27D-437.6), which became effective in July 2022; and,

WHEREAS, it is in the best interests of the residents of the Borough to amend the Borough Code at this time to require inspections for lead-based paint in residential rental dwellings to conform to and ensure compliance with this new State law;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Dunellen, County of Middlesex, State of New Jersey, that the following amendment to Chapter 217 of the Borough Code, adding a new Article IV entitled “Lead-Based Paint Inspection” is hereby enacted:

Section 1. Chapter 217 of the Borough Code is hereby amended as follows by the addition of a new Article IV, entitled “Lead-Based Paint Inspection.”

ARTICLE IV, LEAD-BASED PAINT INSPECTIONS

A. Inspections for Lead-Based Paint.

1. Definitions. The following shall have the meaning as used in and in accordance with N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-1.1, et seq.

“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.

“Multiple dwelling” means any building or structure and any land appurtenant thereto, and any portion thereof, in which three (3) or more dwelling units are occupied or intended to be occupied by three (3) or more persons living independently of each other. “Multiple dwelling” also means any group of ten (10) or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two (2) dwelling units are occupied, or intended to be occupied, by two (2) 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 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 (3) 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.

“Property Maintenance Code Official” means the Borough of Dunellen Construction Official, the Borough of Dunellen Code Enforcer, or any enforcement officer appointed by the Borough of Dunellen, pursuant to N.J.S.A. 40:48-2.3 et seq., or any other statutory authorization, to perform inspections of any Building or other code, or any enforcement officer authorized to enforce the Borough of Dunellen Property Maintenance Code or Health Code, or their designee.

“Remediation” means interim controls or lead abatement work undertaken in conformance with this Article 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.

2. Inspections Authorized. The Dunellen Code Official or the Property Maintenance Code Official shall be authorized and empowered to conduct periodic lead-based paint inspections for all applicable multiple dwelling units offered for rent to determine the presence of lead-based paint, in accordance with N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-1.1, et seq.

3. Certain Multiple Dwelling Units Exempted from Lead-Based Paint Inspection. Inspections for lead-based paint in multiple dwelling units shall be governed by the standards set forth in N.J.S.A. 52:27D-437.1 et seq., and N.J.S.A. 55:13A-1 et seq. 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:
 - a. was constructed during or after 1978;
 - b. is a single-family or two-family seasonal rental dwelling unit that is rented for less than six (6) months duration each year by tenants that do not have consecutive lease renewals;
 - c. has been certified to be free of lead-based paint, pursuant to N.J.A.C. 5:17;
 - d. is in a multiple dwelling that was constructed prior to 1978 and 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 either (a) no outstanding paint violations from the most recent cyclical inspection performed on the multiple dwelling under the "Hotel and Multiple Dwelling Law," P.L. 1967, c.76 (N.J.S.A. 55:13A-1 et seq.), (b) a current certificate of inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, or (c) an open inspection with no violations for paint;
 - e. has a valid lead-safe certification issued pursuant to 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.

B. Owner Required to Obtain Inspection.

1. Inspection Performed by Borough Official. The owner, landlord, and/or agent of every single-family, two-family and/or multiple dwelling unit offered for rental shall be required to obtain an inspection of the unit for lead-based paint hazards as required in this Article, or at tenant turnover, whichever is earlier. To obtain the required inspection, the landlord, owner and/or agent shall arrange it with the Borough's Construction Official or Property Maintenance Code Official and pay all applicable and required fees associated with the Borough's inspection as specified in D & E, below.
2. Option for Inspection Performed by Licensed Lead Evaluation Contractor. A dwelling unit owner or landlord may opt, instead, to directly hire a licensed lead evaluation contractor to conduct the periodic lead-based paint inspections for lead-based paint as required in this Article. Notwithstanding this option, the Borough retains the authority to conduct inspections or investigations of landlords or owners that directly hire lead evaluation contractors to ensure that periodic lead-based paint inspections are being performed, in accordance with this chapter. The Borough also retains the authority to

prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection where: (i) 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; or (ii) the Borough determines there is a conflict of interest between the owner and their lead-evaluation contractor of choice.

C. When Lead-Based Paint Inspections Are Required.

1. The initial inspection for all single-family, two-family and multiple dwellings subject to this Article shall be upon tenant turnover or within two years of the effective date of P.L. 2021, c. 182 (July 22, 2022), whichever is sooner.
2. Thereafter, all such dwelling units shall be inspected for lead-based paint hazards every three (3) years or upon tenant turnover, whichever is earlier, except that an inspection shall not be required at tenant turnover, if the dwelling unit owner has a valid lead-safe certification for the dwelling unit.
3. The next periodic lead-based paint inspection shall be counted from the most recent periodic lead-based paint inspection which resulted in a valid lead-safe certification.

D. Notice of Inspection to be Given.

Whenever any multiple dwelling unit is scheduled for a tenant turnover, the then-current landlord, owner and/or agent shall provide written notice to the Construction Official or the Property Maintenance Code Official that an inspection is needed at least twenty (20) calendar days prior to the scheduled date of the tenant turnover.

E. Fees for inspections.

1. There shall be a fee of One Hundred and Twenty-Five (\$125.00) Dollars for each initial visual lead-based paint inspection. If a dust-wipe sampling is deemed necessary based on visual examination, there shall be an additional fee of Seventy-five (\$75.00) Dollars for that sample.
2. There shall be a fee of One Hundred (\$100.00) Dollars for each visual leadbased paint reinspection which is required and/or requested pursuant to this Article. If a dust-wipe sampling is deemed necessary based on visual examination, there shall be a fee of Seventy-five (\$75.00) Dollars for that sample.
3. An additional Twenty (\$20.00) Dollar fee shall be assessed in accordance with N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-2.2, to be deposited into the Lead Hazard Control Assistance Act Fund under the administration of the New Jersey State Department of Community Affairs.
4. All fees are nonrefundable upon the applicant's failure to cancel the requested inspection at least forty-eight (48) hours prior to a scheduled inspection. Said fee shall

be dedicated to meeting the costs of implementing and enforcing this Article for lead-based paint inspections and shall not be used for any other purpose.

5. A dwelling landlord, owner and/or agent may directly hire a 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 and the requirements of N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-1.1, et seq., in which case, the Twenty (\$20.00) Dollar fee shall be assessed in accordance with N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-2.2, payable to the Borough, to be deposited into the Lead Hazard Control Assistance Act Fund under the administration of the New Jersey State Department of Community Affairs, but no additional lead-based paint inspection fee shall be charged by the Borough.

F. Time for Inspections.

All inspections and reinspections shall take place within fifteen (15) calendar days of the requested inspection. Inspection fees shall be paid prior to the inspection. No inspections or reinspections shall take place unless all fees are paid. Scheduled inspections or reinspections may be canceled by the Construction Official or the Property Maintenance Code Official, unless the completed application and required fees have been received by the Borough at least twenty-four (24) hours prior to the scheduled inspection, or on the last working day prior to the scheduled inspection. Every inspection for which the landlord, tenant, owner or agent has failed to provide access for inspection shall be deemed a failed inspection.

G. Lead-Based Paint Inspections by Visual Assessment or Dust Wiping Method.

1. At the time of the enactment of P.L. 2021, c.182 (N.J.S.A. 52:27D-437.6), the Department of Community Affairs identified the Borough as a municipality in which less than three percent of children tested, six years of age or younger, have a blood lead level greater than or equal to five $\mu\text{g/dL}$ according to the central lead screening database maintained by the New Jersey Department of Health. Accordingly, the Construction Official, Property Maintenance Code Official or licensed lead evaluation contractor shall perform the periodic lead-based paint inspection through a visual assessment, in which the Official or contractor is to examine dwellings, in accordance with HUD guidelines and regulations 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. The Construction Official, Property Maintenance Code Official or licensed lead evaluation contractor may also elect to, but is not required to, collect samples by dust wiping surfaces, including floors, interior windowsills, and other similar surfaces, and tested, in accordance with methods approved by the State of New Jersey and/or the United States Department of Housing and Urban Development.
2. If, in the future, the Department of Community Affairs designates the Borough as a municipality in which at least three percent of children tested, six years of age or

younger, have a blood lead level greater than or equal to five µg/dL according to the central lead screening database maintained by the New Jersey Department of Health, then the inspections required by this Article shall be performed through dust wipe sampling instead of visual assessment alone.

H. Inspection Certification to be Supplied.

1. If, following inspection, the Construction Official, Property Maintenance Code Official or lead evaluation contractor finds that no lead-based paint hazard exists in a dwelling unit, they shall certify the dwelling unit as lead-safe on the form prescribed by the Department of Community Affairs and supply a copy of the lead-safe certification to the landlord, owner, and/or agent of the dwelling. If a licensed lead evaluation contractor issues the lead-safe certification, a copy shall also be provided to the Construction Official, Property Maintenance Code Official and the Borough Clerk at the time it is issued.
2. The lead-safe certification shall be valid for a period of two years from the date of issuance, unless during the two-year certification period, a lead evaluation contractor, lead inspector/risk assessor, a local health department, or a public agency conducts an independent inspection or risk assessment and determines that there is a lead-based paint hazard, in which case, the certification shall be invalid.

I. Identification of Lead-Based Paint Hazard.

1. If the Construction Official, Property Maintenance Code Official or licensed lead evaluation contractor finds that a lead-based paint hazard exists in a dwelling unit, they shall notify the New Jersey State Department of Community Affairs, Division of Local Government Services for review of the findings, in accordance with the Lead Hazard Control Assistance Act.
2. If a lead-based paint hazard is identified in an inspection of one of the dwelling units in a building consisting of two (2) or more dwelling units, then the lead contractor, Construction Official or Property Maintenance Code Official 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.

J. Responsibility for Remediation of Lead-Based Paint.

The owner of the dwelling unit shall be responsible for remediation of the lead-based paint hazard. Remediation and any reinspections 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 Construction Official or the Property Maintenance Code Official.

K. Owner Responsibility for Record-Keeping.

1. The landlord, owner and/or agent of a dwelling that is subject to this Article shall provide to the tenant and to the 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 of a multiple dwelling that is subject to this Article shall provide evidence of a valid lead-safe certification obtained pursuant to this Article, as well as 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.
3. 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.
4. The owner of any dwelling subject to this Article shall inform the Borough of all tenant turnover activity to ensure any required inspection may be scheduled.
5. 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.

L. Municipal Responsibilities and Enforcement Powers

1. Pursuant to N.J.A.C. 5:28A-2.1(d), the Construction Official or Property Maintenance Code Official shall exercise appropriate oversight of a landlord or owner who chooses to hire a lead evaluation contractor to perform the periodic lead-based paint inspection.
2. Pursuant to N.J.A.C. 5:28A-3.2, the Construction Official or Property Maintenance Code Official shall maintain a record of: all dwellings subject to this chapter, which includes up-to-date information on inspection schedules, inspection results, and tenant turnover; all lead-safe certifications issued; and all lead-free certifications issued.
3. Pursuant to N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-4.1, the Construction Official or Property Maintenance Code Official is authorized to conduct investigations and issue penalties in order to enforce a multiple dwelling landlord's, owner's and/or agent's failure to comply with this Article.
 - a. The owner of the dwelling shall first be given a period of thirty (30) calendar days to cure any violation by conducting the required inspection or initiating any required remediation efforts.
 - b. If the owner of the dwelling has not cured the violation within that time period, they shall be subject to a penalty, not to exceed One Thousand (\$1,000) Dollars per week, until the required inspection has been conducted or the remediation efforts have been initiated.

- c. Remediation efforts shall be considered to be initiated when the dwelling owner has hired a lead abatement contractor or other qualified party to perform leadhazard control methods.

Section 2. The Borough Administrator, and any and all other Borough officials, are hereby directed and authorized to perform all acts necessary to effectuate the purposes of this Ordinance.

Section 3. Any article, section, paragraph, subsection, clause, or other provision of the Borough Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

Section 4. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

Section 5. This ordinance shall take effect upon its passage and publication as provided for by law.