

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2024-10

Title: AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 523, RENTAL PROPERTIES, OF THE CODE OF THE TOWNSHIP OF LOWER IN ORDER TO PROVIDE FOR LEAD-BASED PAINT INSPECTIONS OF CERTAIN RENTAL PROPERTIES AND TO ENACT INSPECTION FEES IN COMPLIANCE WITH P.L. 2021, C. 182

WHEREAS, the State of New Jersey has enacted P.L. 2021, c.182 establishing the Lead Hazard Control Assistance Act requiring lead-based testing for certain residential rental properties; and

WHEREAS, pursuant to P.L. 2021, c.182 (N.J.S.A. 52:27D-437.16 et seq.), all municipalities are 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, while these requirements are already applicable and enforced by State Law, the Township Council of the Township of Lower has determined that it is in the best interests of the Township and its residents to amend Chapter 523, Rental Properties, of the Code of the Township of Lower in order to codify the requirements associated with inspections for lead-based paint in residential rental dwellings;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey as follows:

Section 1. Chapter 523, Rental Properties, Article II, Lead-Based Paint Inspections, is hereby enacted as follows

523-8 Definitions.

The following definitions shall apply to this article:

COMMON INTEREST COMMUNITY

A condominium or homeowners' association or other real estate development, in which the property is burdened by servitudes requiring property owners and/or unit owners to contribute to maintenance of commonly held property or to pay dues or assessments to an owners' association that provides services or facilities to the community.

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.

LEAD ABATEMENT

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

LEAD EVALUATION CONTRACTOR

A firm certified by the Department 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 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-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% 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 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 this article, which confirms that a periodic lead-based paint inspection was performed and no lead-based paint hazards were found.

MULTIPLE DWELLING

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.

PERIODIC LEAD-BASED PAINT INSPECTION

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

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.

523-9 Lead-Based Paint Inspections.

- A. The owner, and/or its agent, of every single-family, two-family, and multiple dwellings must obtain an inspection upon tenant turnover or within two years of the effective date of July 22, 2022, in accordance with this article. Thereafter, all such dwelling units shall be inspected for lead-based paint hazards every three 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. In all scenarios, 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.

- B. A lead inspector employed by the Township shall inspect every single-family, two-family, and multiple rental dwelling located within the Township for lead-based paint hazards through visual assessment in accordance with N.J.S.A. 52:27D-437.1 et seq., as may be amended from time to time.
- C. The property owner may, in lieu of having the dwelling inspected by the Township's lead inspector, 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., as may be amended from time to time.

523-10 Applicability and Exemptions.

This article applies to all rental single-family, two-family, and multiple dwelling units with the exception of those set forth below which shall be exempt from the requirements of this article and, thus, shall not be subject to periodic lead-based paint inspection and evaluation for the presence of lead-based paint hazards:

- A. Dwelling units that were 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, as may be amended from time to time;
- D. Multiple rental dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and have 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, as may be amended from time to time.
 - i. All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and that have a current certificate of inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, shall be exempt from this article;
 - ii. All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years with open inspections that have no violations for paint shall also be exempt from this article.
- E. Dwellings with a valid lead-safe certification issued pursuant to this article. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4, as may be amended from time to time.

523-11 Inspection Results.

If, following inspection, the Township's lead inspector or a lead evaluation contractor retained by the owner finds that no lead-based paint hazard exists in a dwelling unit, the Township's lead inspector or the owner's lead evaluation contractor shall certify the dwelling unit as lead safe on the form prescribed by the Department of Community Affairs.

- A. The lead-safe certification shall be valid for a period of two years from the date of issuance.

- i. If, 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, the lead-safe certification issued pursuant to this article shall be invalid. A periodic lead-based paint inspection shall be scheduled upon the conclusion of remediation, in accordance with N.J.A.C. 5:28A-2.5(e), as may be amended from time to time.
 - ii. Where an independent inspection or risk assessment determines that there is a lead-based paint hazard, the inspector/risk assessor shall inform the municipality of the results of the inspection.
 - iii. The lead-safe certification shall not exempt the dwelling from any other law that would require a lead inspection/risk assessment.
- B. A copy of the lead-safe certification shall be provided to the owner of the dwelling. If a lead evaluation contractor issues the lead-safe certification, a copy shall also be provided to the municipality at the time it is issued.
- C. If the Township's lead inspector, a lead evaluation contractor hired by the owner, or permanent local agency finds that a lead-based paint hazard exists in a dwelling unit, they shall notify the Department of Community Affairs for review of the findings, in accordance with the Lead Hazard Control Assistance Act.
 - i. If a lead-based paint hazard is identified in an inspection of one of the dwelling units in a building consisting of two or three dwelling units, then the lead contractor or permanent local agency 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.
 - ii. The owner and/or agent of the owner of the dwelling unit shall be responsible for remediation of the lead-based paint hazard. Remediation must be conducted consistent with the requirements at N.J.A.C. 5:28A-2.5, as may be amended from time to time.

523-12 Remediation.

- A. Where a lead-based paint hazard exists in a dwelling, the owner or agent of the owner shall remediate the hazard by using either abatement or interim controls. The owner or agent of 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.
- C. Abatement work shall be performed in accordance with the requirements in the lead hazard evaluation and abatement regulations, N.J.A.C. 5:17, as may be amended from time to time.
- D. Any relocation of tenants required pursuant to a remediation shall be undertaken in accordance with applicable law.
- E. Upon conclusion of the remediation, the following procedure shall be followed:

- i. If the owner or agent of the owner utilized interim controls for remediation, the Township's lead inspector or the lead evaluation contractor hired by the owner shall conduct an additional inspection within 60 days of the initial inspection. If the inspection shows that the hazard no longer exists, the lead inspector or lead evaluation contractor shall certify the unit as lead safe on the form prescribed by the Department of Community Affairs. The certification shall be valid for a period of two years from the date of issuance; and
- ii. If the owner or agent of the owner utilized abatement for remediation and a lead abatement clearance certificate has been issued by the local enforcing agency 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.

523-13 Property Owner Responsibilities.

- A. The owner or agent of an owner of a dwelling that is subject to this article shall provide to the tenant and to the Township evidence of a valid lead-safe certification obtained pursuant to this article at the time of tenant turnover. The owner or agent of the owner shall also affix a copy of any such certification as an exhibit to the tenant's lease.
- B. The owner or agent of an 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.
- C. The owner or agent of an 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.
- D. The owner or agent of any dwelling subject to this article shall inform the Township of all tenant turnover activity to ensure any required inspection may be scheduled.
- E. The owner or agent of an 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.

523-14 Fees.

The fees for a lead-based paint inspections shall be as follows:

- A. The fee for a visual assessment shall be \$100.00 per unit. A lead-free certificate will only be issued if no lead-based paint is found.
- B. Post remediation inspection/clearance: \$100 per unit.
- C. The fee for the filing of a lead-safe certification or lead-free certification shall be \$25.
- D. In accordance with N.J.S.A. 52:27D-437.16(h), an additional fee of \$20 per dwelling unit inspected by the Township's lead inspector or the owner's private lead inspector shall be assessed for the purposes of the Lead Hazard Control Assistance Act unless the unit owner demonstrates that the Department of Community Affairs has already assessed an additional inspection fee of \$20. The fees collected pursuant to this subsection shall be deposited into the Lead Hazard Control Assistance Fund.

- E. 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.

523-15 Violations and Penalties.

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

- A. If a property owner and/or agent of a property owner has failed to conduct the required inspection or initiate any remediation efforts, the owner and/or agent of the owner shall be given 30 days to cure the violation.
- B. If the property owner and/or agent of the property owner has not cured the violation after 30 days, the property owner and/or agent of 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 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

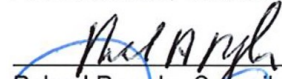
Section 4. This Ordinance shall become effective 20 days after final passage and publication according to law.



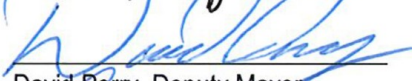
Thomas Conrad, Councilmember



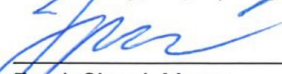
Kevin Coombs, Councilmember



Roland Roy, Jr., Councilmember



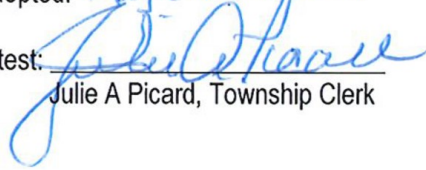
David Perry, Deputy Mayor



Frank Sippel, Mayor

First Reading: July 15, 2024

Adopted: August 5, 2024

Attest: 
Julie A Picard, Township Clerk