

ORDINANCE NO. 3692-24

AN ORDINANCE OF THE BOROUGH OF RUTHERFORD, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING THE BOROUGH CODE TO CREATE CHAPTER 78-7 REGULATING STATE-MANDATED LEAD-BASED PAINT TESTING FOR RENTAL PROPERTIES

WHEREAS, N.J.S.A. 52:27D-437.1 established the Lead Hazard Control Assistance Act lead-based testing program for residential rental properties; and

WHEREAS, N.J.S.A. 52:27D-437.16, and its implementing regulations at N.J.A.C. 5:28A-1.1 et seq., now require all municipalities 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 Council has determined that it is in the best interest of the Borough to amend the Borough Code to require such inspections to conform with State law.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Rutherford, County of Bergen, and State of New Jersey, as follows:

SECTION 1. Chapter 78, Property Maintenance, of the Borough of Rutherford Code is hereby amended to establish § 78-7, Lead-Based Paint Inspection of Rental Properties, to read as follows:

§ 78-7 Lead-Based Paint Inspection of Rental Properties

§ 78-7.1 Definitions.

The following terms shall have the meanings indicated below pursuant to N.J.S.A. 52:27D-437.16, as may be amended and which is incorporated by reference. Additional definitions as may be established by N.J.A.C. 5:28A-1.1 et seq. are incorporated by reference.

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.

TENANT TURNOVER

the time at which all existing occupants vacate a dwelling unit and all new tenants move into the dwelling unit.

VISUAL ASSESSMENT

A visual examination for deteriorated paint or visible surface dust, debris, or residue.

§ 78-7.2 Inspections by Borough.

The Construction Code Official, a designee, or a certified lead evaluation contractor hired by the Borough shall inspect every single-family, two-family, and multiple rental dwelling located within the Borough at tenant turnover for lead-based paint hazards or by July 22, 2024, whichever is earlier. Thereafter, all such units shall be inspected for lead-based paint hazards the earlier of every three years or upon tenant turnover, except that an inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification. The owner of any such rental dwelling shall not permit any tenant turnover without first complying with this section. The Borough shall charge the dwelling owner or landlord, and the dwelling owner or landlord shall pay the Borough, or designated certified lead evaluation contractor in advance of any inspection, a fee sufficient to cover the cost of the inspection, which shall be dedicated to meeting the costs of implementing and enforcing this section.

§ 78-7-3 Option for Owner/Landlord to Hire Lead Evaluation Contractor.

The dwelling owner or landlord may directly hire a lead evaluation contractor who is certified to provide lead paint inspection services by the New Jersey Department of Community Affairs to satisfy the requirements of § 78-7.2 instead of the Borough, or designated certified lead evaluation contractor conducting the inspection. In the event that a dwelling owner or landlord directly hires such a lead evaluation contractor, the term “Construction Code Official” shall also mean and include such lead evaluation contractor for purposes of this section (except for the purposes of § 78-7-13).

- a. The Borough shall have 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.
- b. The Borough shall have the authority to prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection in the following situations:
 - i. An owner, who previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection, 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.

§ 78-7.4 Consultation with Local Health Board.

The Construction Code Official, designee, or certified lead evaluation contractor responsible for inspecting single-family, two-family, and multiple rental dwellings pursuant to this section may consult with the local health board, the State of New Jersey

Department of Health, and/or the State of New Jersey Department of Community Affairs concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in dwellings, methods of detection of lead in dwellings, and standards for the repair of dwellings containing lead paint.

§ 78-7.5 Exceptions for Inspections.

Notwithstanding any language in § 78-7.2 to the contrary, 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. has been certified to be free of lead-based paint;
- b. was constructed during or after 1978;
- c. is in a multiple dwelling that has been registered with the State of New Jersey 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 on the multiple dwelling under the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1, et seq.);

§ 78-7.6 Remediation.

If the Construction Code Official, designee, or certified lead evaluation contractor finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to § 78-7.2, then the owner of the dwelling unit shall 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 al.). Upon the remediation of the lead-based paint hazard, the Construction Code Official, designee, or certified lead evaluation contractor shall conduct an additional inspection of the unit to certify that the hazard no longer exists. The Construction Code Official, or designated certified lead evaluation contractor shall charge an additional fee sufficient to cover the cost for such additional inspection.

§ 78-7.7 Lead-Safe Certification.

If the Construction Code Official, designee, or certified lead evaluation contractor finds that no lead-based paint hazards exist in a dwelling unit upon conducting an inspection pursuant to § 78-7.2 or following remediation of a lead-based paint hazard pursuant to § 78-7.6, then the Construction Code Official, designee, or certified lead evaluation contractor shall certify the dwelling unit as lead-safe on a form prescribed by the New Jersey Department of Community Affairs as provided for in regulations or guidance promulgated pursuant to N.J.S.A. 52:27D-437.20. The lead-safe certification provided to the property owner by Construction Code Official, designee, or certified lead evaluation contractor shall be valid for two years from the date of issuance.

§ 78-7.8 Production of Lead-Safe Certification.

Beginning on July 22, 2024, property owners shall:

- a. Provide evidence of a valid lead-safe certification obtained pursuant to this section 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. 55:13A1, et seq.), unless not required to have had an inspection by the Construction Code Official, designee, or certified lead evaluation contractor pursuant to paragraph a, b, or c of § 78-7.5;
- b. Provide evidence of a valid lead-safe certification obtained pursuant to this section to new tenants of the property at the time of tenant turnover unless not required to have had an inspection by the Construction Code Official, designee, or certified lead evaluation contractor pursuant to paragraphs a, b, c, and d of § 78-7.5, and shall affix a copy of such certification as an exhibit to the tenant's or tenants' lease; and
- c. 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, unless not required to have had an inspection by the Construction Code Official, designee, or certified lead evaluation contractor pursuant to paragraphs a, b, c, and d of § 78-7.5.

§ 78-7.9 Notification to Commissioner of Community Affairs.

If the Construction Code Official, designee, or certified lead evaluation finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to this section, then the inspector shall notify the Commissioner of Community Affairs, who shall review the findings in accordance with the Lead Hazard Control Assistance Act (N.J.S.A. 52:27D- 437.8).

§ 78-7.10 Inspection of Two- or Three-Dwelling Units.

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 Construction Code Official, designee, or certified lead evaluation contractor shall inspect the remainder of the building's dwelling units for lead hazards, with the exception of dwelling units that have been certified to be free of lead-based paint. The inspector may charge an additional fee sufficient to cover the cost of the inspection.

§ 78-7.11 Fees.

- a. The Borough, or designated certified lead evaluation contractor shall charge the dwelling owner or landlord a fee sufficient to cover the cost of the periodic lead-based paint inspection.
- b. In addition to these fees, the Borough shall assess an additional fee of \$20.00 per unit inspected for the purposes of the Lead Hazard Control Assistance Act (N.J.S.A.52:27D437.1, et seq.) concerning lead hazard control work, unless the unit owner demonstrates that the Department of Community Affairs already has assessed an additional inspection fee of \$20.00 pursuant to the provisions of N.J.S.A. 52:27D-437.10. In a common interest community, any inspection fee charged pursuant to this section shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit. The fees collected pursuant to this section shall be deposited into the "Lead Hazard Control Assistance Fund" established pursuant to N.J.S.A. 52:27D-437.4.
- c. In addition to these fees, the Borough shall assess an administration fee of \$25.

§ 78-7.12 Inspections as a Result of Testing of Children of Six Years of Age or Younger.

- a. If less than three percent (3%) of children tested in the Borough, six years of age or younger, have a blood lead level greater than or equal to five ug/dL, according to the central lead screening database maintained by the State of New Jersey Department of Health pursuant to N.J.S.A. 26:2-137.6, or according to other data deemed appropriate by the commissioner (as such term is used in and for the purposes of N.J.S.A. 52:27D-437.16), then the Construction Code Official, designee, or certified lead evaluation contractor may inspect a dwelling located therein for lead-based paint hazards through visual assessment.
 - i. For a visual assessment, the Construction Code Official, designee, or certified lead evaluation contractor shall 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.
- b. If at least three percent (3%) of children tested, six years of age or younger, have a blood lead level greater than or equal to five ug/dL, according to the central lead screening database maintained by the State of new Jersey Department of Health pursuant to section 5 of P.L.1995, c.328 (C.26:2-137.6), or according to other data deemed appropriate by the commissioner, then the Construction Code Official, designee, or certified lead evaluation contractor shall inspect a dwelling located therein through dust wipe sampling.
 - i. For dust wipe sampling, the Construction Code Official, designee, or certified lead evaluation contractor shall collect samples by wiping representative

surfaces, including floors, interior windowsills, and other similar surfaces, and tested, in accordance with methods approved by HUD.

- 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 Construction Code Official, designee, or certified lead evaluation contractor shall inspect the remainder of the building's dwelling units for lead hazards, with the exception of dwelling units that have been certified to be free of lead-based paint. The inspector may charge fees in accordance with this section for such additional inspections

§ 78-7.13 Penalties.

The Borough and the Construction Code Official, designee, or certified lead evaluation contractor shall be authorized to conduct investigations and issue penalties to enforce a property owner's failure to comply with N.J.S.A. 52:27D-437.16 or this section. If the Borough or the inspector determines that a property owner has failed to comply with a provision of N.J.S.A. 52:27D-437.16, et seq. or this section regarding a rental dwelling unit owned by the property owner, the property owner shall first be given thirty (30) days to cure any violation by conducting the required inspection or initiate any required remediation efforts. If the property owner has not cured the violation after thirty (30) days, the property owner shall be subject to a penalty not to exceed \$1,000.00 per week until the required inspection has been conducted or remediation efforts have been initiated.

SECTION 2. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are, to the extent of such inconsistency, hereby repealed.

SECTION 3. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

SECTION 4. This Ordinance shall take effect in accordance with the law.

ATTEST:

BOROUGH OF RUTHERFORD

Margaret M. Scanlon

Margaret M. Scanlon, Borough Clerk

Frank Nunziato

Frank Nunziato, Mayor

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Mayor and Council at a meeting held **June 10, 2024**.

Margaret M. Scanlon

Margaret M. Scanlon, Borough Clerk