

**Ord. #16-2023**

**AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING CHAPTER 227, HOUSING, OF THE TOWNSHIP CODE, TO REQUIRE LEAD PAINT TESTING AS MANDATED BY P.L. 2021, C.182**

**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 now requires 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 Mayor and Council of the Township of Mount Olive have determined that it is in the best interest of the Township to amend the Township Code to require such inspections to conform with State law.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Township of Mount Olive, County of Morris, State of New Jersey, as follows:

**SECTION 1.** Part II, General Legislation, Chapter 227, Housing, of the Township Code is hereby amended to establish Article II, Lead-Based Paint Hazard Inspection Requirements for Rental Dwellings, to read as follows:

**Article II Lead-Based Paint Hazard Inspection Requirements for Rental Dwellings**

**§ 227-10. Definitions.**

The following term shall have the meanings indicated below pursuant to N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.2, both of which are incorporated by reference.

**COMMON INTEREST COMMUNITY**

A real estate development or neighborhood in which the property is burdened by servitudes requiring property 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. Common interest community includes, but is not limited to, condominiums and cooperative housing corporations.

**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-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 percent 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 EVALUTION CONTRACTOR**

A firm certified by the Department of Community Affairs 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-FREE CERTIFICATION**

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.

**MULTIPLE DWELLING**

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. "Multiple dwelling" also means 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. "Multiple dwelling" does not include those buildings and structures that are excluded pursuant to N.J.S.A. 55:13A- 3(k).

**REMEDIATION**

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

## **TENANT TURNOVER**

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**

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.

### **§ 227-11. Standards.**

Inspections for lead-based paint in rental dwelling units shall be governed by the standards set forth in N.J.S.A. 52:27D-437.1 et seq. (Lead Hazard Control Assistance Act) and implementing regulations at N.J.A.C. 5:28A-4.1 et seq. and N.J.S.A. 55:13A-1 et seq. (Hotel and Multiple Dwelling Law), as may be amended from time to time.

### **§ 227-12. Lead-based paint inspections by Township.**

The Township shall inspect every single-family, two-family, and multiple rental dwelling located within the Township 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 Township shall charge the dwelling owner or landlord, and the dwelling owner or landlord shall pay the Township in advance of any inspection, applicable fees set forth in § 227-21, which fees shall be dedicated to meeting the costs of implementing and enforcing this section. For the purposes of this section, "Township" shall mean the Construction Code Official, Health Officer or designee, or lead evaluation contractor hired by the Township.

### **§ 227-13. 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 Department of Community Affairs to satisfy the requirements of § 227-12, instead of the Township conducting the inspection. In the event that a dwelling owner or landlord directly hires such a lead evaluation contractor, "Township" shall also mean and include such privately hired lead evaluation contractor for purposes of this section, except for the purposes of § 227-23.

### **§ 227-14. Consultation with Local Health Board.**

The Township may consult with the local health board, the New Jersey Department of Health, or the 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.

§ 227-15. Exceptions for Inspections.

Notwithstanding any language in § 227-12 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 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.);
- D. 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; or
- E. has a valid lead-safe certification issued in accordance with this section.

§ 227-16. Remediation.

If the Township finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to § 227-12, 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 Township shall conduct an additional inspection of the unit to certify that the hazard no longer exists.

§ 227-17. Lead-Safe Certification.

If the Township finds that no lead-based paint hazards exist in a dwelling unit upon conducting an inspection pursuant to § 227-12, or following remediation of a lead-based paint hazard pursuant to § 227-16, then the Township shall certify the dwelling unit as lead-safe on a form prescribed by the 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 the Township pursuant to this section shall be valid for two years.

§ 227-18. Property Owner Production of Lead-Safe Certification.

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 Township pursuant to paragraph (1), (2), or (3) of § 227-15;

- 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 Township pursuant to paragraphs (1), (2), (3), and (4) of § 227-15, 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 Township pursuant to paragraphs (1), (2), (3), and (4) of § 227-15.

§ 227-19. Notification to Commissioner of Department of Community Affairs.

If the Township finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to this section, then the Township 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).

§ 227-20. 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 Township 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 Township shall charge an additional fee as set forth in § 227-21 of the Township Code each additional inspection.

§ 227-21. Fees.

The following fees shall apply:

- A. Visual assessment inspection: \$200.00 per dwelling unit.
- B. Dust Wipe Sampling: \$50.00 per sample.
- C. Filing of a Lead-Safe Certification or Lead-Free Certification: \$30.00.
- D. In addition to the fees charged for inspections, the Township shall assess an additional fee of \$20.00 per unit inspected as required by the Lead Hazard Control Assistance Act (N.J.S.A.52:27D437.1, et seq.) 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. 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.
- E. 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.

§ 227-22. 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 Township, 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 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 Township may inspect a dwelling located therein for lead-based paint hazards through visual assessment.
- 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 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 Township shall inspect a dwelling located therein through dust wipe sampling.
- 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 Township, 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

§ 227-23. Violations and penalties.

The Township 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 Township 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.** Ordinances, resolutions, regulations or parts of ordinances, resolutions and regulations inconsistent herewith are hereby repealed to the extent of such inconsistencies.

**SECTION 3.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such a decision shall not affect the remaining portions of this Ordinance.

**SECTION 4.** This Ordinance shall take effect twenty (20) days following final passage, approval, and publication as required by law.