

ORDINANCE #50-24

**BOROUGH OF SAYREVILLE, COUNTY OF MIDDLESEX
ORDINANCE ADDRESSING LEAD PAINT INSPECTIONS**

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, the purpose of these requirements is to prevent the poisoning of residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 structures be identified and correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to such hazards; and

WHEREAS, it is necessary and in the best interests of the residents of the Borough of Sayreville ("Borough") to amend the Borough's Housing Code to require inspections for lead-based paint in residential rental dwellings, in order to conform to and ensure compliance with this new State law;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Sayreville in the County of Middlesex, State of New Jersey, as follows:

SECTION 1. Chapter XII of the Code of Ordinances, titled "Building and Housing" is hereby supplemented with a new section as follows:

12-14 Lead-Based Paint Hazards

12-14.1 Statutory authority.

This article is enacted pursuant to P.L. 2021, c. 182, and shall be interpreted and enforced to the same extent as that legislation, any amendments or supplements thereto, the companion regulations set forth at N.J.A.C. 5:28A-1.1 *et seq.*, and other associated regulatory or judicial authority.

12-14.2 Definitions.

For the purposes of this Chapter only, the following words and terms shall have the meanings set forth below, in accordance with N.J.S.A. 52:27D-437.1 *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").

"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 abatement contractor" means a firm certified by the New Jersey Department of Community Affairs (the "Department" or "DCA") to perform remediation through lead abatement or interim control work pursuant to N.J.A.C. 5:17.

"Lead-based paint hazard" means 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 evaluation contractor" means 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" means an individual certified by the New Jersey Department of Health ("DOH") 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-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.

"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.

12-14.3 Required inspections.

- A. The Borough Code Enforcement Official and the lead evaluation contractor shall be authorized and empowered to conduct periodic lead-based inspections for all applicable 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.
- B. A lead evaluation contractor retained by the Borough shall inspect every single-family, two-family, or multiple rental dwelling located in the Borough for lead-based paint hazards through visual assessment and duct wipe sampling in accordance with N.J.S.A. 52:27D-437.1 et seq.
- C. The dwelling owner, landlord and/or property management agent of every single-family, two-family and/or multiple dwelling rental unit are responsible and shall obtain an inspection of each unit for lead-based paint hazards as required by New Jersey law. To obtain the required inspection, the dwelling owner, landlord and/or property management agent may arrange it with the lead evaluation contractor retained by the Borough and pay all applicable and required fees associated with such inspection.
- D. In lieu of having the dwelling inspected by the Borough's lead evaluation contractor, a dwelling owner or landlord may directly hire a private lead evaluation contractor who is certified to provide lead paint inspection services by the DCA to perform the lead-based paint inspection in accordance with N.J.S.A. 52:27D-437.1 et seq.
- E. The owner, landlord, and/or agent of every single-family, two-family, or multiple rental dwelling unit offered for rental shall be required to obtain an inspection of

the unit for lead-based paint hazards every three (3) years, or at tenant turnover, whichever is earlier.

- F. Whenever a dwelling unit is scheduled for a tenant turnover, the then-current landlord, owner and/or managing property agent shall provide written notice to the Office of Code Enforcement or the Borough Lead based paint contractor that either an inspection is needed or will be conducted by a private lead evaluation contractor at least twenty (20) calendar days prior to the scheduled date of the tenant turnover.
- G. Pursuant to N.J.S.A. 52:27D-437.16(e), property owners shall:
 - 1. Provide evidence of valid lead-safe certification and the most recent tenant turnover at the time of the cyclical inspection;
 - 2. Provide evidence of a valid lead-safe certification obtained pursuant to this Chapter to new tenants of the property at the time of tenant turnover unless not required to have had an inspection by a lead evaluation contractor or permanent local agency; and
 - 3. Maintain records of lead-safe certification, which shall include name(s) of the unit tenant(s), if the inspection was conducted during a period of tenancy.

12-14.4 Method of inspection.

- A. Visual assessments. Periodic lead-based paint inspections may be performed through visual assessment if, according to the central lead screening database maintained by DOH, or other data deemed appropriate by DOH, the Borough of Sayreville is a municipality in which less than 3% of children tested, six years of age or younger, have a blood lead level greater than or equal to five ug/dL.
 - 1. Pursuant to N.J.A.C. 5:28A-2.3(a)1, for visual assessments, dwellings must be examined in accordance with the guidelines and regulations promulgated by the United States Department of Housing and Urban Development ("HUD") set forth 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. Dust wipe sampling. Dust wipe sampling is required if, according to the central lead screening database maintained by DOH, or other data deemed appropriate by DOH, if Borough of Sayreville becomes a municipality in which 3% or more of children tested, six years of age or younger, have a blood lead level greater than or equal to five ug/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16.
 - 1. Pursuant to N.J.A.C. 5:28A-2.3(b)1, dust wipe sampling must be performed by the collection of samples from the wiping of representative surfaces, including floors, interior windowsills, and other similar surfaces, and tested in accordance with methods approved by HUD.
 - 2. Pursuant to N.J.A.C. 5:28A-2.3(b)2, a visual assessment, conducted in accordance with Subsection A, may be undertaken during the course of dust wipe sampling.

12-14.5 Remediation; certification.

- A. If an inspection determines that a lead-based paint hazard exists, then the owner of the dwelling unit must 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 seq. A follow-up inspection is required to certify that the hazard has been properly remediated.

1. If hazard controls are employed, the follow-up inspection must be conducted using dust wipe sampling. If the follow-up inspection shows that the hazard is no longer present, the unit must be certified as lead-safe pursuant to the lead-safe certification requirements set forth in N.J.A.C. 5:28A-2.4.
 2. If abatement is utilized, and a lead abatement clearance certificate has been issued 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 periodic lead-based paint inspections.
 3. To the extent dust wipe sampling is required as part of the remediation process, the owner must have such testing performed by a licensed contractor.
- B. If an inspection determines that no lead-based paint hazard exists, or following remediation of a lead-based paint hazard, the Borough's lead evaluation contractor shall certify the dwelling unit as lead-safe on a form prescribed by DCA. This certification shall be valid for two years. If the inspection was conducted by a lead evaluation contractor, the contractor must provide a copy of the lead-safe certificate to the owner and the Borough.
- 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 remainder of the building's dwelling units shall be inspected for lead hazards, except for dwelling units that have been certified to be free of lead-based paint. These additional inspections are subject to fees.
- D. If an inspection determines that a lead-based paint hazard exists, then the Borough or its designee shall notify the Commissioner of DCA.

12-14.6 Exemptions.

The following dwelling units in a single-family, two-family, or multiple rental dwelling are not subject to inspection and evaluation for the presence of lead-based paint hazards:

- A. Dwelling units that have been certified to be free of lead-based paint pursuant to N.J.A.C. 5:17.
- B. Dwelling units constructed during or after 1978.
- C. Single-family and two-family seasonal rental dwellings rented for less than six months in duration each year by tenants that do not have consecutive lease renewals.
- D. Multiple rental dwelling units constructed prior to 1978 that have been registered with the DCA for at least 10 years and have no outstanding paint violations from

the most recent cyclical inspection performed on the 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.

1. All multiple dwelling units constructed prior to 1978 that have been registered with the DCA for at least 10 years and that have a current certificate of inspection issued by DCA.
 2. All multiple dwelling units constructed prior to 1978 that have been registered with DCA for at least 10 years with open inspections that have no violations for paint.
- E. Dwelling units in a multiple dwelling that has been registered with the DCA 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 under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.
- F. Dwellings that have a valid lead-safe certification issued in accordance with this article and 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.

12-14.7 Enforcement.

- A. The Office of Code Enforcement is charged with enforcing the provisions of this article. In carrying out this function, the Office of Code Enforcement may consult with all appropriate federal, state, county, and local agencies concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in such dwellings, methods of detection of lead in such dwellings, and standards for the repair of such dwellings concerning lead paint.
- B. Compliance with this chapter is a precondition to obtaining a rental certificate of occupancy pursuant to 12-3.5 Property Rental and Resale Inspection.

12-14.8 Fees.

- A. The Borough fee for the lead-based paint inspection shall be \$40.00 per dwelling. In accordance with N.J.S.A. 52:27D-437.16(h), \$20.00 of the above fee inspected by the Borough's lead evaluation contractor or the owner's private lead evaluation contractor shall be assessed for the purpose of the Lead Hazard Control Assistance Act, unless the owner demonstrates that the DCA has already assessed an additional inspection fee of \$20.00. The fees collected pursuant to this subsection shall be deposited into the Lead Hazard Control Assistance Fund.
- B. No inspections or re-inspections shall take place unless all fees are paid. All fees are non-refundable. Scheduled inspections or re-inspections may be canceled by the Borough or its lead evaluation contractor, unless the completed application and required fees have been received by the Borough at least twenty-four hours prior to the scheduled inspection, or on the last working day prior to the scheduled inspection. Applicant may cancel the requested inspection no less than twenty-four (24) hours prior to the time of 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 and a reinspection fee assessed.
- C. In a common interest community, any inspection fee charged pursuant to this Chapter shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit.

12-14.9 Recordkeeping.

- A. The Office of Code Enforcement and the Borough's lead evaluation contractor shall maintain a record of all dwellings subject to this article, including all current information on inspection schedules, inspection results, and tenant turnover.
- B. The Office of Code Enforcement and the Borough's lead evaluation contractor shall also maintain a record of all lead-safe certifications issued pursuant to this article and all lead-free certifications issued pursuant to N.J.A.C. 5:17.

12-14.10 Investigations; violations and penalties.

- A. The Office of Code Enforcement is authorized to conduct investigations and issue penalties to enforce a property owner's failure to comply with this article.
- B. Offending owners have 30 days to cure any violation by conducting the required inspection or initiating any required remediation efforts.
- C. If the dwelling owner has not cured the violation or initiated remediation efforts within 30 days, the owner shall be subject to a penalty of \$1,000 per week until the required inspection has been conducted or the remediation efforts have been initiated.
- D. For the purposes of this provision, remediation efforts are deemed to have been initiated when the owner has hired a lead abatement contractor or other qualified party to perform lead hazard control methods.
- E. Failure to conduct the required inspection, or remediate a lead-based paint hazard, shall constitute a violation of the International Property Maintenance Code adopted pursuant to Chapter 12-3.5, and any unpaid penalties imposed for such violations may be assessed as liens against the subject property pursuant to Chapter 12-3.4.

SECTION 2. Severability.

The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

SECTION 3. Repealer.

All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

SECTION 4. Effective Date.

This ordinance shall take effect upon final adoption and publication in accordance with law.

INTRODUCED/APPROVED ON FIRST READING

DATED: November 25, 2024

Jessica Morelos, R.M.C.
Clerk of the Borough of Sayreville

John Zebrowski, Councilman
(Planning and Zoning Committee)
Borough of Sayreville

ADOPTED ON SECOND READING

DATED: December 9, 2024

Jessica Morelos, R.M.C.
Clerk of the Borough of Sayreville

John Zebrowski, Councilman
(Planning and Zoning Committee)
Borough of Sayreville

APPROVAL BY THE MAYOR ON THIS _____ DAY OF _____, 2024.

Kennedy O'Brien, Mayor
Borough of Sayreville

APPROVED AS TO FORM:

Borough Attorney