

**TOWNSHIP OF HAMILTON
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE

No. **23-014**

1ST READING MARCH 21, 2023
2ND READING & PUBLIC HEARING April 4, 2023
WITHDRAWN _____ LOST _____

DATE TO MAYOR _____
DATE RESUBMITTED TO COUNCIL _____
DATE EFFECTIVE _____

APPROVED AS TO FORM AND LEGALITY

FACTUAL CONTENTS CERTIFIED TO BY

TOWNSHIP ATTORNEY

TITLE

ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF HAMILTON, NEW JERSEY, PART II, GENERAL LEGISLATION, CHAPTER 268, HOUSING STANDARDS, TO ADD § 268-19 ET SEQ. FOR LEAD-BASED PAINT TESTING

Whereas the Township of Hamilton maintains the *Code of the Township of Hamilton, New Jersey, Part II, General Legislation, Chapter 268, entitled Housing Standards*, and specifically the enforcement of property maintenance and related codes; and

Whereas pursuant to *N.J.S.A. 52:27D-437.16*, all municipalities are required to inspect every single-family, two (2) family, and multiple rental dwelling built prior to 1978, located within the municipality at tenant turnover for lead-based paint hazards; and

Whereas the New Jersey State Department of Community Affairs has proposed regulations to implement *N.J.S.A. 52:27D-437.16*, on July 18, 2022 as *N.J.A.C. 5:28A-1.1 et seq.*; and

Whereas it is in the best interests of the citizens of the Township of Hamilton to amend the *Code of the Township of Hamilton, New Jersey* at this time to require inspections for lead-based paint in residential rental dwellings to conform to this new State law;

Now, Therefore, Be It Ordained by the Council of the Township of Hamilton, in the County of Mercer and State of New Jersey, that the *Code of the Township of Hamilton, New Jersey, Part II, General Legislation, Chapter 268, Housing Standards*, as amended and supplemented, be further amended and supplemented as follows to add new sections for lead-based paint testing:

Chapter 268

HOUSING STANDARDS

.....

§ 268-18. Standards for operation of residential rental units.

.....

§ 268-19. Inspections for lead-based paint.

- A. Definitions. The following shall have the meaning as used in and in accordance with N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.1, et seq.

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.

EXPLANATION

Matter UNDERLINED thus in this legislation is new matter.
Matter contained in BRACKETS [thus] is to be omitted from the law.

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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.

MULTIPLE DWELLING

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

The initial inspection of all applicable dwelling units at the earlier of two years from the effective date of N.J.S.A. 52:27D-437.16, 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 the following sections.

REMEDIATION

Interim controls or lead abatement work undertaken in conformance with the sections 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.

B. Inspections Authorized. In accordance with N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.1 et seq., the Township shall designate an outside agency, retained by the Township pursuant to law, and the Township empowers said outside agency to conduct the lead-based paint inspections for all applicable dwelling units offered for rent to determine the presence of lead-based paint pursuant to this Chapter and/or the provisions of N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.1 et seq.

C. Lead-Based Paint Inspection. Inspections for lead-based paint in 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 (2) family, or multiple rental dwelling shall not be subject to inspection and evaluation for the presence of lead-based paint hazards if the unit:

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- (1) has been certified to be free of lead-based paint;
- (2) was constructed during or after 1978;
- (3) is in a multiple dwelling that has been registered with the New Jersey State Department of Community Affairs as a multiple dwelling for at least ten (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.;
- (4) is a single-family or two (2) family seasonal rental dwelling which is rented for less than six (6) months duration each year by tenants that do not have consecutive lease renewals; or
- (5) has a valid lead-safe certification. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4.

§ 268-20. Owner required to obtain inspection.

The owner, landlord, and/or agent of every single-family, two (2) 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 Chapter, or at tenant turnover, whichever is earlier. If a landlord, owner, and/or agent so chooses, a dwelling unit owner or landlord may directly hire a licensed lead evaluation contractor to conduct the period lead-based paint inspections for lead-based paint. Inspections shall be performed as per the timetable set forth below.

§ 268-21. When lead-based paint inspections are required.

- A. The initial inspection for all single-family, two (2) family, and multiple dwellings subject to this Chapter shall be upon tenant turnover or within two (2) years of the effective date of N.J.S.A. 52:27D-437.16 (July 22, 2022), whichever is sooner.
- B. 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.
- C. 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.

§ 268-22. Lead-based paint inspections by dust wiping method.

A licensed lead evaluation contractor shall 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. A visual assessment may also be undertaken during the course of the dust wipe sampling.

§ 268-23. Notice of inspection to be given.

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

§ 268-24. Time for inspections.

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

§ 268-25. Identification of lead-based paint hazard.

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 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.

§ 268-26. Inspection certification to be supplied.

The licensed lead evaluation contractor shall supply a copy of the lead-safe certification to the landlord, owner, and/or agent of the dwelling. A copy shall also be provided to the Housing Division at the time it is issued. If a lead evaluation contractor or permanent local agency 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.

§ 268-27. 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 must be conducted consistent with the requirements at N.J.A.C. 5:28A-2.5 and such remediation shall be documented to the Housing Division.

§ 268-28. Costs and fees for inspections.

A. Cost. The following represents the cost to complete the Scope of Work, per dwelling. Analytical costs are based on standard two-week turnaround time.

<u>Activity</u>	<u>Cost</u>
<u>Lead Dust Wipe Sampling</u>	
<u>Single Family Home</u>	<u>\$475.00</u>
<u>Two-Family Home</u>	<u>\$520.00</u>
<u>Three-Family Home</u>	<u>\$565.00</u>
<u>Four-Family Home</u>	<u>\$610.00</u>

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- B.** 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.

- C.** 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 dollars (\$1,000.00) per week, until the required inspection has been conducted or the remediation efforts have been initiated.

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

Be It Further Ordained that the Housing Division, and any and all other Township officials, are hereby directed and authorized to perform all acts necessary to effectuate the purposes of this Ordinance.

Be It Further Ordained that should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason by any Court of competent jurisdiction, such provision(s) shall be deemed severable, and the remaining portions of this Ordinance shall remain in full force and effect.

Be It Further Ordained that all ordinances or parts of ordinances or resolutions that are inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

PRESIDENT

MUNICIPAL CLERK

RECORD OF VOTE													
First Reading							Second Reading						
COUNCIL	AYE	NAY	NV	AB	ORD	SEC	COUNCIL	AYE	NAY	NV	AB	ORD	SEC
PASQUALE "PAT" PAPERIO, JR.	✓					✓	PASQUALE "PAT" PAPERIO, JR.						
NANCY PHILLIPS	✓						NANCY PHILLIPS						
RICHARD L. TIGHE, JR.	✓				✓		RICHARD L. TIGHE, JR.						
ANTHONY P. CARABELLI, JR.				✓			ANTHONY P. CARABELLI, JR.						
CHARLES F. WHALEN	✓						CHARLES F. WHALEN						

X - Indicates Vote A.B. - Absent N.V. - Not Voting ORD. - Moved SEC. - Seconded

REJECTED _____

JEFFREY S. MARTIN, MAYOR

DATE

APPROVED _____

EXPLANATION Matter UNDERLINED thus in this legislation is new matter.
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- B. An additional twenty dollar (\$20.00) fee shall be assessed in accordance with *N.J.S.A. 52:27D-437.16* 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.
- C. All fees shall be non-refundable if the applicant fails to cancel the requested inspection at least forty-eight (48) hours prior to a scheduled inspection. This is separate and apart from the non-access fee set forth above. Said fee shall be dedicated to meeting the costs of implementing and enforcing this Chapter for lead-based paint inspections and shall not be used for any other purpose.
- D. A dwelling landlord, owner, and/or agent may directly hire a certified lead evaluation contractor who is certified to provide lead paint inspection services by the New Jersey State Department of Community Affairs to satisfy the requirements of this Chapter and the requirements of *N.J.S.A. 52:27D-437.16* and *N.J.A.C. 5:28A-1.1 et seq.*, in which case no additional lead-based paint inspection fee shall be paid; provided, however, that the additional twenty dollar (\$20.00) fee shall still be assessed in accordance with *N.J.S.A. 52:27D-437.16* and *N.J.A.C. 5:28A-2.2*, payable to the Township of Hamilton, to be deposited into the Lead Hazard Control Assistance Act Fund under the administration of the New Jersey State Department of Community Affairs.

§ 268-29. Owner responsibility for record-keeping.

- A. The landlord, owner, and/or agent of a dwelling that is subject to this Chapter shall provide to the tenant and to the Township evidence of a valid lead-safe certification obtained pursuant to this Chapter 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.
- B. The owner of a multiple dwelling that is subject to this Chapter shall provide evidence of a valid lead-safe certification obtained pursuant to this Chapter, 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 of a dwelling that is subject to this Chapter 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 of any dwelling subject to this Chapter shall inform the Township of all tenant turnover activity to ensure any required inspection may be scheduled.
- E. The owner of a dwelling shall provide a copy of this Chapter, and any lead-safe certifications issued pursuant thereto, along with the accompanying guidance document, Lead-Based Paint in 23 Rental Dwellings, to any prospective owners of the dwelling during a real estate transaction, settlement, or closing.

§ 268-30. Municipal enforcement powers to be exercised by all authorized persons.

- A. Pursuant to *N.J.S.A. 52:27D-437.16* and *N.J.A.C. 5:28A-4.1*, the Housing Division is authorized to conduct investigations and issue penalties in order to enforce a landlord's, owner's, and/or agent's failure to comply with this Chapter.

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RECONSIDERED BY COUNCIL _____ OVERRIDE VOTE AYE _____ NAY _____

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