

TOWN OF NEWTON

ORDINANCE 2022-24

AN ORDINANCE TO AMEND, REVISE, AND SUPPLEMENT CHAPTER 213 OF THE TOWN CODE, ENTITLED "PROPERTY MAINTENANCE" TO ADD ARTICLE IV, "LEAD-BASED PAINT TESTING"

WHEREAS, the Town maintains Town Code Chapter 213, entitled Property Maintenance, and specifically the enforcement of the Property Maintenance and related codes; and

WHEREAS, pursuant to P.L. 2021, c.182 (N.J.S.A. 52:27D-437.6), 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 Department of Community Affairs has proposed regulations to implement P.L. 2021, c.182 (N.J.S.A. 52:27D-437.6), which are anticipated to be effective in October 2022; and

WHEREAS, it is in the best interests of the residents of the Town of Newton to amend the Town Code 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 Mayor and Town Council of the Town of Newton, County of Sussex, State of New Jersey, that it does hereby amend, revise, and supplement Chapter 213 of the Town Code, entitled "Property Maintenance", to add a new Article IV, entitled "Lead-Based Paint Testing," as follows:

[Brackets] mean deletions; Underlines mean additions

Section 1. Chapter 213 of the Town Code is hereby amended as follows by the addition of a new Article IV, entitled "Lead-Based Paint Inspections".

ARTICLE IV LEAD-BASED PAINT INSPECTIONS

§ 213-15 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-437.6 and N.J.A.C. 5:28A-1.1, *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) and as conducted pursuant to N.J.A.C. 5:28A-2.3.

"Dwelling" means 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" means 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" means 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" means the initial inspection of all applicable dwelling units at the earlier of two years from the effective date of P.L. 2021, c. 182, (July 22, 2022) [N.J.S.A. 52:27D-437.6], 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 this Article.

"Property Maintenance Code Official" means the Town of Newton Property Maintenance Code Official, any enforcement officer appointed by the Town of Newton, pursuant to *N.J.S.A. 40:48-2.3 et seq.*, or any other statutory authorization to perform inspections of any Building or other code, any enforcement officer authorized to enforce the Town of Newton Property Maintenance Code or Health Code, or their designee.

"Remediation" means interim controls or lead abatement work undertaken in conformance with this Article to address lead-based paint hazards.

"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.

- B. Inspections Authorized. In accordance with *N.J.S.A. 52:27D-437.6* and *N.J.S.C. 5:28A-1.1 et. seq.*, the Town shall designate an outside agency, retained by the Town pursuant to law, and the Town empowers said outside agency to conduct the lead-based paint inspections for all applicable multiple dwelling units offered for rent to determine the presence of lead based paint pursuant to this Chapter of the Town Code and/or the provisions of *N.J.S.A. 52:27D-437.6* and *N.J.S.C. 5:28A-1.1 et. seq.*
- C. Lead-Based Paint Inspection. Inspections for lead-based paint in multiple 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:

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 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," P.L. 1967, c.76 (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*.

§ 213-16 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 Article, 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 periodic lead-based paint inspections for lead-based paint. Inspections shall be performed as per the timetable set forth below.

§ 213-17 When Lead-Based Paint Inspections Are Required.

- A. The initial inspection for all single-family, two (2) family, and multiple dwellings subject to this Article shall be upon tenant turnover or within two (2) years of the effective date of P.L. 2021, c. 182 (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.

§ 213-18 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.

§ 213-19 Notice of Inspection to be Given.

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

§ 213-20 Time for Inspections.

All inspections and reinspections shall take place within fifteen (15) calendar days of the requested inspection. Inspection fees shall be paid prior to the inspection. No inspections or reinspections shall take place unless all fees are paid. Scheduled inspections or reinspections may be canceled by the Municipal Clerk, unless the completed application and required fees have been received by the Town 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.

§ 213-21 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.

§ 213-22 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 Municipal Clerk 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.

§ 213-23 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 Municipal Clerk.

§ 213-24 Fees for inspections.

1. a. There shall be a fee of Seven Hundred Fifty (\$750.00) Dollars for an initial unit inspected at a multiple family dwelling unit during a single mobilization. For each and every additional unit inspected at a multiple family dwelling unit during a single mobilization, the fee shall be Six Hundred (\$600.00) Dollars per unit. If during a single mobilization, if the inspector is not granted access to one (1) or more dwelling units at the time of the appointment, an additional charge of Four Hundred (\$400.00) Dollars shall be charged to each and every unit where access is not granted.

b. As to re-inspection there shall be a Six Hundred (\$600.00) Dollar fee for an initial unit re-inspection at a multiple family dwelling unit for a single mobilization each and every time a re-inspection occurs. There shall be a Four Hundred Fifty (\$450.00) Dollar fee for every additional unit re-inspected at a multiple family dwelling unit during a single mobilization each and every time a re-inspection occurs. If during a single mobilization, if the inspector is not granted access for re-inspection for one (1) or more dwelling units at the time of the appointment, an additional charge of Four Hundred (\$400.00) Dollars shall be charged to each and every unit where access is not granted each and every time a re-inspection occurs.
2. An additional Twenty (\$20.00) Dollar fee shall be assessed in accordance with *N.J.S.A. 52:27D-437.6* 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.
3. All fees shall be nonrefundable 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 Article for lead-based paint inspections and shall not be used for any other purpose.
4. 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 Department of Community Affairs to satisfy the requirements of this Article and the requirements of *N.J.S.A. 52:27D-437.6* 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 (\$20.00) Dollar fee shall still be assessed in accordance with *N.J.S.A. 52:27D-437.6* and *N.J.A.C. 5:28A-2.2*, payable to the Town, to be deposited into the Lead Hazard Control Assistance Act Fund under the administration of the New Jersey State Department of Community Affairs.

§ 213-25 Owner Responsibility for Record-Keeping.

The landlord, owner, and/or agent of a dwelling that is subject to this Article shall provide to the tenant and to the Town evidence of a valid lead-safe certification obtained pursuant to this Article 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.

1. The 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.*
2. The 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.
3. The owner of any dwelling subject to this Article shall inform the Town of all tenant turnover activity to ensure any required inspection may be scheduled.
4. The 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 23 Rental Dwellings, to any prospective owners of the dwelling during a real estate transaction, settlement, or closing.

§ 213-26 Municipal Enforcement Powers to be Exercised by All Authorized Persons.

Pursuant to N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-4.1, the Municipal Clerk is authorized to conduct investigations and issue penalties in order to enforce a multiple dwelling landlord's, owner's, and/or agent's failure to comply with this Article.

1. 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.
2. 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 (\$1,000) Dollars per week, until the required inspection has been conducted or the remediation efforts have been initiated.
3. 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.

Section 2. The Town Manager, and any and all other Town officials, are hereby directed and authorized to perform all acts necessary to effectuate the purposes of this Ordinance.

Section 3. 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.

Section 4. 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.

Section 5. This Ordinance will take effect after passage and publication according to law.

NOTICE

TAKE NOTICE the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, November 14, 2022. It was adopted, after final reading and public hearing thereon, at a meeting of the Newton Town Council conducted at 7:00 pm on Monday, November 28, 2022, in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect in accordance with law.



Teresa A. Oswin, RMC
Municipal Clerk