



## Legislation Text

File #: 25-0278, Version: 1

**AN ORDINANCE TO AMENDING TITLE XVI, CHAPTER 16.3 CHILDHOOD LEAD POISONING ARTICLE 7. RENTAL DWELLING LEAD SAFE CERTIFICATION §16:3-20, LEAD SAFE CERTIFICATION REQUIRED FOR RENTAL UNIT TO ESTABLISH “LEAD-BASED PAINT INSPECTIONS” 2000 AS SUPPLEMENTED TO REPEAL AND REPLACE ARTICLE 7, “RENTAL DWELLING LEAD SAFE CERTIFICATION” TO CREATE THE INSPECTION OF CERTAIN RESIDENTIAL RENTAL DWELLINGS FOR LEAD-BASED PAINT HAZARDS §16:3-20 SINGLE FAMILY, AND MULTIPLE UNITS DWELLINGS BUILT PRIOR TO 1978 BE INSPECTED FOR LEAD-BASED PAINT.**

**WHEREAS**, N.J.S.A. 40:48-2 authorizes a municipality to make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this State or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

**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 residential rental single-family, two-family, and certain multiple dwellings located within the municipality on a recurring basis and at tenant turnover for lead-based paint hazards; and

**WHEREAS**, the purpose of these requirements is to prevent lead poisoning and lead-associated health hazards of residents by requiring that the following, which includes but is not limited to, the presence of deteriorated lead-based paint of pre-1978 structures be identified and properly addressed through required mitigation control measures and/or lead abatement, in accordance with New Jersey law, statutes and requirements. Mitigation and/or abatement efforts shall be made in order to prevent human exposure to lead-based hazards; and

**WHEREAS**, it is necessary and in the best interest of the residents of the City of Newark to amend the City's Title XVI, Chapter 16.3 Childhood Lead Poisoning Article 7 Rental Dwelling Lead Safe Certification to require inspections for lead-based paint in certain residential and multiple rental dwellings to conform with the State Law; and

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:**

Note: Additions are shown as underlined and **bold**. Deletions are shown as ~~strikethroughs~~.

**SECTION 1.** Chapter 16.3 entitled "Childhood Lead Poisoning Article 7 Rental Dwelling Lead Safe Certification Section § 16:3-20 Lead Safe Certification Required for Rental Units, is hereby repealed and replaced with **§ 16:3-20 SINGLE FAMILY AND MULTIPLE UNITS DWELLINGS BUILT**

PRIOR TO 1978 BE INSPECTED FOR LEAD-BASED PAINT; as follows:

Article 7 Rental Dwelling Lead Safe Certification

§ 16:3-20 LEAD SAFE CERTIFICATION REQUIRED FOR RENTAL UNITS.

§ 16:3-20.1 Required.

§ 16:3-20.2 Exceptions.

§ 16:3-20.3 Penalty.

§ 16:3-20 LEAD SAFE CERTIFICATION REQUIRED FOR RENTAL UNITS.

§ 16:3-20.1 Required.

~~[Ord. 6 S+FD, 5-1-2002 § 1; Ord. 6 S+FE, 10-17-2007; Ord. 6PSF-E, 8-6-2014; Ord. 6PSF-F, 6-15-2016]~~

~~It shall be the responsibility of the owner of any rental dwelling unit(s) within the City to cause an inspection of said unit(s) by a State certified lead inspector declaring said rental unit to be lead safe prior to being rented to the general public. Upon each occasion that the dwelling unit becomes vacant, the owner shall be required to recertify said unit as being lead safe prior to it being re-occupied. For each succeeding tenant who leases the dwelling unit, the owner must disclose the lead inspection report and provide the tenant with a copy of a Lead Safe Certificate.~~

~~The owner of any rental dwelling unit(s) shall also be required to file copies of all lead inspection reports and certifications with the name, address, telephone number and license number of the lead inspection firm/individual, as well as address and apartment number of the inspected unit with the City Department of Engineering and Department of Health and Community Wellness. The City's aforementioned agencies shall establish and maintain a database of all rental units City-wide.~~

§ 16:3-20.2 Exceptions.

~~[Ord. 6 S+FD, 5-1-2002 § 3; Ord. 6PSF-F, 6-15-2016]~~

~~This provision shall not apply to hotels, motels, group homes, boarding homes, commercial and noncommercial shelters, public housing units and single room occupancies or dwelling units which have been newly constructed or substantially rehabilitated since 1978.~~

§ 16:3-20.3 Penalty.

~~[Ord. 6 S+FD, 5-1-2002 § 4]~~

~~There shall be a penalty and fine of up to \$1,000 a day for each violation of this Article.~~

**§16:3-20.1 Definitions. For purposes of this Chapter, the definitions herein shall have the meaning as used in and in accordance with 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., Lead-Based Paint Inspections in Rental Dwellings; Sections 1 through 12 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-1 et seq.) and Sections 14 through 24 of P.L. 1993, c.288, (N.J.S.A. 52:27D-427 et seq.), the Lead-Based Paint Hazard Abatement and Lead-Based Paint Abatement Contractor Certification Act, and implementing regulations at N.J.A.C. :5:17, Lead Hazard Evaluation and Abatement Code; and N.J.S.A. 55:13A-1 et seq., Hotel and Multiple Dwelling Law; unless otherwise stated.**

**"Dust wipe sampling" shall mean 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" shall mean 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.

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

"Common Interest Community" shall mean a real estate development or neighborhood in which the property requires 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

"Periodic Lead-Based Paint Inspection" shall mean 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 subsequent inspections, thereafter shall be 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 Chapter.

"Municipal Inspector" means the City of Newark Health Officer or their designee, the City of Newark Construction Official or their designee, including a City of Newark Code Enforcement Officer, which Enforcement Officer shall include but not be limited to enforcement pertaining to the Sanitation Code, the Construction Code and/or the Housing Code, and be authorized to perform inspections of any dwelling or enforce any ordinance, statute, or law defined within the Code of the City of Newark or the State of New Jersey pursuant to N.J.S.A. 40:48-2.3 et seq.

"Lead Inspector" means an individual certified by the New Jersey Department of Community Affairs to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:17-1.2. This includes the ability to perform dust wipe sampling.

"Municipal Lead Inspector" shall mean either an employee of the City of Newark or an outside contractor working with the City of Newark, who is certified by the New Jersey Department of Community Affairs, to perform lead inspection and risk assessment work, which includes the ability to perform dust wipe sampling, pursuant to N.J.A.C. 5:17-1.2.

"Lead-Based Paint Hazard" shall mean any condition that causes exposure to lead from lead-contaminated dust or lead-contaminated paint that is deteriorated or present in surfaces that would result in adverse human health effects.

"Lead-Safe Certification" shall mean a certification, which has been issued by the New Jersey Department of Community Affairs and/or City of Newark, New Jersey and identifies the property address and dwelling unit, pursuant to N.J.A.C. 5:28A, confirming that a lead-based paint inspection was performed at this dwelling unit and no lead-based paint hazards were found. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4. This Certification shall be provided to the City of Newark Department of Health and Human Services by the property owner of the inspected address listed on the

## Lead-Safe Certification.

"Lead-Free Certification" shall mean a certification, issued by the New Jersey Department of Community Affairs and pursuant to N.J.A.C. 5:17, which confirms that a lead-based paint inspection was performed and that no lead-based paint exists in the dwelling unit or that all lead-based paint hazards have been fully abated. Lead-Free Certifications do not have an expiration date, however if the City of Newark is notified or becomes aware of a lead event at the dwelling unit listed on the Lead-Free Certification, a lead inspection will be conducted to ensure that health and safety is maintained in accordance with N.J.A.C. 5:17-1.2.

"Lead Abatement Contractor" shall mean an individual, individuals, or entity certified by the New Jersey Department of Health to perform lead abatement or interim control work pursuant to N.J.A.C. 5:17

"Lead Evaluation Contractor" shall mean an individual, individuals or entity certified by the New Jersey Department of Health and/or the New Jersey 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.

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

"Interim Controls" shall mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it is defined pursuant to 42 U.S.C. § 4851b and incorporated in N.J.A.C. 5:17.

"Lead Abatement" means a set of measures designed to permanently eliminate lead-based paint hazards, in accordance with the standards established by the New Jersey Department of Community Affairs at N.I.A.C. 5:17.

"Lead Abatement Clearance Certificate" means the certificate issued by the construction official pursuant to N.J.A.C. 5:23-2.23(p) at the end of a lead abatement project.

"Tenant Turnover" means the time at which all existing occupants vacate a dwelling unit, all new tenant(s) move into a dwelling unit, or the time at which a new tenant enters a vacant dwelling unit previously uninhabited.

### §16:3-20.2. Lead-Based Paint Inspection - Owner Requirement.

- A. Dwelling Owner is Responsible for Obtaining Lead Inspection. The owner, landlord, and/or agent of every residential rental single-family, two-family and/or multiple dwelling rental unit 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. To obtain the required lead inspection, the landlord, owner, and/or agent shall arrange said lead inspection with the Municipal Lead Inspector and pay all applicable and required fees associated with the City's inspection as specified in § 7.21.060 below.
  
- B. Recurring Periodic Lead-Based Paint Inspections Required. After the initial inspection

required by Section 7.21.020(A), the property/dwelling owner, landlord and/or agent retained for rental of unit(s), shall be required to obtain an inspection of the dwelling unit for lead-based paint hazards the earlier of every three (3) years or upon tenant turnover. A lead inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification pursuant to this section and provides the lead-safe certification to the City of Newark. The lead-safe certification shall include valid dates and years for the recurring inspection period.

1. The due date for the next periodic lead-based paint inspection shall be determined by the date of the most recent periodic lead-based paint inspection that resulted in a valid lead-safe certification.
2. Whenever any dwelling unit is scheduled for tenant turnover, the then-current owner, landlord and/or agent shall provide written notice to the Municipal Inspector that an inspection is needed and shall provide said notice at least twenty (20) calendar days prior to the scheduled date of the tenant turnover.

**C. Option for Owner to Hire Private Certified Lead Inspector.** The property owner, landlord and/or agent, in lieu of having the dwelling inspected by the Municipal Lead Inspector, may instead, directly hire a lead inspector certified to provide lead inspection services by the New Jersey Department of Community Affairs, to satisfy the requirements of Section 7.21.020(A), The City of Newark shall have the authority to prohibit an owner from directly hiring a lead inspector to conduct a periodic lead-based paint inspection when an owner who previously opted to hire a lead inspector to perform the periodic lead-based paint inspection has failed to have the inspection completed.

**D. Dust-Wipe Sampling Inspection for Lead-Based Paint.** A lead inspector conducting inspections in residential rental single-family, two-family, and certain multiple rental dwellings located in the City of Newark for lead-based paint hazards shall do so through a dust wipe sampling in accordance with N.J.A.C. 5:28A-2.3(b) (1).

**E. Certain Dwelling Units Exempted from Lead-Based Paint Inspection.** A rental dwelling unit in a single-family, two-family, or multiple dwelling shall not be subject to a lead inspection and evaluation for the presence of lead-based paint hazards if the unit:

1. Was constructed during or after 1978.  
Has been certified to be free of lead-based paint and a valid certificate has been provided to the City of Newark and/or DCA Bureau of Housing Inspection
2. Is a single-family or two-family seasonal rental dwelling that is renting unit(s) for less than six (6) months duration each year by tenants that do not have consecutive lease renewals.
3. Is in a multiple dwelling that was constructed prior to 1978 and 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 either (a) "no outstanding paint violations" from the most recent cyclical lead 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.), (b) a current certificate of lead inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, or (c) an open inspection with no violations for lead paint

### **§16:3-20.3. Inspection Results and Lead-Safe Certification.**

**A. If lead-based paint hazards are not identified following a lead inspection conducted**

by a certified lead inspector pursuant to this Chapter, then the Municipal Lead Inspector or the owner's private lead inspector shall certify the dwelling as lead-safe on a form prescribed by the Department of Community Affairs. If the inspection was conducted by a Municipal Lead Inspector a copy of the lead-safe certification shall be provided to the owner of the building.

- B. The lead-safe certification shall be valid for a period of two (2) years from the date of issuance.
1. If, during the two-year certification period, a lead evaluation contractor, lead inspector/risk assessor or the City of Newark conduct an independent inspection or risk assessment and determines that there is a lead-based paint hazard, the lead-safe certification previously issued pursuant to this article in accordance with N.J.A.C. 5:28A shall be invalid. A periodic lead-based paint inspection shall be scheduled upon the conclusion of remediation from the most recent lead inspection or lead risk assessment by a certified lead inspector.
  2. Where an independent lead inspection or lead risk assessment determines that there is a lead-based paint hazard, the lead inspector/risk assessor shall inform the City of Newark of the result of the inspection.
  3. The lead-safe certification shall not exempt the dwelling from any other law(s) that would require a lead inspection/risk assessment.

**§.§16:3-20.4 Owner Responsibility if Lead-Based Paint Hazards Identified Upon Inspection.**

- A. If lead-based paint hazards are identified following a lead inspection conducted pursuant to this Chapter, then the owner of the dwelling shall:
1. Remediate the hazard by using either lead abatement or interim controls. The appropriate remediation mechanism shall be in accordance with lead inspection health and safety findings pursuant to N.J.A.C. 5:17.
  2. Abatement work shall be performed in accordance with the requirements in the Lead Hazard Evaluation and Abatement Regulations, N.J.A.C. 5:17.
  3. Interim controls shall be performed in accordance with the requirements of the United States Department of Housing and Urban Development at 42 U.S.C. § 4851b and detailed within the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.
- B. Any relocation of tenants required pursuant to a remediation shall be undertaken in accordance with applicable state and/or local law.
- C. Upon conclusion of the remediation of the lead-based paint hazard, the following procedure shall be followed:
1. If the owner utilized interim controls for remediation, the lead evaluation contractor or permanent local agency shall conduct an additional inspection within sixty (60) days of the initial inspection by using dust wipe sampling. If the inspections show that the hazard no longer exists, the lead evaluation contractor or the City of Newark shall certify the unit as lead-safe on the form prescribed by the Department The certification shall be valid for a period of two years from the date of issuance; and
  2. If the owner utilized abatement for remediation, and a lead abatement clearance certificate has been issued by the local enforcing agency 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 periodical lead-based paint inspections.

**§16:3-20.5. Owner Responsibility for Record Keeping.**

- A. In accordance with N.J.S.A. 52:27D-437.16(e), every owner, landlord and/or agent of a residential rental single-family, two-family, and certain multiple rental dwelling located within the City of Newark, which are subject to lead-based paint inspections pursuant to this Chapter, shall:**
- 1. Maintain up-to-date records on lead inspection schedules, inspection results, lead-safe certificates issued pursuant to N.J.A.C. 5:28A-2.4, which shall include the name or names of the unit's tenant or tenants if the inspection was conducted during a period of tenancy.**
  - 2. Provide evidence of a valid lead-safe certification to new tenants of the property at such time of tenant turnover and shall affix a copy of such certification as an exhibit to the tenant's or tenants' lease.**
  - 3. Provide to the City of Newark Department of Health and Community Wellness evidence of a valid lead-safe certification along with the most recent tenant turnover at the time of the periodic lead-based paint inspection.**
- B. Municipal Lead Inspector.**
- 1. The City of Newark shall maintain a record of all dwellings subject to this article, including most recent information on inspection schedules, results, and tenant turnover provided by the owner, landlord and/or agent of a dwelling subject to lead-based paint inspections established by this Chapter.**
  - 2. The City of Newark shall maintain a record of all lead-safe certifications issued pursuant to this article in accordance with N.J.A.C. 5:28A.**
    - A. Where a lead inspector performs inspections for the City of Newark, the lead inspector shall provide a copy of the lead-safe certification to the City of Newark and the owner of the dwelling unit**
    - B. Where a property/dwelling owner hires a lead inspector to perform lead inspections for the owned dwelling, the lead inspector shall provide a copy of the lead-safe certification to the City of Newark Department of Health and Human Services at the same time such certification is provided to the owner of the dwelling unit.**
- C. Pursuant to N.J.A.C. 5:17, the City of Newark shall maintain a record of all received lead-free certifications.**

**§16:3-20.6. Fees.**

- A. When the owner, landlord or agent of the residential rental dwelling does not hire a private certified lead inspector, the City of Newark shall charge the dwelling owner or landlord a fee sufficient to cover the cost of the periodic lead-based paint inspection, including the cost of hiring a Municipal Lead Inspector. Fee schedules for a City of Newark-retained Municipal Lead Inspector shall be adopted by ordinance authorizing the agreement of service entered into by the City of Newark and such contractor/vendor.**
- B. In addition to the cost of the lead-based paint inspection, an additional \$20.00 fee shall**

be assessed per inspection per unit pursuant to N.J.S.A.52:27D-437.6 irrespective of whether the dwelling unit owner elected to hire a private lead inspector or have the Municipal Lead Inspector perform the requisite lead-based paint inspection. The \$20.00 fee shall be assessed at the time of each required lead inspection unless the owner, landlord and/or agent demonstrates that the New Jersey Department of Community Affairs has already assessed an additional inspection fee of \$20.00. The fees collected pursuant to this subsection shall be payable to the City of Newark to be deposited into the New Jersey Lead Hazard Control Assistance Fund.

- C. In a common interest community, any inspection fee charged shall be the responsibility of the individual unit owner and not the homeowner's association, unless the association is the owner of the unit.
- D. An administrative fee for the filing of a lead-safe certification or lead-free certification with the City of Newark shall be \$25.00 per dwelling unit and be provided at the time of filing and made payable to the City of Newark.
- E. Failure to provide access to a Municipal Lead Inspector at the time of a scheduled lead-based paint inspection may result in a fine up to \$300.00 per dwelling unit scheduled for inspection. All fees are non-refundable upon the owner's failure to provide written cancellation notice of the requested inspection at least forty-eight (48) hours prior to the scheduled inspection. Said fees 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.

#### §16:3-20.7. Completion of Inspections Following Request.

- A. All inspections and re-inspections shall take place within fifteen (15) calendar days of the requested inspection. Completed applications and all inspection fees shall be submitted and paid to the City of Newark at least three (3) days 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 Municipal Lead Inspector, unless the completed application and required fees have been received by the City of Newark. Every inspection for which the landlord, tenant, owner and/or agent has failed to provide access for inspection shall be deemed a failed inspection for which fees may be assessed pursuant to §7.21.060(E).

#### §.16:3-20.8 Municipal Responsibilities and Enforcement Powers.

- A. Pursuant to N.J.A.C. 5:28A-2.1(d), the Municipal Inspector shall exercise appropriate oversight of an owner, landlord or agent, who chooses to hire private certified lead inspector to perform the periodic lead-based paint inspection.
- B. Pursuant to N.J.S.A. 52:27D-437.6 and N.J.A.C. 5:28A-4.1, the Municipal Inspector is authorized to conduct investigations and issue penalties in order to enforce a dwelling owner's, landlords, and/or agent's failure to comply with this Chapter.
  - 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 as detailed as a result of conducted inspections and/or investigations.
  - 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 dollars (\$1,000.00) per week, until the required inspection has been conducted or the remediation efforts have been initiated, and the City of Newark has been notified of such efforts by the dwelling's owner, landlord and/or agent.**

3. **Remediation efforts shall be considered to be initiated when the dwelling owner has hired and entered into a written contract with a Lead Abatement Contractor to perform lead-hazard control methods.**

**C. Any other violations of this Chapter shall be punished by a penalty as is provided in Chapter 1:1-9 of the Code of the City of Newark.**

**SECTION 2.** All ordinances or parts of ordinances inconsistent with the provisions of this ordinance be and the same are hereby repealed.

**SECTION 3.** The provisions of this Ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, illegal, or unconstitutional, the remaining provisions shall continue in full force and effect.

**SECTION 4. Codification.** This Ordinance shall be a part of the Code of the City of Newark as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code. The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Newark in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

### **STATEMENT**

This Ordinance Repeals and Amends Chapter 16.3 entitled "Childhood Lead Poisoning Article 7 Rental Dwelling Lead Safe Certification Section § 16:3-20 Lead Safe Certification Required for Rental Units, is hereby repealed and replaced with § 16:3-20 Single Family and Multiple Units Dwellings Built Prior to 1978 Be Inspected for Lead-Based Paint.