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## **ORDINANCE #2023-12**

**Introduction: August 14, 2023**

**Adoption:**

**AN ORDINANCE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE AMENDING AND RESTATING TOWNSHIP OF SOUTH ORANGE VILLAGE CODE CHAPTER 254 – “RENTAL PROPERTY” WITH THE ADDITION OF SECTION 254-40 – “LEAD-BASED PAINT INSPECTION” AND AMENDING AND RESTATING CHAPTER 143-21 “RENTAL PROPERTY FEES” WITH THE ADDITION OF LEAD-BASED PAINT INSPECTION FEES**

**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 Township of South Orange Village (the "Village") at tenant turnover for lead-based paint hazards; and

**WHEREAS**, the purposes of these requirements is to identify, remove and/or otherwise remediate the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 structures in order to prevent human exposure to such hazards; and

**WHEREAS**, it is in the best interests of the residents of the Village to amend the Village Code at this time to require inspections for lead-based paint in residential rental dwellings to conform and ensure compliance with New Jersey State law

**NOW THEREFORE BE IT ORDAINED**, by the Board of Trustees of the Township of South Orange Village, a municipal corporation of New Jersey located in Essex County thereof, as follows:

**SECTION 1.** Village Code Chapter 254, is hereby amended and restated with the addition of Section 40 as follows:

254-40 Lead Paint Inspection

A. 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") 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 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.

## B. Applicability and Exemptions

The obligation to perform lead paint inspections shall apply to all rental single-family, two-family, and multiple dwelling units except as otherwise provided pursuant to N.J.S.A. 52:27D-437.1 et seq.



### C. Inspections and Responsibilities

1. The Village Building Official, Health Officer and/or Code Enforcement Official 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.
2. A lead evaluation contractor retained by the Township of South Orange Village shall inspect every single-family, two-family, or multiple rental dwelling located in the Village 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..
3. 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 Village and pay all applicable and required fees associated with such inspection.
4. In lieu of having the dwelling inspected by the Village'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 Department of Community Affairs to perform the lead-based paint inspection in accordance with N.J.S.A. 52:27D-437.1 et seq.
5. 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.
6. 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 Village Building Official 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.
7. In accordance with N.J.S.A. 52:27D-437.16(c), 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 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 (C.55:13A-1 et seq.);
    - d. Is a single-family or two-family seasonal rental dwelling which 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.
  8. The Building/Code Enforcement Department shall have the authority to prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection in the following situations:
    - a. An owner, who previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection, failed to have the inspection completed; or
    - b. The Village determines there is a conflict of interest between the owner and their lead-evaluation contractor of choice.
  9. Pursuant to N.J.S.A. 52:27D-437.16(e), property owners shall:
    - a. Provide evidence of valid lead-safe certification and the most recent tenant turnover at the time of the cyclical inspection;
    - b. 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
    - c. Maintain records of lead-safe certification, which shall include name(s) of the unit tenant(s), if inspection was conducted during a period of tenancy.
- D. Lead-based Paint Hazards
  1. If lead-based paint hazards are identified, then the owner, landlord, and/or agent of the dwelling shall remediate the lead-based paint hazard using lead abatement or lead-based control methods in accordance with N.J.S.A. 52:27D-437.16(d). Upon the remediation of the lead-based paint hazard, the Village's lead evaluation



contractor shall conduct an additional inspection of the unit to certify that the hazard no longer exists.

2. If no lead-based paint hazards are identified, then the Village's lead evaluator shall certify the dwelling as lead-safe on a form prescribed by the Department of Community Affairs, which shall be valid for two (2) years.
3. Pursuant to N.J.S.A. 52:27D-437.16(e), property owners shall:
  - a. Provide evidence of valid lead-safe certification and the most recent tenant turnover at the time of the cyclical inspection;
  - b. 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; and
  - c. Maintain records of lead-safe certification, which shall include name(s) of the unit tenant(s), if inspection was conducted during a period of tenancy.

#### E. Fees for Inspection

1. As listed in Village Code Chapter 143-21 - Rental Property Fees.
2. In accordance with N.J.S.A. 52:27D-437.16(h), an additional fee of \$20.00 per dwelling unit inspected by the Village'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 Department of Community Affairs 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.
3. 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 Village or its lead evaluation contractor, unless the completed application and required fees have been received by the Village 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 forty-eight (48) 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.
4. 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.



F. Violations

1. If a property owner has failed to conduct the required inspection or initiate any remediation as required by N.J.S.A. 52:27D-437.1 et seq. the owner shall have 30 days to cure the violation.
2. If a property owner fails to cure the violation after 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.**

Village Code Chapter 143-21 Rental Property Fees is hereby amended and restated with the addition of Lead-Based Paint Inspection Fees as follows:

**143-21 Rental Property Fees**

Description	Code Section	Fee
Rental property registration		
Multifamily rental properties (2 to 50 units)	§ 254-26A	\$175
Multifamily rental properties (51 + units)	§ 254-26A	\$250
Single-family rental properties	§ 254-26A	\$125
Rental property registration LATE FILING FEES		
Late fee – filing on September 2 up to and including October 31	§ 254-26A	\$100
Additional monthly late fee – for each calendar month beginning on or after November 1	§ 254-26A	\$50 monthly
Lead-Based Paint Inspections (owners may expect certain charges directly from Lead Evaluation Consultant)		
Dust wipe sampling per unit (up to 10 samples)	§ 254-40	Owners will be charged directly by contractor for all or some of these services
Dust wipe sampling for each sample taken over 10 samples	§ 254-40	
X-Ray Fluorescence Inspection (per unit) (optional)	§ 254-40	
Post remediation inspection/clearance per unit	§ 254-40	
Dust wipe sample – Post remediation (per sample)	§ 254-40	
Hard copy of report (optional) (digital copy provided free of charge)	§ 254-40	
Production of Lead Safe or Lead Free Certification and filing fee (per unit)	§ 254-40	\$30
Lead Hazard Control Assistance Act Mandatory Assessment (per unit)	§ 254-40	\$20



**SECTION 3.**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

**SECTION 4.**

This ordinance shall take effect upon final passage and publication as required by law.

**SECTION 5.**

On passage this ordinance shall be codified.

**Introduction – First Reading**

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Brown			X			
Greenberg	X		X			
Haskins			X			
Hartshorn Hilton		X	X			
Jones			X			
Lewis-Chang			X			

**CERTIFICATION**

I, Ojetti E. Davis, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Board of Trustees at their regular meeting held on August 14, 2023.

Ojetti E. Davis  
Village Clerk

**Adoption – Second Reading**

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Brown						
Greenberg						
Haskins						
Hartshorn Hilton						
Jones						
Lewis-Chang						



**CERTIFICATION**

I, Ojetti E. Davis, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading by the Board of Trustees at their meeting held on September 11, 2023.

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Ojetti E. Davis  
Village Clerk

Adopted:

Attest:

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Sheena C. Collum  
Village President

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Ojetti E. Davis  
Village Clerk