

**TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY**

1st Reading November 27, 2023
 2nd Reading & Public Hearing December 11, 2023
 Date Adopted December 11, 2023
 Date Effective January 1, 2024
 DOT APPROVAL RECEIVED _____

Date to Mayor December 11, 2023
 Date Signed December 12, 2023
 Date Resubmitted to Council _____
 Approved as to Form and Legality, _____

Township Attorney
Michael W. Herbold Esq.

2023-25

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 100, "HOUSING STANDARDS" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR, NEW JERSEY TO INCLUDE ARTICLE II, LEAD SAFE RESIDENTIAL RENTAL INSPECTION REQUIREMENTS" AND CHAPTER 82 "FEES".

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
Gawas	✓						Gawas	✓					
Geevers	✓					✓	Geevers	✓					✓
Mandel	✓						Mandel	✓					
Stevens	✓						Stevens	✓				✓	
Whitfield	✓				✓		Whitefield	✓					

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

 Hemant Marathe, Mayor

December 12, 2023
 Date

Rejected _____

Reconsidered by Council _____

Override Vote: YES _____ NO _____

 Gay M. Huber, Township Clerk

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 100, "HOUSING STANDARDS" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST WINDSOR, NEW JERSEY TO INCLUDE ARTICLE II, LEAD SAFE RESIDENTIAL RENTAL INSPECTION REQUIREMENTS" AND CHAPTER 82 "FEES".

WHEREAS, pursuant to P.L. 2021, c. 182 (N.J.S.A. 52:27D-437.16 et seq.), municipalities are required to implement a lead-safe inspection program for certain single-family, two-family and multiple rental dwellings constructed prior to 1978; and

WHEREAS, Township Council recognizes the well-known negative health consequences posed by deteriorated lead-based paint often found in dwellings constructed prior to 1978; and

WHEREAS, the Township desires to implement an inspection program to ensure hazards are identified and abated in accordance with state regulations; and

WHEREAS, the Township has determined that it is in the best interest of the residents of West Windsor to supplement the Housing Standards to require inspection of certain residential rental units for lead-based paint, in order to protect vulnerable individuals from negative health consequences and to ensure compliance with New Jersey regulations for lead-based paint inspections in rental dwellings.

NOW, THEREFORE BE IT RESOLVED, by the Township Council of the Township of West Windsor, in the County of Mercer and State of New Jersey, Chapter 100, Housing Standards is amended by adding thereto a new article entitled "Lead Safe Residential Rental Requirements" and Chapter 82, "Fees" by adding thereto section 82-26 "Lead-paint Rental Requirements" as follows:

Article I Housing Standards.

Article II Lead Safe Residential Rental Requirements

100-14 Enforcement.

A. The Construction Code Official, Fire Official, Health Officer, Zoning Officer or other designated and duly authorized employees designated by the Business Administrator of the West Windsor Township shall administer, implement and enforce the provisions of this article.

B. In the absence of a permanent local agency responsible for rental housing inspections and the issuance of certificates of occupancy for said units, the term "municipal lead inspector" shall mean a lead evaluation contractor retained by the Township.

100-15 Inspections; remediation; certification.

A. Initial lead paint hazard inspection required.

The owner of every single-family, two-family, and multiple rental dwelling constructed prior to 1978 shall obtain an initial lead paint hazard inspection of said unit and file a lead-safe or lead-free certificate with the Township prior to July 22, 2024, or upon tenant turnover, whichever is sooner, in accordance with N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.1 et seq.

B. Periodic lead paint hazard inspection and certification required.

Following the initial lead paint hazard inspection and filing of a lead-safe certification per 100-15A, property owners shall:

1. Obtain a lead paint hazard inspection and file a valid lead-free or lead-safe certification of every non-exempt, single-family, two-family, and multiple rental dwelling constructed prior to 1978, every three years, or upon tenant turnover, whichever is earlier, except, inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification at the time of tenant turnover.
2. Provide evidence of a valid lead-safe or lead-free certification obtained pursuant to this section, to new tenants of the property at the time of tenant turnover unless not required to have had an inspection.
3. Maintain records of lead-safe and/or lead-free certifications for prior six (6) years, which shall include name(s) of the unit tenant(s), if inspection was conducted during a period of tenancy.

C. Standards. Inspections for lead-based paint hazards in rental dwelling units shall be governed by the standards set forth in N.J.S.A. 52:27D-437.16 et seq., and N.J.S.A. 55:13A-1 et seq., as may be amended from time to time.

D. Township-facilitated inspection. A municipal lead inspector designated by the Township shall be authorized and empowered to conduct periodic lead-based paint inspections for all applicable rental dwelling units in accordance with N.J.S.A. 52:27D-437.16 and N.J.A.C. 5:28A-1.1 et seq.

1. Notice of Inspection.

- a. Requests for township-facilitated initial inspections must be submitted in writing by the property owner prior to April 1, 2024 or a minimum of 20 business days prior to the scheduled date of tenant turnover. It is the responsibility of the property owner to schedule inspections.
- b. Requests for township-facilitated periodic inspections must be submitted in writing by the property owner a minimum of 20 business days prior to the scheduled date of tenant turnover or expiration of the valid lead-safe

certification. It is the responsibility of the property owner to schedule inspections.

2. Required inspection fees per Chapter 82-26 and applications shall be received by Township a minimum of 2 business days prior to a scheduled inspection. Inspections or re-inspections shall not be conducted prior to receipt of fees by the Township.
3. Every inspection for which the landlord, tenant, owner or agent has failed to provide access for inspection shall be deemed a failed inspection and the inspection fees shall be forfeited. If an owner desires to cancel an inspection, a written notice of cancellation must be provided to the Township a minimum of 48 business hours in advance of the scheduled inspection. Business hours are Monday – Friday, 9 AM through 5 PM, excluding Holidays.

Owner Option to designate a private lead evaluation contractor.

1. A dwelling owner or landlord may hire a private lead evaluation contractor certified to provide lead paint inspections services in accordance with N.J.S.A. 52:27D-437.16 et seq., to conduct lead paint inspections and provide lead-safe or lead-free certificates in lieu of obtaining a Township-facilitated inspection.
 2. Notwithstanding this option, the Township retains the authority to conduct inspections or investigations of landlords or owners that directly hire private lead evaluation contractors to ensure periodic lead-based paint inspections are being performed in accordance with this chapter. The Township also retains the authority to prohibit an owner from directly hiring a private lead evaluation contractor to conduct a periodic lead-based paint inspection where: (i) the owner previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection and failed to have the inspection completed; or (ii) the Township determines there is a conflict of interest between the owner and their lead-evaluation contractor of choice.
 - a. If the Township restricts the owner from directly hiring a private lead evaluation contractor, the Township shall provide written notice to the owner that a Township-facilitated inspection is required and fees outlined in Chapter 82-26 shall be applicable.
- E. If lead-based paint hazards are identified, the owner of the dwelling shall remediate the hazards through abatement or lead-based paint hazard control mechanisms in accordance with N.J.S.A. 52:27D-437.16(d) and N.J.A.C. 5:28A-2.5.
1. If interim controls are used to remediate the hazards, the owner shall obtain a reinspection within 60 days.
 2. If abatement is used to remediate the hazards, 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.

- F. If no lead-based paint hazards are identified, the lead inspector shall certify the dwelling as lead safe on a form prescribed by the Department of Community Affairs, which shall be valid for two years and shall be filed with the Township.

100-16 Exemptions. Dwelling units in single-family, two-family, or multiple rental dwellings shall be exempt from this Article if they meet the stipulations in N.J.S.A. 52:27D-437.16(c).

100-17 Fees. Fees for the provisions of this Article are established in Chapter 82.

100-18 Violations and penalties.

- A. If a property owner fails to conduct a required inspection or initiate remediation as required by N.J.S.A. 52:27D-437.1 et seq. the owner shall be provided a written Notice of Violation and given thirty (30) days to cure the violation.
- B. If a property owner fails to cure the violation after thirty (30) days, the property owner shall be subject to a penalty not to exceed \$1,000 per week until the required inspection has been conducted or remediation efforts have been initiated.

CHAPTER 82 FEES

82-26 Lead-safe rentals.

- A. Filing fee for certifications issued following inspections required by Chapter 100, Article II.
 - 1. Lead-safe or lead-free certification \$50 per dwelling unit
This fee shall include a \$20 per unit assessment in accordance with N.J.S.A. 52:27D-437.16(h).
 - 2. Lead-safe or lead-free certifications dated prior to the effective date of Chapter 100, Article II shall be assessed a fee of \$20 per unit in accordance with N.J.S.A. 52:27D-437.16(h).
- B. Lead-based paint hazard inspection fees.
 - 1. Initial and periodic inspection fee.
\$200 base fee for a one bedroom dwelling plus additional \$50 for each additional bedroom in the unit; or the amount paid by the Township to a third-party lead evaluation contractor plus a 12% administrative fee; whichever is greater.
 - 2. Re-inspection fees.

\$150 base fee for a one bedroom dwelling plus additional \$50 for each additional bedroom in the unit; or the amount paid by the Township to a third-party lead evaluation contractor plus a 12% administrative fee; whichever is greater.

3. Inspection fees shall not apply if the owner directly hires a private lead evaluation contractor who meets the qualifications of the New Jersey Department of Community Affairs prior to scheduling an inspection with the Township, and the Township has not issued a notice requiring a Township-facilitated inspection.

C. Dust wipes \$35 per sample

D. Fee for checks returned for insufficient funds \$75 per check

E. Fees required by this section are non-refundable and non-transferable. Requests to cancel a scheduled inspection must be submitted a minimum 48 business hours in advance of the inspection, or fees shall be forfeited.

Brackets mean removal[]; **Bold** and underline mean added

INTRODUCTION: November 27, 2023

PUBLIC HEARING: December 11, 2023

ADOPTION: December 11, 2023

MAYOR'S APPROVAL: December 12, 2023

EFFECTIVE DATE: January 1, 2024

TOWNSHIP OF WEST WINDSOR
Division of Health

MEMORANDUM

TO: Marlena Schmid, Business Administrator

FROM: Jill M. Swanson, Health Officer

SUBJECT: Proposed Ordinance Amendments

- 1. Amending Chapter 100, "Housing Standards" to add Article II, Lead-safe Rental Inspection Requirements**
- 2. Amending Chapter 82, "Fees" to add Section 82-26**

DATE: October 31, 2023

Effective July 22, 2022, a new state law "New Jersey's Lead-safe Certification" was enacted aimed at preventing lead-based paint exposure in certain residential rental dwellings by requiring inspections for single family, two-family and multiple family dwellings. The law mandates municipal programs of inspection in accordance with state regulations subsequently adopted May 1, 2023 under the Department of Community Affairs, entitled "regulations for lead-based paint inspections in rental dwellings." The proposed local ordinances provide for the Township's inspection processes and establishes fees to support the work associated with the program.

Under the new state law, West Windsor Township must ensure that all rental dwellings built prior to 1978 are inspected for lead paint hazards and certified to be lead-safe or lead-free, unless otherwise exempted under the law. The initial inspections must be completed by July 22, 2024, or at the time of tenant turnover, whichever is earlier. After the initial inspection is certified, units must be inspected every three years, or at tenant turnover, whichever is sooner. The type of inspection mandated is based on the jurisdiction's historic reports of elevated childhood blood lead levels (EBLLs). West Windsor's EBLLs fall under 3%, therefore a visual inspection is required as opposed to a more intensive dust wipe inspection. If hazards are identified, owners have an option of remediation or abatement, both of which must be conducted by trained professionals hired by the owner and performed in compliance with established standards.

The Township is required to comply with the law and provide for the inspection program within the required timeline regardless of adoption of Chapter 100, Article II. The local ordinance provides for administrative procedures for the program. Highlighted below is a summary of the sections of the proposed ordinances which extend beyond the requirements stipulated in the state regulations.

1. Section 110-14, A and B align with the state regulations and provide the Business Administrator latitude to adjust the program within departmental responsibilities as the Township matures and evolves in future years.
The initial responsibility for ensuring Township compliance with the new state law has been undertaken by the Health Officer. An administrative assistant for the lead-safe housing program has been hired with 7 hours per week dedicated in the position. This scenario will likely require adjustment as the program develops. It is intended that this role will remain separate and distinct from the registered environmental health positions within the Health Department.
2. Section 100-15 B#4. Although the state regulations require owners to keep the records, they do not specify the duration. We are recommending 6 years based on a 3 year cyclable inspection requirement.
3. Section 100-15 D-1(a) through D-3 falls outside the state regulations and set procedural standards for administration and scheduling. D-1(a) The proposal calls for owners opting for a township facilitated inspection for the initial inspection to notify the Township by April 1, 2024, although the inspection may not be required to be completed until July 22, 2024. This will allow the Township to adequately plan staggered inspections, meet our required mandates and avoid a rush as the initial inspection deadline approaches. (b) This proposal requires 20-days prior notice to schedule Township-facilitated inspections. This provision will help the Township with implementation of an inspection program dependent upon a third party. D-2 and D-3 are procedural and self-explanatory.
4. Section 100-15 E aligns with the state regulation, except 2 (a) is added to require the Township provide the owner with written notice if a Township-facilitate inspection is mandated.
5. Sections 100-15 F and G, 100-16 ,100-17 and 100-18 align with the state regulations.
6. Chapter 82-26 establishes fees. The state regulations stipulate that fees to support the program shall be charged. We include a filing fee as well as an inspection fee for those opting for the Township-facilitated inspections. Additionally, the Township must assess \$20 per inspection, unless this fee has already been charged by the NJ DCA. These additional assessed funds are to be forwarded to the State of N.J. Lead Hazard Control Assistance Fund. We have surveyed fees established by municipalities and those charged by private contractors. Wide variability exists and those provided in the draft are our recommendations.

The additional points are provided to further explain our local approach to this program.

7. As mentioned, the Township does not conduct certificate of occupancy inspections at the time of tenant turnover for rental units; therefore, we do not have an accurate and current database of the affected properties. The appropriate Township officials have been consulted and no such comprehensive listing is available. The Assessor has provided a listing of approximately 2500 residential properties constructed prior to 1978. It is unknown how many are rentals. We have some segmented lists but none are considered complete. The State of New Jersey has estimated the numbers within our jurisdiction to

be low. A mailing will be issued to the appropriate property owners and local realtors upon adoption of the local ordinance to outline the requirements of this new law.

8. Since the effective date of the law, the Health Department has had minimal inquiries from the public. We recognize that outreach efforts are a priority over the next few months to ensure awareness in the community.
9. Property owners can opt to hire a private, qualified lead evaluation contractor to perform the inspection and issue the appropriate certificate. The certificate can then be filed with the Township according to stipulations above. We will encourage this approach. However, the state law prohibits the Township from requiring the owner to hire a private contractor. The township must offer the option of an inspection conducted by Township's "permanent local agency" or in the absence of one, a lead evaluation contractor hired by the Township.
10. The regulations fall under the jurisdiction of the NJ Department of Community Affairs and they define "permanent local agency" as "a local, municipal agency maintained for the purpose of conducting inspections and enforcing law, ordinances, and regulations concerning buildings and structures within its jurisdiction. This may include local building agencies, health agencies, and housing agencies." There is wide variability across the state on approaches with enforcement at the municipal level falling under varied departments.
11. As the Board of Health, it is important to understand that these regulations are an upstream effort to provide safe housing and prevent childhood lead poisoning. However, this law is not part of the mandated services required of local public health agencies. Therefore, the Health Department is not responsible for enforcement within our two additional contractual communities. This responsibility falls to the construction code officials in these towns in their capacity as housing officials. However, if a childhood EBLL is reported in any of the three communities, Health Department action is mandated under separate regulations and some of these cases will trigger more intensive inspections and interventions. A valid lead-safe certification or a lead-free certification will not negate site visits and enforcement by licensed Health Department personnel in these scenarios.

c. Hemant Marathe, Mayor
Michael W. Herbert, Esq.
Gay Huber, Township Clerk