

AN ORDINANCE TO AMEND CHAPTER 34 OF THE CITY CODE TO MANDATE LEAD PAINT INSPECTIONS OF RESIDENTIAL DWELLINGS AND CHILDCARE FACILITIES

#0342

Sponsor:

Council
Member
Darby

WHEREAS, lead paint is the most common way to expose children to lead, a heavy metal that, if ingested, causes severe neurological diseases; and

WHEREAS, lead-based paint exposure occurs often in older buildings built before 1979; and

WHEREAS, lead-based paint exposure disproportionately affects lower income Wilmingtonians; and

WHEREAS, Governor John C. Carney, Jr. recently signed Senate Substitute 1 to Senate Bill 9 into law. This law establishes a Delaware State Lead-Based Paint Remediation Program, providing funds to remove and remediate dwellings that have been found to have lead; and

WHEREAS, City Council finds it prudent to strengthen its lead paint inspections in order to access Delaware State Lead-Based Paint Remediation Program funds; and

WHEREAS, City Council deems it necessary and appropriate to amend Chapter 34 of the City Code to require Lead Paint Hazard inspections.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 34 of the City Code is hereby amended by adding in a new Section 34-46 to read as follows:

Sec. 34-46. – Lead Paint Hazard Inspection.

a) Definitions. The following words, terms, and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- 1) Certified Lead-Based-Paint Risk Assessor. An individual who maintains a current certification from the Environmental Protection Agency and licensed by the State of Delaware to perform on-site investigations to identify the existence, nature, severity, and location of lead-based-paint hazards and document the findings in order to recommend corrective measures.
- 2) Certified Lead Abatement Contractor. An individual who maintains a current certification by the Environmental Protection Agency and licensed by the State of Delaware to perform lead-based paint abatement activities for the purpose of permanently eliminating lead paint hazards that includes both abatement supervisors and abatement workers. Additionally, such individual must own or work for a Licensed Lead Abatement Company.
- 3) Certified Lead Dust Sampling Technician. An individual who is certified by the Environmental Protection Agency and licensed by the State of Delaware to perform non-abatement lead dust clearance testing under the EPA's Renovation, Repair, and Painting (RRP) Rule and clearance examinations under HUD's Lead Safe Housing rule. Additionally, such individual must own or work for a Licensed RRP Company.

- 4) Certified Lead-Safe Contractor. An individual certified by the State of Delaware under 16 Del. C. § 2612(c), or who meets provisional certification under 16 Del. C. § 2614.
- 5) Lead Paint Free. A building or dwelling identified through testing by a Certified Lead-Based-Paint Risk Assessor that, following the completion of approved lead-based paint abatement activities, said building or dwelling unit is lead paint free and that all lead paint has been abated in accordance with applicable EPA regulations.
- 6) Lead Paint Free Report. A report issued by a Certified Lead-Based-Paint Assessor indicating that the referenced building or dwelling unit is lead paint free and that all lead paint has been abated in accordance with applicable EPA regulations.
- 7) Lead-Free Certification. A form submitted to the Department of Licenses and Inspections from a licensed Lead-based-Paint Risk Assessor certifying that appropriate testing has been performed in accordance with applicable standards for a dwelling or dwelling unit is free from all lead paint. The Department of Licenses and Inspections shall draft a certification form for the Lead-Based-Paint Risk Assessor to complete.
- 8) Lead Paint Safe. A building or dwelling identified through testing by a Certified Lead-Based-Paint Risk Assessor or by a Certified Lead Dust Sampling Technician as having lead paint surfaces that are intact and free from deterioration. As noted in the lead-safe certification by the Lead-

Based-Paint Risk Assessor, ongoing lead-safe maintenance may be necessary to maintain the property in a lead-paint safe condition.

- 9) Lead Paint Safe Report. A report issued by a Certified Lead-Based-Paint Assessor or by a Certified Lead Dust Sampling Technician indicating that the referenced building or dwelling unit identified through testing by a licensed Lead-Based Paint Risk Assessor has lead paint surfaces that are intact and free from deterioration in accordance with EPA regulations.
- 10) Lead-Safe Certification. A form submitted to the Department of Licenses and Inspections from a licensed Lead-Based-Paint Risk Assessor or by a Certified Lead Dust Sampling Technician certifying that a visual inspection and dust-wipe samples have been taken from a dwelling or dwelling unit and stating that it does not have visible deteriorated paint and that interior dust-wipe samples were collected in compliance with EPA regulations, were tested, and were found to not contain lead-contaminated dust in excess of EPA dust level standards. The Department of Licenses and Inspections shall draft a certification form for the Lead-Based-Paint Risk Assessor or Certified Lead Dust Sampling Technician to complete.
- 11) Licensed Lead Abatement Company. A person, firm, company, or institution certified by the State of Delaware under 16 *Del. C.* § 2612(c), or who meets provisional certification under 16 *Del. C.* § 2614.

12) Licensed Lead RRP Company. A person, firm, company, or institution certified by the State of Delaware under 16 *Del. C.* § 2612(c), or who meets provisional certification under 16 *Del. C.* § 2614.

13) Structures. As used herein, Structure shall be defined as liberally as possible to encompass all types of dwellings (including apartments, single family homes, multi-units, and condominiums) as defined in Section 48-2, day cares and as liberally defined in Section 48-2, condemned properties, and vacant properties.

b) Lead (paint) Inspections required.

1) With respect to Structures that are the subject of this Article as defined above, owners of such structures shall be required to obtain a lead paint inspection, from a Certified Lead-Based-Paint Risk Assessor or a Certified Lead Dust Sampling Technician and provide to the Department of Licenses and Inspection either a Lead (paint) Safe Report or a Lead (paint) Free Report in the following situations:

a. for Structures that are subject to residential rental licensing and/or registration with the City, said lead paint inspection shall be performed within six months of and the corresponding report shall be submitted with the initial application for licensing (or first renewal if already licensed at the time of adoption of this Article). Thereafter, a new lead paint inspection with corresponding report shall be required with the submission of a rental license and/or registration every three years. The City shall not issue a rental registration license or renewal thereof

unless the Department of Licenses and Inspections has received a Lead (paint) Safe Report or Lead (paint) Free Report when required under this Article. If a Lead (paint) Free Report is submitted to the City by a Certified Lead-Based-Paint Risk Assessor containing a Lead (paint) Free Certification for a Structure, then no further lead paint-based inspections or reports shall be required for said Structure unless the Lead (paint) Free Report is rescinded, invalidated, or otherwise determined to be void.

- b. For Structures that are a Condemned Property, said lead paint inspection shall be performed within six months of and the corresponding report shall be submitted prior to authorizing and/or removing any condemnation placard.
- c. For Structures that are Child Day-Care Facilities and Day-Care Centers, said lead paint inspection shall be performed within six months of and the corresponding report shall be submitted prior to the issuance of the next required certificate of occupancy by the City for such Structure. For Child Day-Care Facilities and Day-Care Centers, the Lead (paint) Safe Report or Lead (paint) Free Report shall state that the Structure and property is in compliance with applicable federal and state laws related to lead paint. This provision shall not place any duty on the owner or operator of such Child Day-Care Facility or Day-Care Center to meet lead paint levels greater than those imposed by state or federal law.

- d. For all Structures that are subject to the transfer inspection process, said lead paint inspection shall be performed within six months of and the corresponding report shall be submitted as part of the real estate transfer inspection process. If a Lead (paint) Free Report is submitted to the City by a Certified Lead-Based-Paint Risk Assessor containing a Lead (paint) Free Certification for a Structure, then no further Lead-based paint inspections or reports shall be required for said Structure unless the Lead (paint) Free Report is rescinded, invalidated, or otherwise determined to be void.
 - e. In the event that a Structure falls within two or more of the above categories or descriptions, the lead paint inspection and report requirements for both shall apply.
- c) *Issuance of reports; remediation; responsibility of owner.*
- 1) If remediation is required to receive a Lead (paint) Safe Report or Lead (paint) Free Report, then the Department of Licenses and Inspections will forward the information to the Delaware Department of Public Health and the Delaware State Lead-Based Paint Program to begin remediation in compliance with 16 Del. C. § 2612, et seq.
 - 2) All lead paint safe inspections are the responsibility of the property owner, and all Lead (paint) Safe Reports, Lead (Paint) Free Reports, and their corresponding findings become the liability of the issuing Certified Lead-Based-Paint Risk Assessor or Certified Lead Dust Sampling Technician.

SECTION 4. This Ordinance shall become effective upon passage by City Council and signed by the Mayor.

First Reading.....September 7, 2023
Second Reading.....September 7, 2023
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ___ day of _____, 2023.

Mayor

SYNOPSIS: This Ordinance amends Chapter 34 of the City Code to require the City to employ certified lead-based paint and dust technicians, and to inspect properties for lead.

FISCAL IMPACT STATEMENT: This Ordinance’s fiscal impact should be *de minimis*.