

MONMOUTH COUNTY BOARD OF HEALTH

ORDINANCE NO. 2-2020

AN ORDINANCE BY THE MONMOUTH COUNTY BOARD OF HEALTH ESTABLISHING LEAD ABATEMENT, REPAIR, CLEANING, AND MAINTENANCE METHODS REGARDING HOMES WHERE A LEAD HAZARD HAS BEEN DETECTED OR IS SUSPECTED

WHEREAS, the Monmouth County Board of Health (“MCBH”) has been certified by the New Jersey Department of Health as a local health agency and is delegated the authority to implement various health programs in accordance with the Local Health Services Act, N.J.S.A. 26:1A-15 et seq., and Local Board of Health Act, N.J.S.A. 26:3A2-1 et seq.; and

WHEREAS, the MCBH serves as the health department for various towns throughout Monmouth County (the “Constituent Municipalities”) by virtue of contractual agreements; and

WHEREAS, the MCBH is charged with enforcing N.J.A.C. 8:51-1 et seq., “Childhood Elevated Blood Lead Levels”, N.J.A.C. 5:17 et seq., “Lead Hazard Evaluation and Abatement Code”, to protect individuals from adverse health effects due to exposure to lead hazards in their homes and in the environment; and

WHEREAS, the federal government has also established regulations surrounding lead-based paint through the U.S. Department of Housing (“HUD”) Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Title X”), and EPA’s Lead Renovation, Repair and Painting Rule (“RRP Rule”); and

WHEREAS, the purpose of this Ordinance is to establish a local universal code relating to lead paint hazards and to provide MCBH officers the authority to issue summonses and/or stop work orders; and

WHEREAS, the MCBH has responded to multiple complaints and wishes to outline the proper procedures for encapsulation as an abatement technique as well as proper procedures for power washing potential lead based paint; and

WHEREAS, this Ordinance also establishes property owners’ and contractors’ responsibilities for record keeping and lead maintenance measures; and

WHEREAS, the MCBH has determined that it is necessary to establish an Ordinance setting forth lead abatement, repair, cleaning, and maintenance methods for properties in Constituent Municipalities where a lead hazard is detected or suspected; and

NOW, THEREFORE, BE IT ORDAINED by the Monmouth County Board of Health as follows:

Section I – Authority

This ordinance is enacted pursuant to and consistent with state and federal regulations.

Section II Purpose

To further define proper procedures of abatement, repair, cleaning, and maintenance methods regarding homes where a lead hazard has been detected or is suspected.

Section III Definitions

“Abatement” and/or “Lead Abatement” - any set of measures or processes designed to permanently eliminate lead-based paint or any other lead-related hazards on a premises and includes, but is not limited to: the removal of lead-based paint and/or lead-contaminated dust; the enclosure or encapsulation of lead-based paint; the replacement or removal of lead-painted surfaces, fixtures, furniture, toys or objects; the removal, treatment or covering of lead-contaminated soil; and all preparation, clean-up, disposal and post-abatement clearance testing activities associated with such measures.

“Chewable Surface” - any projection from an interior or exterior surface that offers a biting surface or that can be mouthed by a child. Chewable surfaces may include, but are not limited to: window sills, window casings, doors, door casings, stair railings, stair treads, balusters, toys, parts of certain furniture or any other surface that may be readily mouthed by children.

“Confined power sanding” - the use for the removal of lead paint of electric- powered or hydraulic-powered sanding tools that have attachments that, while sanding paint, simultaneously vacuum dust and chips into a HEPA-filtered vacuum device or otherwise contain and control chips and dust from being released into the environment.

“Encapsulant” - a coating or rigid material that relies on adhesion to a lead-based painted surface and is not mechanically fastened to the substrate.

“Encapsulation” - a process to make lead-based paint inaccessible by providing a barrier between the lead-based paint and the environment, where the primary means of attachment for the encapsulant is bonding of the product used to the surface covered either by the product itself or through use of an adhesive.

“Friction surface” - any interior or exterior surface subject to abrasion or friction. Such surfaces include: floors, stair treads, stair risers, thresholds, window sashes, window stops, window parting beads, window wells, window jambs, door jambs, cabinets, and drawers.

“HEPA vacuum” - a high-efficient filter that filters out fine particles of dust at 99.7% of fine particles at 0.3 microns in size.

“HUD Guidelines” - the most recent version of the “Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing” prepared by the United States Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control and available from the U.S. Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Washington, DC 20410. Copies may also be obtained from the HUD website at https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines.

“Impact Surface” - an interior or exterior surface that is subject to damage by repeated impacts,

including chair rails and certain parts of doors.

“Interim controls” - a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint 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.

“Lead-based paint” - paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared when measured by an XRF analyzer, or in excess of 0.5% by weight as determined by a laboratory certified by the State of New Jersey, or such other level as may be established by federal law.

“Lead-based paint hazard” - any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces that would result in adverse human health effects.

“Patch test” - a field test procedure in which a small area of the existing lead based paint film is prepared and the encapsulant product is applied or installed and cured in the manner intended for the large scale job and then tested to determine adhesion and surface integrity.

“Person” - any individual, corporation, employee, company, association, firm or partnership.

“Unconfined power sanding” - the use for the removal of paint of electric-powered or hydraulic-powered sanding tools that do not have attachments that, while sanding paint, simultaneously vacuum dust and chips into a HEPA-filtered vacuum device or otherwise contain and control chips and dust from being released into the environment.

Section IV-Prohibition and Requirements

4.1. Use of encapsulants in lead based paint control and abatement.

- A.** In accordance with N.J.A.C. 5:17-1.1(e), the removal, repair, encapsulation, or enclosure of lead-based paint or lead-contaminated soil shall require a construction permit issued pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq.
- B.** As a lead-based paint abatement method, liquid encapsulant products shall be banned from use or application to:
 - 1) Chewable surfaces
 - 2) Friction or impact surfaces
 - 3) Deteriorated components
 - 4) Severely deteriorated paint films
- C.** Abatement methods must be uniformly carried out on the entire surface that is found to be leaded. Combination abatement, interim controls, and/or lead-based paint hazard control methods shall not be performed upon the same building component in a building

where a lead abatement is required. Only one uniform method may be applied to each individual component which presents a lead-based paint hazard.

- D.** Prior to Monmouth County Health Department approving a scope of work which includes encapsulation as a method of abatement, the abatement contractor shall provide written notification advising the owner of the maintenance requirements listed in 4.1(F) and 4.1(G) below, N.J.A.C. 5:17-6.4(h), section 1018 of Title X, and maintenance and tenant notifications and posting requirements as listed in HUD Guidelines chapter 13, subsections VIII and IX. Appendix A
- E.** Prior to conducting a patch test to determine surface adherence suitability, as described in N.J.A.C. 5:17-6.4, the Monmouth County Health Department shall be notified and afforded the opportunity to witness the test to ensure that encapsulants are tested on its intended surfaces.
- F.** Liquid encapsulant products or systems to be used for lead-based paint hazard abatement shall be warranted by the manufacturer and applied as per the manufacturers specifications in accordance with N.J.A.C. 5:17-6.4(a).

Encapsulated lead based paint shall be properly inspected at intervals in order to maintain protection from the lead based paint not removed by this particular method of lead abatement. A schedule for inspection of the encapsulated surfaces in order to determine potential signs of failure shall be established by the lead abatement contractor in the scope of work presented to the owner of the property, before the abatement work begins. This inspection schedule shall be in accordance with N.J.A.C. 5:17-5.1, and shall be performed at least one month after application, six months after application, and then annually thereafter, until the end of encapsulant lifespan, as indicated by the encapsulant manufacturer. Visual monitoring shall be implemented by the owner of the building, or his representative, and shall be supplied to the occupant of the building if other than the owner. This schedule shall be made available for all future tenants in a rental dwelling upon occupancy, and shall include a written record of the visual monitoring performed as required above.

- G.** Both the owner and contractor shall keep records of interim control methods or abatement measures used on the building or building component(s) if lead based paint is known to be in existence in the structure.
- H.** As lead-based paint is not removed when using an encapsulant as an abatement method, locations of lead-based paint shall be recorded and maintained. No more than seven days following completion of remediation, records of the following descriptive information shall be mounted on a wall of a basement, storage closet, or utility room or other area approved by the Monmouth County Health Department:
 - 1) Drawings to show locations of lead-based paint.
 - 2) Exact location of encapsulant.
 - 3) Product label and/or copy of manufacturer's technical product information, including type of encapsulant and product name.

- 4) Contractor name.
- 5) Date of Application.

I. In the event that the mandatory annual visual inspection indicates the potential or existence of damaged or failed encapsulation, Monmouth County Health Department shall be notified, and abatement shall again be required, in order to address removal of lead-based paint hazards from the home. This abatement shall be conducted by a certified State of NJ licensed lead abatement contractor in accordance with N.J.A.C. 5:17.

4.2. Lead-based paint and exterior construction/renovation/remodeling

- A.** No person shall disturb or remove lead-based paint, or painted surface on the exterior elements of a house or other structure constructed prior to 1978, by the method of unconfined power sanding, open flame burning, the use of a high temperature heat gun (greater than 1100 degrees Fahrenheit) or uncontained water blasting or power washing. Any property which is deemed lead-safe is exempt from these restrictions.
- B.** When exterior lead-based paint is removed by confined power sanding or other methods, such as scraping, manual sanding, and/or power washing, then drop cloths or other ground cover shall be used to contain paint chips and dust resulting from the process of paint removal.
- C.** Paint chips and dust shall not be permitted to migrate from the immediate covered/protected area and shall not be permitted to migrate onto adjacent properties.
- D.** Chips and dust that fall onto the bare soil or areas uncontained by tarps or other protective material as referenced above shall be removed and the uncontained areas shall be cleaned to sight.
- E.** Prior to removal of exterior lead-based paint, windows of the structure being painted or disturbed shall be closed and sealed with tape or other impermeable barrier to prevent entry of paint chips and paint dust into the interior of the structure.
- F.** Following paint removal, cleanup of paint dust and chips on window surfaces, driveways, sidewalks, and other surfaces shall be performed. Paint dust and chips shall not be dispersed or disturbed by air blowers or pressurized water. Paint chips and dust collected shall be placed in double plastic bags of not less than three mils each of thickness and not weighing more than 20 pounds each.
- G.** Paint chips and dust collected following removal from any building or any building component may be left with the owner or resident, if a person other than such has disturbed the structure. These paint chips and dust shall be disposed of in accordance with State and Federal lead-based paint removal guidelines.
- H.** Any violation which is found by the enforcement official may result in an order to immediately cease work and to clean and remove leaded paint chips and/ or leaded paint dust, as per section 4.2(F) above, to the satisfaction of the Monmouth County Health Department or other designated enforcing authority.

- I. It shall be unlawful to refuse a cease work order from the Monmouth County Health Department or other designated enforcing authority, or fail to furnish requested information regarding a lead based paint hazard or paint disturbance, or to abate disturbed lead based paint chips, if deemed necessary by the health authority.

Section V-Enforcement, Violations, Penalties

This article shall be enforceable by the Monmouth County Health Department, or assigned agent.

Any person who violates any provision of this article shall be subject to a penalty not in exceedance of \$1,000 for the first offense and not in exceedance of \$5,000 for each subsequent offense. Each day that the violation continues shall constitute a separate offense.

An order to immediately cease work may be issued by the Monmouth County Health Department or other designated agent, for dangerous or unapproved lead abatement, violations of work practice standards constituting an immediate health treat, or for failure to furnish requested information regarding a lead based paint hazard or paint disturbance, or for failure to abate disturbed lead based paint chips. Stop work orders shall remain in place until lifted by the Monmouth County Health Department, or adjudicated in Municipal Court.

The Monmouth County Board of Health shall report violations of the work practice standards to the local construction official that issued the permit and to the Bureau of Code Services, Division of Codes and Standards in the New Jersey Department of Community Affairs.

If the Monmouth County Board of Health has to implement an abatement and/or interim controls notice or order because of the property owner's refusal to comply, the board shall recover the expenses associated with removing the lead hazard and making the necessary repairs from the owner as set forth at N.J.S.A. 24:14A-9.

Section VI - Repealer

Any Ordinance or portion thereof enacted by the Monmouth County Board of Health or any Constituent municipality that contains any subject matter governed by this Ordinance which is inconsistent with or stands as an obstacle to the effective implementation of this Ordinance shall be superseded by this Ordinance and is hereby repealed and set aside.

Section VII - Severability

If any provision of this Ordinance, or the application of any such provision to any person or circumstance, shall be held invalid by a court of the United States or this State, or by any administrative agency of the United States or this State, remaining provisions shall remain in effect.

Section VIII - Effective Date

This Ordinance shall take effect upon adoption.

Attachments to be posted on website for contractor use-

Dear Homeowner,

Prior to your local health department approving a scope of work which includes encapsulation as a method of abatement, the abatement contractor shall provide written notification advising you of the maintenance requirements listed in 4.1(F) and 4.1(G) below, N.J.A.C. 5:17-6.4(h), section 1018 of Title X, and maintenance and tenant notifications and posting requirements as listed in HUD Guidelines chapter 13, subsections VIII and IX.

In some specific circumstances, encapsulants are an accepted abatement method, however encapsulants do not remove lead paint. When applied correctly, encapsulants provide a barrier between lead based paint and the environment.

Appropriate protective measures must be taken if the encapsulant fails or if the building is renovated or demolished. Because it is not feasible to label beneath encapsulated surfaces, drawings showing the locations of lead based paint must be mounted on a wall of a basement, storage closet or utility room or other area to be deemed acceptable to your local health department. Written documentation of both the initial installation and your scheduled inspections to ensure that the encapsulated surface has remained intact must be maintained and must be available to your local health department upon demand. Documented visual monitoring inspections are required 1 month and 6 months after application and then annually thereafter, up until the time of the encapsulant product's expiration. A sample of this documentation can be found on Monmouth County Health Department's website.

Additionally, these records must be provided to a new owner at the time of a realty transfer, or to any prospective new tenant, in accordance with the lead hazard disclosure requirements (section 1018 of Title X)

In addition to the disclosure requirements referenced above, be advised that periodic inspections and the implementation of a maintenance plan will be the responsibility of you, the property owner for the life of the encapsulant. The encapsulant will need to be evaluated and possibly refreshed, replaced or repaired at the end of the encapsulant's life cycle- as labeled on the product used.

Any damage or failure of the encapsulant must be reported to your local health department and that area must be addressed by a licensed lead abatement contractor. Failure to adhere to the inspection schedule, maintenance plan or disclosure requirements could subject you fines or other penalties.



The Monmouth County Board of Health

Brian Charnick

Acting President

50 East Main Street
FREEHOLD, NEW JERSEY 07728

TELEPHONE (732) 431-7456
FAX (732) 409-7579

Christopher P. Merkel, M.P.H.

Public Health Coordinator

Contractor name-

Date of Application-

Type of encapsulant and product name-

Drawings to show exact locations of encapsulant and of lead-based paint-