

ORDINANCE 2014-3 \_\_\_\_\_

AN ORDINANCE TO PROVIDE FOR THE REMOVAL OF WET BUILDING MATERIALS IN AFFECTED STRUCTURES LOCATED WITHIN THE BOROUGH OF MANVILLE, NEW JERSEY, AND REMEDIATION OF MOLD CONTAMINATED MATERIALS THEREFROM WITHIN 45 DAYS FOLLOWING A RECOGNIZED FLOOD OCCURRENCE.

WHEREAS, the Manville Board of Health of the Borough of Manville ("Board of Health") was established pursuant to N.J.S.A. 26:3-1; and

WHEREAS, pursuant to N.J.S.A. 26:3-1, the Board of Health may make, amend, repeal and enforce such other ordinances, regulations, rules and bylaws not contrary to the laws of this state or of the United States, and where it may deem it necessary and proper for the good of the government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the Borough of Manville and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

WHEREAS, the Manville Board of Health recognizes that the Borough is situated in a region of the State of New Jersey which has experienced significant natural disasters, including flooding; and

WHEREAS, the Manville Board of Health recognizes that as a direct result of its geographic location, it is the historic experience of its residents and property owners to experience significant water infiltration into homes and other structures within the Borough following significant flooding; and

WHEREAS, the Manville Board of Health recognizes that as a direct result of its historic experience it is aware of the intrusion into homes and business structures of its residents and property owners of high levels of water; and

WHEREAS, the Manville Board of Health recognizes that a direct result of the high levels of water within structures is the saturation of furnishings and structural elements including drywall, insulation, lath and plaster, ceiling tiles and wood framing containing cellulose; and

WHEREAS, the Manville Board of Health recognizes that once structural elements and furnishings are flooded by water there occurs a natural production of molds; and

WHEREAS, the Manville Board of Health recognizes the well-known health and safety risks posed by molds, as defined herein; and

WHEREAS, the Manville Board of Health recognizes that molds grow by digesting and destroying the building materials they grow on; and

WHEREAS, the Manville Board of Health recognizes that for favorable growing conditions, molds need nutrients (oxygen and moisture) and material on which to grow; and

WHEREAS, the Manville Board of Health recognizes that molds reproduce by making spores and these spores become airborne, both outside and inside of buildings. If spores land on suitable material which

would include wet sheet rock, insulation and other building materials and conditions are favorable, the molds will begin to grow; and

WHEREAS, the Manville Board of Health recognizes and adopts the Mold Guidelines established by the State of New Jersey Department of Health – Consumer, Environmental and Occupational Health Service in its report revised on April 17, 2013 (hereinafter "Mold Guidelines"); and

WHEREAS, the Mold Guidelines recognizes that excessive moisture is a key ingredient which causes molds to grow and that excessive moisture may be found in many building materials such as drywall, insulation, ceiling tiles and wood framing containing cellulose; and

WHEREAS, the Mold Guidelines recognizes that as molds grow on building materials they become destructive and may grow unnoticed above ceilings, behind walls, in attics, basements or crawlspaces causing extensive property damage; and

WHEREAS the Manville Board of Health has determined that in order to promote the health, safety and welfare of its inhabitants and property owners it is necessary to promulgate ordinances, regulations and rules which seek to mitigate the harmful effects of molds within the Borough of Manville; and

WHEREAS the Manville Board of Health has determined that in order to preserve the public health, safety and welfare of the municipality, its inhabitants and property owners and to carry out the necessary removal of wet building materials, as hereinafter defined, within a reasonable period of time following the occurrence of a natural flooding event, as hereinafter defined, it is necessary to promulgate ordinances, regulations and rules; and

WHEREAS, the Manville Board of Health recognizes and adopts the Corrective Actions, as herein defined, adopted by the Mold Guidelines for New Jersey Residents; and

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Manville that any structure, residential or commercial, which has experienced flooding and the resulting water saturation of drywall, ceiling tiles, wood framing containing cellulose, would lath and plaster shall have said material removed within 45 days of the occurrence in compliance with the "Wet Sheet Rock Ordinance" as more fully defined herein, in accordance with the following:

Section 1. Definitions.

"Molds" are fungi which occur naturally in the environment. Many different species of mold exist in New Jersey. Molds help break down dead materials and convert them back into organic matter which can be used by living organisms.

"Corrective Actions". If a mold problem is found, steps need to be taken to address such conditions. Remediation is necessary to prevent further property damage and further exposures. Specific steps have been outlined by the United States Environmental Protection Agency (USEPA) see <http://epa.gov/mold/>. These include:

Identifying and correcting the source of moisture.

Removing and/or cleaning mold contaminated materials.

Removing the mold and ensuring the area is completely dry before performing any renovation or construction work.

"Remediation". Working with mold can be hazardous, so regardless of who performs the work, best practices ensures that the workers are protected, as well as the occupants. Workers need to be protected through the use of gloves, a respirator, protective clothing and goggles or some type of eye protection. Also the work area may need to be contained to prevent the spread of mold to other areas.

"Identifying molds". Identifying molds in the structure must begin with a thorough visual inspection by either the property owner or a qualified environmental consultant. Excess moisture is always a key ingredient in mold growth. All structures should be examined for water leaks and infiltration as well as other sources of excess moisture. Mold grows well on building materials that contain cellulose. All building materials that contain cellulose (i.e., ceiling tiles, gypsum board, insulation, studs, and other wood products) should be inspected closely for signs of mold growth. Areas of inspection should include, but not be limited to, walls, ceilings, basements, crawlspaces and attics.

"Affected structures" shall be any structurally enclosed residence, place of business, commerce or other privately owned building located within the Borough of Manville.

"Recognized Flood Occurrence". A natural occurrence, recognized by the State of New Jersey, the National Weather Service or any other officially accepted organization or government agency which has the legal right to declare the Borough of Manville and/or its surrounding environs as a "flood area" following a naturally occurring weather incident.

"Removal of Mold Contaminated materials". All saturated wall covering material including, but not limited to drywall and insulation, shall be removed up to the level of the high watermark of the natural occurrence, but no lower than four feet above the floor. Such contaminated materials shall be removed completely from the studding or other structural elements and be removed from within the affected home or enclosed structure.

"Mold Guidelines for New Jersey Residents" shall refer to the guidelines promulgated by the New Jersey Department of Health on April 17, 2013 in a publication entitled "MOLD". A copy of these guidelines shall be provided on the official website of the Borough of Manville and shall be made available in the office of the Secretary of the Board of Health.

"Volunteer Manville" shall mean that group or groups of volunteers who meet the requirements and guidelines of the workforce established through and under the auspices of the Borough of Manville in conjunction with the United Way of Somerset County.

"Property Owner" shall mean that person, legal entity or creditor (as defined in Manville Ordinance # 2014- ) having legal title to the affected structure, residential or commercial, located within the Borough of Manville.

"Person" shall mean an individual, creditor, firm, partnership, corporation or association of persons.

"And" and "or" may be used interchangeably, and either of the two may be applicable, whichever is more conducive towards the effectuating of this Ordinance.

Personal pronouns shall mean either the singular or plural, whichever is applicable and conducive toward the effectuating of this Ordinance.

Section 2. Within 45 days following the conclusion of a recognized flood occurrence, every property owner of affected structures in the Borough which were compromised by the intrusion of floodwaters shall take corrective actions to remove, clean and remediate the affected structures. Corrective actions shall include, but are not limited to the removal of wet building materials, gypsum board, insulation, ceiling tiles, lath and plaster and other building materials that contain cellulose and other wood products. Corrective action shall include performing the specific steps as outlined by the United States Environmental Protection Agency to remediate mold contamination. These steps include: The identifying and correcting the source of any moisture, removing and/or cleaning mold contaminated materials and the physical removal of mold and ensuring the area is completely dry before performing any renovation or construction work.

Section 3. Violations, fines, penalties; enforcement.

- A. Any person who violates or refuses to comply with any part of this Ordinance shall be liable to a fine and penalty of not less than \$500.00 or more than \$2,000.00 for each offense. A person who refuses or neglects to pay forthwith the amount of this fine and penalty and who also refuses to comply with any part of this Ordinance shall have the amount of a judgment rendered against him including the costs and charges incident with the removal and remediation of the mold contaminated materials thereto and shall be committed by the court to the county jail for a period not exceeding 10 days in the case of a first conviction, and in the case of a conviction of a second, subsequent or continuing violation, for a period not exceeding 30 days.
- B. The Borough of Manville Board of Health or its designees, including but not limited to the Chief of Police, the police officers of the Borough, the Administrators of the Departments of Public Works Building and Code Enforcement and/or any officer or agent authorized or empowered to perform any duty under this Ordinance, exercising the functions of the Board of Health according to law, upon written complaint or having reason to suspect that a violation exists in any affected structure, as defined by the provisions of this Ordinance is or may be in violation of the provisions contained herein, shall, by written notification, advise the person having control of the structure accordingly and order appropriate action to be taken. A person receiving that notice that fails or refuses to comply with the order is subject to a fine of not less than \$500.00 for the first offense, and \$2,000.00 for each subsequent offense. In addition to the penalty provided herein the court may order immediate compliance with the provisions of this Ordinance.
- C. A penalty recovered under the provisions of this Ordinance shall be recovered by and in the name of the Borough of Manville Board of Health. When any penalty is recovered it shall be paid by the Board of Health into the Treasury of the Borough of Manville.
- D. The Borough's Manville Municipal Court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of this Ordinance if the violation has occurred within the jurisdiction of the court. The proceedings shall be summary and in accordance with the "penalty enforcement law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Borough of Manville Board of Health, as plaintiff.

- E. The penalties provided in subsections A and B of this Section shall be the only civil remedy for a violation of this Ordinance, and there shall be no private right of action against a party for failure to comply with the provisions of this Ordinance.
- F. The Board of Health, or its designees as heretofore identified, shall have the authority to modify or extend provisions of this Ordinance without the need for formal action or approval, based upon conditions and circumstances as they may occur from time to time.

SECTION 4: Supersedure of other law, etc.

- A. If any provisions of this Ordinance shall be determined to be invalid in any court, the same shall not affect the other Sections or provisions of this Ordinance, except so far as the Section or provision so declared invalid shall be inseparable from the remainder of any portion thereof.
- B. The provisions of this Ordinance shall supersede any other Ordinances of the Borough of Manville. Any parts of Ordinances of the Borough of Manville in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency.
- C. This Ordinance shall take effect after final passage and upon expiration of twenty (20) days following publication unless otherwise provided by Resolution of the Council of the Borough of Manville.