

**A LOCAL LAW PROVIDING FOR VILLAGE  
REGULATION OF UNSAFE PROPERTY(IES)**

Local Law #6 2016

[HISTORY: The foregoing Local Law repeals and supersedes former Local Law 3-2015, titled, “A Local Law Providing for the Proper Care of Unsafe Buildings,” adopted December 21, 2015.

Be it enacted by the Board of Trustees of the Village of Wellsville, in the County of Allegany, State of New York (the “Village”), as follows:

**SECTION 1. PURPOSE AND INTENT**

- A. The purpose and intent of this law is to promote and preserve the health, safety, and welfare of the public, residents, occupants, and/or owners of real property located within the Village by providing a regulatory method for the repair and/or demolition (and removal) of buildings and other conditions that, irrespective of the cause(s), are dangerous, unhealthy, unsanitary, and/or otherwise unsafe to the public, residents, occupants, and/or owners of real property located within the Village.
- B. Unsafe buildings constitute nuisances that when left unabated threaten the public welfare and may pose the risk of: 1) an attractive nuisance for young children who may be injured therein; 2) serving as a point of congregation by vagrants and/or transients; 3) attracting rodents, insects, other vermin, and/or disease; 4) attracting illegal drug activity; 5) potential property damage and/or personal injury to the public, any adjoining property owner(s), as well as any guest(s), invitee(s), and/or their land(s) and/or improvement(s) thereon.
- C. This Local Law is adopted pursuant to section 10 of the Municipal Home Rule Law and shall be in addition to all other powers conferred upon the Village in relation to the same subject matter as governed by New York Law.

**SECTION 2. DEFINITIONS**

As used in this Local Law, the following terms shall have the meanings indicated:

“Building” – Any structure, or portion thereof, situated within the Village used for any purpose.

“Code Enforcement Officer” – Any person(s) appointed by the Village government and/or Mayor to enforce the provisions of this law and any other applicable Village and/or State law.

“Hearing” – Any fact-finding proceeding conducted by the Village Board of Trustees, after proper Notice to any Owner(s) of Property(ies), the purpose of which is to determine whether any violation(s) of this Local Law exist(s).

“Owner” – Any natural and/or non-natural person(s) vested with any titled interest in any real property(ies) situated within the Village.

“Premises” – Any parcel(s) of real property(ies) subject to Notice and Hearing under this Local Law.

“Property(ies)” – All parcels of real property situated within the limits of the Village.

“Unsafe Property(ies)” – Any Property(ies) on which any condition(s) exist(s) and/or Building(s) is/are situated where one or more of the following conditions is/are present:

- A. Interior and/or exterior bearing walls or other vertical structural members that list, lean, or buckle to such an extent as to weaken the structural support they were constructed to provide;
- B. Substantial damage to, or deterioration of, the supporting member(s), or substantial damage to, or deterioration of, the non-supporting, enclosing, or exterior walls or covering;
- C. Improperly distributed loads upon the floors and/or roofs, or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose(s) used;
- D. Those which have been damaged by any cause(s) so as to have become dangerous to life, safety, and/or the general health and welfare of the occupants, and/or people of the Village;
- E. Those which are so dilapidated, decayed, unsafe, and/or unsanitary that they are unfit for human habitation in accordance with normally accepted standards of human habitability;
- F. Light, air, and/or sanitation facilities inadequate to protect the health, safety, or general welfare of human beings who may live therein, with particular reference to the requirements of the New York State Uniform Fire Prevention and Building Code as a determinant;
- G. Those having inadequate facilities for exit in case of fire and/or other emergency and/or those having insufficient stairways, elevators, and/or fire escapes, also referencing the New York State Uniform Fire Prevention and Building Code as a determinant;
- H. Parts thereof which are so inadequately attached that they pose a risk of injury to any person(s) and/or any adjoining Property(ies);
- I. Those on which debris, rubble, and/or parts of any Building(s) remain on the Property(ies) following demolition, reconstruction, fire, and/or any other casualty(ies); and/or
- J. Those which, because of the condition(s), is/are unsafe, unsanitary, and/or otherwise dangerous to the health, safety, and/or general welfare of the people of the Village.

### **SECTION 3. UNSAFE PROPERTY(IES) PROHIBITED**

No natural and/or non-natural person(s) shall own, possess, lease, operate, and/or otherwise control any Property(ies) on which any condition(s) and/or Building(s) now, or hereafter, is/are, as defined by this Local Law, as Unsafe Property(ies).

### **SECTION 4. CODE ENFORCEMENT: INSPECTION AND REPORTING**

The Village Code Enforcement Officer shall inspect all Property(ies) situated the within the Village that are reasonably believed to be unsafe and report thereafter to the Village Board of Trustees his/her findings pertaining to any Unsafe Property(ies), including any Unsafe Building(s), identified as such by the Code Enforcement Officer, in written report(s) along with any other relevant information deemed necessary and appropriate by the Officer and submitted by her/him to the Village Board of Trustees, as authorized by this Local Law.

## **SECTION 5. DETERMINATION OF UNSAFE PROPERTY(IES): NOTICE AND OPPORTUNITY TO BE HEARD**

The Village Board of Trustees shall consider any report(s) submitted by the Code Enforcement Officer, along with any other information provided by that Officer, and, after service of Notice to the Property(ies) Owner(s) and affording reasonable opportunity by said Owner(s) to be heard, shall determine whether the reported Premises is/are unsafe and, if so, order its emergency repair and/or demolition and removal (if repair cannot be undertaken safely) as provided for herein, or order that Notice shall be served by the Code Enforcement Officer upon the Owner(s) that comports with the following:

- A. Inclusion of a date, time, and location for a Hearing to be conducted by the Village Board of Trustees to determine whether any violation(s) of this Local Law exist(s) at the Premises which are the subject of the report and Notice;
- B. Any such Hearing shall be scheduled not less than ten (10) business days from the date any such Notice is served for the next available date that is practicable for the Board of Trustees to convene such a Hearing;
- C. A Description of the Premises, including a particularized statement of the condition(s) of the Premises deemed unsafe by the Code Enforcement Officer;
- D. Inclusion of language informing the Owner(s) that an Order requiring repair and/or demolition (and removal) shall be issued timely if, after conducting a Hearing as provided for herein, the Village Board of Trustees determines the Premises constitutes an Unsafe Property;

## **SECTION 6. SERVICE**

Any Notice(s) and/or Order(s) made pursuant to this Local Law, except those in emergency circumstances, as set forth herein, shall be served as follows:

- A. By personal service of a copy upon the Owner(s), or upon any person(s) duly appointed to serve as a legal representative of the Owner(s), or any other person(s) having a vested interest in the Premises as evidenced by the most recent final assessment roll of the Village, or alternatively by those public records maintained by the office of the Allegany County Clerk;
- B. By mailing a copy to such Owner(s) or other permissible person(s) as described above, by United States Postal Service Priority Mail with delivery confirmation, addressed to the last known address of such person(s) and by affixing a copy of the same to the Premises, with such service date to commence the time period recited in the Notice or Order and filed in the Allegany County Clerk's office thereafter, or;
- C. In any such method(s) as a court of competent jurisdiction may direct, and as authorized by the Civil Practice Law and Rules of New York State, upon motion without notice, in the event that service is impracticable under the above provisions.

A copy of the Notice may be filed in the office of the Allegany County Clerk in the same manner as a notice of pendency, as provided by Article 65 of the New York Civil Practice Law and Rules, and shall have the same effect as a notice of pendency as provided therein. A Notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon a court order and/or upon consent of the Village Attorney.

## **SECTION 7. HEARING**

- A. The Hearing shall be conducted by a quorum of the Village Board of Trustees.
- B. The Code Enforcement Officer shall present her/his report to the Village Board of Trustees in writing, in advance of the Hearing as provided for herein.
- C. The Owner(s) (or their representative), if present, shall be permitted to call any such witness(es) and present any such evidence that, in the good faith belief of the Owner(s), provides a relevant rebuttal to the Code Enforcement Officer's findings.
- D. The Village Board of Trustees shall, after eliciting facts during the process described herein, memorialize written findings from those facts elicited at Hearing and determine therein whether the Premises violate this Local Law.
- E. If such Owner(s), after service of Notice as provided for herein, fail(s) to appear at said Hearing, the Village Board of Trustees, at its discretion, may deem the failure to appear as the lack of opposition of the Owner(s) by default and thereafter Order that the repair and/or demolition (and removal) of any such Unsafe Property(ies) be commenced forthwith as provided for herein.

## **SECTION 8: REPAIR AND/OR DEMOLITION ORDER**

The Village Board of Trustees is hereby authorized to enforce this Local Law by issuance of Orders to compel any Owner(s) of any Unsafe Property(ies) to repair and/or demolish (and remove) the same as provided for herein, along with sanctions for unexcused non-compliance, and such Order(s) shall include the following:

- A. That mandated repair and/or demolition (and removal) of any Unsafe Building(s) and/or other condition(s) in violation of this Local Law shall commence within ten (10) days after service of any such Order(s), as provided herein, and shall be completed not less than thirty (30) days thereafter;
- B. The Code Enforcement Officer is hereby authorized, at her/his discretion, to enlarge the time period for compliance specified in the Order, provided evidence exists of good faith intent to comply within the time period specified and circumstances exist that reasonably prevent such intended compliance;
- C. When granting any such enlargement of time for compliance with any Order issued pursuant to this Local Law, the Code Enforcement Officer may impose any such requirement(s) as deemed reasonably necessary and appropriate, at her/his discretion; and
- D. That in the event of any unexcused failure to comply with the Order to repair or demolish (and remove) any Unsafe Building(s), the Village Board of Trustees is authorized to:
  - 1) Provide for its repair or demolition (and removal);
  - 2) Assess all reasonable costs and expenses thereof against;
    - (a) The land on which Unsafe Property(ies) is/are situated as a lien;
    - (b) Any insurance proceeds of the Unsafe Property(ies) damaged in an

insured event;

(c) The Owner(s) of the Unsafe Property(ies) personally; or

(d) Any combination of the sub-sections appearing immediately above;  
and/or

3) Institute special proceedings to impose and collect any costs of repair and/or demolition (and removal), including any legal expenses and/or court costs.

If the Owner(s) of any Unsafe Property(ies) fail(s) to repair and/or demolish (and remove) any Unsafe Property(ies) as Ordered, the Village Board of Trustees may then declare, at its discretion, that the Unsafe Property(ies) warrant(s) undertaking Emergency Work and it may order repair and/or demolition (and removal) of the same forthwith and as provided for herein.

## **SECTION 9. EMERGENCY WORK**

- A. If the Village Board of Trustees determine that actual and imminent danger to public safety, life, and/or property exists because of the condition(s) of any Premises as reported by the Code Enforcement Officer, pursuant to this Local Law, the Village Board of Trustees may cause whatever undertaking(s) is/are reasonably appropriate and necessary to render any such condition(s) temporarily safe, irrespective of whether the procedures provided herein are instituted or not.
- B. When Emergency Work is to be performed under this section, the Village Board of Trustees shall cause the Owner of the Premises to be served personally or by United States Postal Service Priority Mail with delivery confirmation, and posting on the Premises of a Notice to Comply which contains a description of the Premises, a statement of the facts supporting the Code Enforcement Officer's determination of the presence of any Unsafe Building(s) and/or dangerous condition(s), in violation of this Local Law, along with an Emergency Order to correct the defect(s), damage, and/or condition(s) that constitute an emergency within a specified period not to exceed three (3) days from the actual or constructive notice of the Owner(s) regarding the relevant defect(s), damage, and/or condition(s).
- C. In the event that the emergency does not permit any delay in correction, the relevant Notice shall state the Village has resolved the emergency condition(s).
- D. Any such Notice of emergency conditions shall state that the corrective costs of the emergency shall be assessed as authorized and provided for herein.

## **SECTION 10. NON-COMPLIANCE: REMEDIES**

- A. In addition to any other penalty(ies) prescribed by State law, unexcused failure by any Owner(s) to comply timely with any Order(s) of the Village Board of Trustees pursuant to this Local Law that mandates repair and/or demolition (and removal) of any such Unsafe Property(ies) shall be subject to a civil penalty of \$200.00 for each day, or part thereof, during which such violation(s) continue(s), or the maximum daily civil enforcement penalty permitted by the New York State Uniform Fire Prevention and Building Code, whichever amount is greater. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Village.

- B. The Village Board of Trustees are hereby authorized to procure the immediate repair and/or demolition (and removal), or to delegate the same to any duly-appointed agent(s), with such repair and/or demolition (and removal) to be performed either by Village employees or procured by contract.
- C. Except when emergency circumstances exist, any contract will be awarded pursuant to the Village Purchasing Policy.

## **SECTION 11. ADDITIONAL RELIEF: APPLICATION TO SUPREME COURT FOR ORDER**

In addition to the remedies provided by this Local Law, all of which are cumulative, the Village Board of Trustees may direct the Village Attorney to make an application to the Supreme Court of the State of New York for Allegany County seeking an order determining a building to be an Unsafe Building and directing that it shall be repaired and secured or demolished (and removed).

## **SECTION 12. ASSESSMENT OF COSTS**

- A. All costs and expenses incurred by the Village in connection with any administrative and/or judicial proceedings to remove or secure, including the repair, stabilization, demolition, and/or removal cost(s) resulting from Unsafe Property(ies) in violation of this Local Law, and any cost incurred by the Village in the consult of any engineer(s) and/or other expert(s) in connection thereto shall be assessed personally against the Owner(s) of the Unsafe Property(ies), any insurance proceeds of any Unsafe Property(ies) damaged due to an insured event, or any combination of the provisions set forth hereinabove at section 8(D)(2).
- B. Such assessment shall also constitute a lien upon any such Property(ies).
- C. If the Owner(s) of any such Unsafe Property(ies) fail(s) to pay such expenses with thirty (30) days after the Notice of Statement is presented and posted, litigation may be instituted to collect such assessment and/or to foreclose any such lien(s).
- D. Alternatively, the Village may file a certificate of actual expenses incurred as aforesaid, together with a statement identifying the Unsafe Property(ies) to the Assessor, who may, in the preparation of the next assessment roll, assess such amount(s) upon and against any such Property(ies).
- E. Such amount shall be included in the levy against such Property(ies), and shall constitute a lien which shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property tax in the Village.
- F. The Village may commence a special proceeding pursuant to §78-b of the New York General Municipal Law to collect from the Owner(s), costs of demolition (and removal), as well as reasonable and necessary legal expenses incidental to obtaining an order to demolish.

## **SECTION 13. EFFECTIVE DATE**

This Local Law shall take effect, 2016 upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.