

VILLAGE OF ASHAROKEN

LOCAL LAW NO. # 4-2017

A LOCAL LAW REPEALING CHAPTER 46 OF THE CODE OF THE VILLAGE OF ASHAROKEN ENTITLED "BUILDINGS, UNSAFE" AND ADOPTING A NEW CHAPTER 46 ENTITLED "BUILDINGS, UNSAFE AND PROPERTY MAINTENANCE"

BE IT ENACTED by the Board of Trustees of the Village of Asharoken as follows:

Section One. Legislative Intent.

The Board of Trustees finds that to permit Village of Asharoken to take effective remedial action regarding unsightly, dangerous or unsafe conditions of property, buildings and structures located within the Village of Asharoken, Chapter 46 of the Code of the Village of Asharoken should be revised.

Section Two. Repeal of existing Chapter 46 of the Code of the Village of Asharoken.

The existing Chapter 46 of the Code of the Village of Asharoken, entitled "Buildings, Unsafe", is hereby repealed in its entirety.

Section Three. Adoption of new Chapter 46 of the Code of the Village of Asharoken.

A new Chapter 46 of the Code of the Village of Asharoken, entitled "Buildings, Unsafe and Property Maintenance", is hereby adopted to provide as follows.

Chapter 46

BUILDINGS, UNSAFE and PROPERTY MAINTENANCE

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ARTICLE I – GENERAL PROVISIONS

§ 46-1. **Title; intent.**

- A. This chapter shall be known as the “Unsafe Buildings and Property Maintenance Local Law of the Village of Asharoken.”

- B. It is the intent of the Village of Asharoken to permit the Board of Trustees to take remedial action regarding unsightly, dangerous or unsafe conditions of property, buildings and structures located within the Village of Asharoken. The Board of Trustees of the Village of Asharoken finds that such unsightly, dangerous or unsafe conditions of property, buildings or structures are a detriment to adjoining buildings, properties and neighborhoods, constituting a nuisance and a threat to the physical well-being of the residents of the Village of Asharoken. Such conditions interfere with the promotion of good order, peace, health, safety and welfare of the residents of the Village of Asharoken and invite vandalism and necessitate additional police protection for the security of said property, property owners and other residents of the Village of Asharoken.

§ 46-2. Definitions.

For the purposes of this chapter, the terms used herein are defined as follows:

BOARD OF TRUSTEES – The Board of Trustees of the Village of Asharoken.

BUILDING- A combination of materials to form a construction that is designated for or used as a residence, place of business or storage place. The word "building" shall be construed as if followed by the words "or parts thereof."

OWNER - The individual or legal entity in which title for property is vested. The Village of Asharoken shall be permitted to rely upon the name of the person or entity appearing on the latest assessment roll of the Village of Asharoken as evidence of ownership.

PROPERTY - Any vacant or improved lot, piece or parcel of ground within the Village of Asharoken.

RESIDENT – The occupant, tenant or person in possession of property, a building or a structure.

STRUCTURE - A combination of materials to form a construction, including but not limited to garages, swimming pools, decks, terraces, patios, sheds, docks, excavations, bulkheads, platforms, ramps, drains, sidewalks and septic systems.

SUPERINTENDENT – The Superintendent of Buildings of the Village of Asharoken or such other individual appointed by the Board of Trustees to enforce the provisions of this Chapter.

VILLAGE – The Village of Asharoken.

VILLAGE CLERK – The Clerk of the Village of Asharoken.

ARTICLE II – PROPERTY MAINTENANCE

§46-3. Conditions constituting a violation.

It shall be a violation of this Article for an owner or resident of property to create, cause, maintain or permit to continue any of the following conditions:

- A. The accumulation on property of any junk, garbage, stagnant water (including but not limited to unfiltered swimming pool water), wastewater, raw sewage, sewage, wastepaper, rubbish, wood, paper or paper boxes, iron, tin, nails, bottles or glass of any kind, old cars and parts thereof, discarded appliances, such as refrigerators and the like, or other debris

upon any property.

- B. Property upon which grass, weeds or saplings have become untrimmed and overgrown and unsightly, when said grass, weeds or saplings are exposed to public view or present a danger to neighbors or the public.
- C. Abandoned swimming pool, either empty or with untreated water.
- D. Any hazardous condition of terrain, grading or drainage, or construction, in or upon property wherein said hazardous condition shall constitute a menace to the property, lines, mains, streets, sidewalks, equipment, structures or buildings owned by the Village or by adjoining property owners.

§46-4. Report and investigation.

Upon the Superintendent's observation of any condition constituting a violation pursuant to §46-3 of this Article, the Superintendent shall promptly make an investigation of said condition and file a written report of his investigation with the Board of Trustees. Simultaneously, the Superintendent shall notify the owner and resident of the property of the alleged violation. Said notice shall indicate the date of meeting during which the report of the Superintendent will be reviewed and examined by the Board of Trustees and shall indicate that the owner and resident will be given the opportunity to respond to the Superintendent's report.

§46-5. Notice of violation; failure to remedy.

If the Board of Trustees, after reviewing the report of the Superintendent and hearing the owner and/or resident accused of violating the provisions of this Article, shall find that a violation exists, it shall cause a notice to be served to said owner and/or resident stating that the condition constituting the violation must be remedied within five business days, or if the condition shall be of a nature that it cannot be remedied within five business days, that remedy of the condition must commence within five business days and be diligently pursued until remedied. The notice shall further state that if the owner and/or resident fails to remedy the condition, the Village will cause the condition to be remedied and the cost thereof assessed against the property.

§46-6. Assessment of costs of remediation by Village; lien.

In the event that the Village remedies the condition constituting the violation, the Superintendent shall submit a written report thereof to the Board of Trustees describing the actions taken and shall include a compilation of all costs and expenses incurred by the Village. At the next regularly scheduled meeting of the Board of Trustees, the Board shall confirm said costs and expenses as an assessment against the real property involved, by duly adopted resolution. A copy of said resolution shall be mailed to the address of the owner of the property, as said address appears upon the latest assessment roll of the Village. A lien of special assessment shall thereupon arise as provided for by the Village Law of the State of New York. Said assessment shall be collected in

the manner provided for by the Village Law of the State of New York.

ARTICLE III – UNSAFE BUILDINGS AND STRUCTURES

§46-7. Designation of unsafe buildings or structures.

Any building or structure may be declared unsafe if, in the opinion of the Superintendent, it is unfit for human habitation, occupancy or use, by reason of any one or more of the following conditions:

- A. The building or structure contains unsafe equipment, lacks illumination, ventilation, sanitation, heat, water or other facilities adequate to protect the health and safety of the occupants or the public.
- B. The building or structure is damaged, decayed, dilapidated, unsanitary, unsafe or infested with rodents or vermin in such a manner as to create a hazard to the health and safety of the occupants or the public.
- C. The building or structure, because of the location, general conditions, state of the premises, number of occupants or other reason, is unsanitary, unsafe, dilapidated, overcrowded or for other reasons is detrimental to health and safety of the occupants or the general public.
- D. The building or structure, because of the failure of the owner or resident of the property to comply with notices or orders issued by the Superintendent is unfit for human habitation, occupancy or use, or a hazard to the public.
- E. The building or structure is unfit for human habitation, occupancy or use due to prolonged lack of maintenance.
- F. The building or structure is open at a doorway, windows or garage making it accessible to and an object of attention to minors under 18 years of age, as well as to vagrants and other trespassers.
- G. The building or structure is infested with rodent or vermin.
- H. Any other condition which, in the opinion of the Superintendent, is dangerous or jeopardizes the health, welfare and safety of the general public or occupants.

§ 46-8. Notice of unsafe conditions; procedure.

- A. Investigation and report. Upon observation that a building or structure is unsafe, the Superintendent shall make an inspection thereof and prepare a written report of his or her findings and recommendations in regard to its repair or demolition and removal. At the request of the Superintendent, the Board of Trustees may retain an architect, engineer or other qualified individual to assist the Superintendent in preparation of his or her report.

B. The Superintendent shall serve a notice of unsafe conditions on the owner of the property containing the following:

- (1) A description of the property.
- (2) A statement of the particulars in which the building or structure is unsafe.
- (3) An order outlining the manner in which the building or structure is to be made safe and secure, or demolished and removed.
- (4) A statement that the securing or removal of such building or structure shall commence upon service of the notice and shall be completed within a specified, unless, for good cause shown, such time shall be extended by the Superintendent.
- (5) If the circumstances warrant, an order that the occupants of the unsafe building or structure shall vacate the building or structure and/or all entrances securely barricaded to prevent entry.
- (6) A statement that the owner has the right to request a hearing at a specified date, time and place before the Board of Trustees in relation to such unsafe building or structure. Said request must be in writing and served on the Village Clerk either personally or by certified mail
- (7) A statement that in the event the owner does not request a hearing and fails or refuses to comply with the notice, the Board of Trustees is authorized to provide for its securing or demolition and removal, to assess all expenses thereof against the property on which it is located and to institute a special proceeding to collect the costs of the securing or demolition, including legal expenses.

C. The notice shall be served:

- (1) By personal service of a copy thereof upon the owner or the owner's, executor, administrator, agent or other legal representative; or if no such person can be reasonably found, by mailing to the owner or the owner's, executor, administrator, agent or other legal representative, by certified mail, a copy of such notice directed to his or her last known address as shown by the latest assessment roll of the Village; and
- (2) By personal service of a copy of such notice upon any individual of the age eighteen years or older residing in, occupying or using said unsafe building or structure, if such individual can be reasonably found; and
- (3) By securely affixing a copy of such notice upon the unsafe building.

§ 46-9. Hearing, when requested.

- A. The hearing shall be conducted before the Board of Trustees. The Superintendent shall present his or her written report to the Board of Trustees. The owner or the owner's representative, if present, may present witnesses and other evidence as he or she deems necessary and relevant to the subject matter of the hearing. The Board of Trustees shall make written findings of fact from the testimony offered as to whether or not the building or structure in question is unsafe.
- B. If after the hearing the Board of Trustees finds that the building or structure is not unsafe, it shall adopt a resolution rescinding the notice of unsafe conditions.
- C. If after the hearing the Board of Trustees finds that the building or structure is unsafe, it shall adopt a resolution directing the owner to either secure or demolish and remove the building or structure within the time prescribed by the Board of Trustees.
- D. If the owner fails or refuses to secure or demolish and remove the building or structure, as directed by the Board of Trustees, within the time period prescribed by the Board of Trustees, the Board of Trustees shall provide for its securing or demolition and removal, and assess all expenses thereof against the property on which it is located or institute a special proceeding to collect the expenses, including legal expenses.
- E. If, after requesting a hearing, the owner fails to appear at the hearing and fails or refuses to secure or demolish and remove the building or structure, then the Board of Trustees shall provide for its securing or demolition and removal, and assess all expenses thereof against the property on which it is located or institute a special proceeding to collect the expenses, including legal expenses.

§ 46-10. Emergencies.

Notwithstanding any other provision of this Article to the contrary, if, in the judgment of the Superintendent, an emergency exists where there is imminent danger of failure or collapse of a building or structure; or where there is actual or potential danger to the occupants of or to those in the proximity of any building or structure because of the existence of explosive fumes or vapors, or the presence of toxic fumes, gases or materials; or because of any reason set forth in §46-7 imminent danger is found to exist to life or property, the Superintendent may immediately placard the building or structure in a conspicuous place, as access permits, and order the building or structure, or part thereof, immediately vacated and barricade any portion of the building or structure to prevent re-entry, until the dangerous, unsafe or unsanitary condition is remedied to the satisfaction of the Superintendent. In such event, the Superintendent shall, within 48 hours, serve a notice of unsafe condition pursuant to §46-8

§ 46-11. Assessment of expenses.

All expenses incurred by the Village in connection with the securing or demolition and removal of an unsafe building or structure, including reasonable legal expenses and expenses of an architect, engineer or other qualified individual to assist the Superintendent in preparation of his or her report, shall, at the option of the Board of Trustees, either:

- (1) Be assessed against the property on which such building is located and shall be levied and collected as an assessment against the real property involved by duly adopted resolution. A copy of said resolution shall be mailed to the address of the owner of the property, as said address appears upon the latest assessment roll of the Village. A lien of special assessment shall thereupon arise as provided for by the Village Law of the State of New York. Said assessment shall be collected in the manner provided for by the Village Law of the State of New York; or
- (2) Be collected by commencement of a special proceeding against the owner of the real property involved, pursuant to General Municipal Law § 78-b.

§ 46-12. Article seventy-eight proceeding.

Any person or entity aggrieved by any resolution of the Board of Trustees adopted pursuant to § 46-9, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the adoption of the resolution.

§ 46-13. Penalties for offenses.

Nothing herein shall prevent the criminal prosecution of a refusal to obey an order issued pursuant to the provisions of this chapter. Upon conviction thereof, the person or corporation violating the provisions of this chapter shall be subject to a fine of not more than \$250 for each offense.

Section Four. Severability.

If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

Section Five. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.