

**VILLAGE OF BROOKVILLE
LOCAL LAW 3-2013
PROPERTY MAINTENANCE@**

A local law to add new Chapter 163, entitled "*Property Maintenance*" which will provide for and ensure the proper use of property and prevent the unsafe, hazardous or dangerous conditions upon property in the Village, and to repeal Chapter 79, entitled, "*Brush, Grass and Weeds*," which provisions are included in substance within new Chapter 163.

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

SECTION 1. Chapter 163, entitled "*Property Maintenance*," of the Code of the Incorporated Village of Brookville, as last amended by Local Law 2-2013 on March 19, 2013, is hereby enacted as follows:

**CHAPTER 163
PROPERTY MAINTENANCE**

§ 163-1. Title.

This chapter shall be known and cited as the "Property Maintenance Code of the Incorporated Village of Brookville."

§ 163-2. Intent and purpose

It is the intent and purpose of this chapter to provide for and ensure the proper use of property and to prevent unsafe, hazardous or dangerous conditions upon property within the Village of Brookville; to provide basic and uniform standards governing the maintenance, appearance and condition of all structures and properties, whether improved or unimproved, residential, commercial or otherwise. Structures and properties within the Village shall be maintained in conformity with the standards set out in this chapter so as to assure that these structures and properties will not adversely affect the neighborhood and the community at large. It is found and declared that by reason of lack of maintenance and progressive deterioration, certain structures and properties have the further effect of creating blighting conditions, and that if the same are not curtailed and removed, the aforesaid conditions will grow and spread and will necessitate in time the expenditure of large amounts of public funds to correct and eliminate the same. By reason of timely regulations and restrictions as herein contained, the growth of blight may be prevented and the neighborhood and property values thereby maintained, the desirability and amenities of the neighborhoods enhanced and the public health, safety and welfare protected and fostered. It is the intent, therefore, of the Village that blight be identified, abated and eliminated and that any and all conditions which pose a threat to the health and safety of the public or to property within the Village be eliminated and to provide for the elimination of such conditions by the Village upon the failure of responsible parties to do so and for the assessment of the cost thereof against the owners, occupants or other persons as set forth in this chapter.

§ 163-3. Definitions

The following definitions are applicable to this chapter only:

DEBRIS

Includes all materials resulting from the construction, excavation, renovation, equipping, remodeling, repair or demolition of structures, property or roads as well as materials consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related clean up. Such materials include but are not limited to: bricks, concrete and other masonry material, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles, asphaltic pavement, glass, window frames, electrical wiring and components, plastics, carpeting, foam padding, linoleum, metals, or any combination thereof which is incidental to construction, excavation, renovation, equipping, remodeling, repair or demolition.

GARBAGE

Includes all putrescible animal and vegetable waste resulting from growing, processing, marketing and preparation of food items, including packaging containers.

GRAFFITI

Any writing, painting, drawing, staining, carving, etching or other marking, made by use of chalk, paint, ink, aerosol spray can, knife, pencil or any other marking device and/or material, of any word, name, lettering, inscription, figure, design, or other representation, made upon a portion of a building or structure without the consent of the owner. Signs with proper sign permits or approval are expressly not included in the definition of graffiti.

RUBBISH

Includes all discarded or worthless nonputrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to, paper and paper products, rags, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, metals, plastics, tires, bedding, cloth, crockery, furniture, appliances, batteries and other automotive parts, paint and paint products, petroleum products and similar items.

SOLID WASTE

Includes all putrescible and nonputrescible materials and substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection, including, but not limited to, household and commercial garbage, industrial waste, rubbish, debris, litter and ashes.

§ 163-4. Maintenance of property required.

A. General requirements.

(1) Surface and subsurface water shall be drained to prevent damage to buildings and structures and to prevent development of stagnant waters. Gutters, culverts, catch basins,

drain inlets, storm water sewers and sanitary sewers or other satisfactory drainage systems shall be provided and utilized.

(2) All landscaping shall be well maintained so that lawns, hedges, bushes, trees and weeds shall be trimmed so as to prevent overgrown and unsightly conditions, and so that they do not constitute an insect, vermin or rodent harborage or infestation hazard or blighting factor thereby depreciating adjoining property. Uncut grass, weeds or brush or any portion thereof shall not exceed six (6) inches in height. Any amount of brush, grass or weeds which conceals unhealthful deposits or conditions, or which produces unhealthful amounts of pollen is prohibited.

(3) All fences, retaining walls, piers, entryway gates, columns and the like, shall be maintained in a safe and attractive state and be maintained in good condition and state of repair. Such maintenance shall include, but not be limited to, the replacement and/or repair of fences retaining walls, piers, entryway gates, columns and the like, which may become in disrepair. Forbidden are barbed wire or razor wire or electrified fences.

(4) Steps, walkways, driveways and similar paved areas shall be maintained in good and substantial condition and state of repair so as to afford safe passage under normal use and weather conditions, and be free from litter, rubbish, debris, paper, dirt, garbage and junk. Any holes or other hazards that may exist shall be filled or necessary repairs or replacements carried out.

(5) Steps, walkways and driveways shall not be encumbered with ice or snow for more than 10 hours so as to enable postage employees and emergency personnel safe passage thereon. No snow removed from steps, walkways, driveways or other areas shall be deposited upon the public and private streets, roads or highways so as to interfere with the use of such streets, roads or highways or with the use of any other premises.

(6) All areas of the premises not occupied by steps, walkways, driveways or similar paved areas shall be planted with grass, shrubbery, flowers, trees, or other suitable planting so that they will not be unsightly in appearance and to prevent undue soil erosion due to the elements.

(7) Dead or incurably diseased trees shall be taken down and the diseased portion thereof removed and destroyed. Trees shall be kept pruned, and all fallen trees, uprooted tree stumps, and dead wood shall be removed. Any tree cut down shall be cut within eight (8") inches of grade, and promptly removed from the property. Any remaining tree stumps higher than eight (8") inches above grade shall be removed or cut to a height of eight (8") inches above grade or lower. These maintenance activities shall be undertaken in accordance with and shall be subject to the provisions of Chapter 197, "*Trees*" of the Village Code.

(8) Yards, courts and vacant lots shall be kept clean and free of physical hazards, rodent harborage and infestation. They shall be maintained in a manner that will prevent rubbish from being blown about the neighborhood. Open wells, cesspools, cisterns, pits, holes and all other declivities shall be securely closed, covered or barricaded from access to the public.

(9) No person shall deposit, throw or scatter or suffer, permit, allow or maintain the accumulation of any filth, dirt, ashes, junk, garbage, solid waste, debris, wastepaper, dust, rubbish, sticks, stones, grass, wood, leaves, paper or paper boxes, iron, tin, nails, bottles or glass or any other kind of rubbish or waste material, appliances, furniture, tires, machinery, disabled automobiles or automobile parts, or other bulk refuse upon any private or public property, vacant or improved, within the Village except as permitted by the Village regulations for trash and garbage removal.

(10) No discarded material of any kind or accumulation of vegetation or construction waste shall be maintained beyond the normally scheduled garbage removal, and shall otherwise comply with paragraph B of this section.

(11) No sand, dust or other such material shall be kept on property in such a manner as could cause injury, annoyance or detriment to the health, comfort or safety of a person of reasonable sensitivity or cause damage to any real or personal property if such material is blown off or otherwise escapes from the property.

B. Buildings and structures.

(1) All exterior exposed surfaces not inherently resistant to deterioration shall be repaired, coated, treated or sealed to protect them from deterioration or weathering.

(2) Every exterior wall, roof and porch, or appurtenance thereto, shall be maintained in a manner so as to prevent collapse of the same or injury to the occupants of the building or to the public.

(3) Foundation walls of every building shall be maintained in good condition and state of repair and be structurally sound.

(4) Exterior walls (including doors and windows), roofs and the areas around doors, windows, chimneys and other parts of a building shall be so maintained as to keep water from entering the building. Materials which have been damaged or show evidence of dry rot or other deterioration or damage shall be repaired or replaced and refinished in a good and workmanlike manner within a reasonable amount of time. Exterior walls, roofs and other parts of the building shall be free from loose and unsecured objects and materials. Such objects or materials shall be removed, repaired or replaced.

(5) Windows shall at all times be maintained in a safe manner, free of cracks.

- (i) Windows that are cracked, broken or missing shall be immediately boarded, to the extent necessary, to assure the safety of persons from falling out and/or from broken glass until such windows are replaced. In no event shall such boarding of windows exceed ten (10) calendar days. Windows that are cracked, broken or missing shall be replaced within ten (10) calendar days after notice from the Building Inspector. Extensions beyond said ten (10) days, based upon a good faith inability to obtain replacement windows within that time, shall be in the sole discretion of the Building Inspector. Such

replacement windows shall be installed in conformity with the requirements of the Village Code.

- (ii) The boarding of windows, except as provided in subsection (i) hereof, is prohibited, except to the extent that the use of wood structural panels, as provided for in the New York State Residential Code to provide protection from broken glass during periods of high wind velocity, or within 24 hours immediately before of within 24 hours immediately after such periods. High wind velocity, for the purposes of this section, shall mean wind gusts equal to or in excess of 85 miles per hour in three-second or greater gusts. In any prosecution for a violation of this subsection, it shall be an affirmative defense that such wood structural panels were in place based upon the exceptions set forth in this subsection.

(6) Vacant buildings shall be maintained in a condition that does not present a hazard to adjoining properties, buildings, structures or to the public.

(7) All property, buildings and structures shall be maintained free of insects, vermin and rodent harborage and infestation. Insects, rodents or other pests shall be exterminated or caused to be exterminated and methods used for such extermination shall conform with generally accepted practices in the Village and comply with all applicable law.

(8) No building or structure shall be permitted to exist with graffiti. Graffiti shall be removed and the building or structure restored.

C. Maintenance of site and adjoining roads during construction

(1) During the construction of any new building or structure, or during any reconstruction, enlargement, modification or alteration of any existing building or structure or during work upon any site, the owner of such construction site shall cause the entire site and all adjoining roads to be kept in a good, neat, clean, sanitary and attractive condition and free of all garbage, rubbish, debris (including construction debris) trash and the like to the extent practicable.

(2) At the end of each work day, the owner of the construction site shall cause all garbage, rubbish, debris (including construction debris) trash and the like thrown, placed, deposited or discarded by the owner or owner's contractors, subcontractors agents, employees or invitees to be collected and placed in dumpsters or other appropriate covered containers or garbage disposal bags or removed from the site and adjoining roadways.

(3) At the end of each work week, the owner of the construction site shall cause any accumulation of sand, gravel, cinder, topsoil, mud, earth or dirt or the like placed, deposited or tracked or caused to be placed, deposited or tracked from any construction site upon any adjoining roadways or caused by the owner or owner's contractors, subcontractors, agents, employees or invitees or other vehicles coming to and from the site or from any other cause to be removed and the adjoining roadways to be swept and cleaned.

(4) The owner of the construction site shall cause appropriate sanitary disposal facilities for

the use of construction workers to be placed and maintained at the construction site as required by applicable laws, rules and regulations or as the Village's building inspector shall determine to be suitable for the number of construction workers at the site.

(5) All construction shall be conducted only during the hours and only on the days as provided in section 134-3(G) of the Code of the Village of Brookville.

D. Blighted Property.

(1) Blighted property is prohibited. Blighted property is property characterized by one or more of the following conditions. The Building Inspector or the Code Enforcement Officer can determine whether property is blighted.

- (i) Boarded windows, doors, entryways or exits;
- (ii) Broken or unsecured windows;
- (iii) Excessive litter or debris;
- (iv) Overgrown grass at least 6 inches or higher or other overgrown vegetation or shrubbery;
- (v) Roofs, gutters, siding/shingles, chimney, shutters, and/or accessory structures, including, but not limited to, decks, sheds, porches, pools, pool houses or cabanas, garages, carports, storage units, front and rear porches, outside statuary, and/or fish ponds which are broken, unsecured, or in disrepair;
- (vi) Junk vehicles, salvage, or scrap property;
- (vii) Graffiti;
- (viii) Fencing which is broken, unsecured or in disrepair;
- (ix) Outdoor lighting fixtures which are broken, unsecured or in disrepair;
- (x) Electrical wires, electrical equipment or extension cords which are broken, exposed or hazardously utilized;
- (xi) Unfinished or abandoned construction;
- (xii) Damaged, dead or fallen trees or limbs;
- (xiii) Fire damage to property which has not been repaired or restored;
- (xiv) Peeling or deteriorated paint;
- (xv) Stagnant water;
- (xvi) Open or unsecured wells, cesspools or cisterns;
- (xvii) Vermin, rodent harborage or infestation;
- (xviii) Any other factors deemed by the Building Inspector to pose significant threat to the safety, health and/or general welfare of the Village; and
- (xix) Presence within/upon an outdoor area or the improper storage of:
 - (a) Refrigerator, washing machine, sink, stove, heater, boiler, tank, other household appliances, boxes or indoor furniture for a period in excess of 72 consecutive hours; and/or
 - (b) Lumber, construction materials, dirt, debris, trash, garbage or uncovered refuse cans, accumulated refuse or garbage in covered refuse cans which is not timely or properly disposed of.

§ 163-5. Violations and Parties responsible.

It shall be a violation of this chapter for any person to create, cause or maintain any condition which causes property to be blighted or fails to abate any such condition. It shall be a violation of this chapter for any person to fail to maintain property in accordance with the requirements of §163-4. For purposes of this chapter, "any person" shall include the owner, occupant, tenant, contractor, agent mortgagee or vendee in possession, mortgagee when the owner or occupant has caused or allowed the property to deteriorate or otherwise fall into a state of disrepair or blight, a mortgagee who has commenced the foreclosure process, the operator, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm, or corporation directly or indirectly in control of property or part thereof.

§ 163-6. Additional responsibilities of owners.

A. Owners of property shall be responsible for compliance with the provisions of this chapter and shall remain responsible therefore regardless of the fact that this chapter may also place responsibilities on operators, occupants and others and regardless of any agreements between owners, operators, occupants or others as to which party shall assume such responsibility.

B. Whenever any person or persons shall be in actual possession of or have charge, care or control of any property within the Village as executor, administrator, trustee, guardian, operator, mortgagee, contractor or agent, such person shall be deemed and taken to be the owner or owners of said property within the true intent and meaning of this chapter and shall be bound to comply with the provisions of this chapter to the same extent as the record owner, and notice to any such person or any order or decision of the Building Inspector shall be deemed and taken to be a good and sufficient notice, as if such person or persons were actually the record owner or owners of such property. In instances where an occupant is responsible or shares responsibility with the owner for the existence of one of more violations of this chapter, said occupant shall be deemed and taken to be an owner within the true intent and meaning of this chapter.

§ 163-7. Additional responsibilities of mortgage holders.

A. The mortgage holder shall immediately notify the Village, in writing, of its notice to the owner of the owner's failure to maintain the property. Upon the commencement of foreclosure proceedings the mortgage holder shall also immediately notify the Village, in writing, of such action. Commencement of a foreclosure proceeding shall be defined in this chapter as the service of a notice of foreclosure upon a property owner.

B. Upon either of the contingencies set forth in § 163-7A, the mortgage holder shall also deposit with the Village a sum determined by the Building Inspector to be sufficient for the maintenance and repair of the property. The Board of Trustees shall have the authority to reduce or waive the deposit.

§ 163-8. Inspection authorization.

A. The Building Inspector or Code Enforcement Officer is hereby authorized and directed to make all inspections necessary to determine whether compliance with the provisions of this chapter exists. For the purpose of making such inspections, the Building Inspector or Code Enforcement Officer is hereby authorized as permitted by law to enter, examine and survey at all reasonable times all premises. The owner or occupants of every premises, or the person in charge thereof, shall give the Building Inspector or Code Enforcement Officer free access to such premises at all reasonable times for the purpose of such inspection, examination and survey. Every occupant of a premises shall give the owner thereof, or his agent or employee, access to any part of such premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful rule or regulation adopted or any lawful order issued pursuant to the provisions of this chapter.

B. In the event that permission to enter any such premises for the purpose of inspection is denied, the Building Inspector or Code Enforcement Officer may apply to the appropriate authority for a search warrant.

C. A warrant shall not be required:

- (1) When entry is by permission or at the request of the owner or occupant.
- (2) Where the Building Inspector or Code Enforcement Officer has reason to suspect that an imminent danger to health and safety exists and where immediate inspection is required to determine if such an imminent danger to health or safety exists.

§ 163-9. Notice to remedy prohibited conditions and enforcement; Public hearing; Costs and expenses

A. If conditions existing on property violate the provisions of this chapter, the Building Inspector or Code Enforcement Officer shall serve or cause to be served a written notice of such violation, upon the owner or owner's agent and upon any known lessee or occupant of said premises.

B. Said notice shall contain substantially the following:

- (1) The name of the owner as set forth on the tax assessor's record and any known lessee or occupant of the premises.
- (2) The address or location of the premises.
- (3) The identification of the premises as the same appears on the current assessment roll.
- (4) A statement of the conditions on the property deemed upon inspection to be in violation of this chapter.
- (5) A demand that the violation of this chapter be cured on or before ten days after the service or mailing of such notice.
- (6) A statement that a failure, refusal or neglect to comply with the provisions of this chapter and the notice given pursuant thereto within the time specified may result in a duly authorized officer, agent or employee of the Village entering upon the property and removing or otherwise curing such violation.
- (7) A statement that the cost and expense of such curing, plus legal fees and an administrative fee equal to 15% of such cost and expense, if not immediately reimbursed to

the Village, shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law for the collection of delinquent taxes.

(8) The date, time, and location at which the Village Board of Trustees will conduct a public hearing, if the conditions that gave rise to the issuance of the notice of violation are not corrected, to determine whether to authorize the corrective action specified in paragraph B(6) of this section. The date of such public hearing must be at least 20 days after service or mailing of the notice of violation. Notice of the public hearing shall be published in a paper of general circulation in the Village at least five days prior to the date of the public hearing.

(9) A statement that the property owner, his/her agent, lessee or occupant is entitled to be heard at such hearing and present evidence or testimony.

C. Any notice required pursuant to this section shall be served as follows:

- (1) By personal delivery to the person to be served;
- (2) By delivery to a person of suitable age and discretion at the dwelling place of the person to be served; or
- (3) By certified mail, return receipt requested, at the last known dwelling place of the person to be served.

D. Nothing contained herein shall require notice as a prerequisite to the issuance of a summons or appearance ticket for a violation of any of the provisions of this chapter.

E. Within 48 hours prior to the public hearing the Building Inspector or Code Enforcement Officer shall conduct a second inspection of the property and prepare a written report of the conditions that gave rise to the issuance of the notice of violation and the extent to which such conditions may have been corrected.

F. If the Building Inspector or Code Enforcement Officer deems the violations to be adequately corrected, the public hearing shall be canceled and notice is to be posted to inform the public of same. If the violations remain, the public hearing shall proceed as scheduled with no additional notice required.

G. If a public hearing is held, the Village Board of Trustees may determine that corrective action needs to be taken to bring the premises into conformity with the provisions of this chapter.

H. Upon a determination by the Village Board of Trustees that corrective action needs to be taken, the Village Board of Trustees is empowered to authorize officers, agents or employees of the Village to enter onto the property to remove any materials stored, deposited, placed or maintained in violation of this chapter and dispose of or otherwise destroy the same, or otherwise repair the property or cure any condition in violation of this chapter.

I. Any costs and expenses, plus legal fees and an administrative fee equal to 15% of such costs and expenses, incurred by the Village when acting pursuant to this chapter to bring the property into conformity with the provisions of this chapter are required to be immediately reimbursed to the

Village upon written notice requesting same. Failure to reimburse the Village shall result in any costs and expenses being assessed against the property involved and shall constitute a lien thereon to be placed on the property's tax bill and levied upon and collected as provided by law for the collection of delinquent taxes.

J. A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

§ 163-10. Penalties for offenses.

Any person or persons, association, firm or corporation who violates any provision of this chapter shall be guilty of a violation, punishable as follows:

A. For conviction of a first offense, by a fine of not less than \$250 and not more than \$1,000 or by imprisonment not exceeding five days, or by both.

B. For conviction of the second of two offenses, both of which were committed within a period of five years, by a fine of not less than \$1,000 and not more than \$2,500 or by imprisonment not exceeding 10 days, or by both.

C. For conviction of a third or subsequent offense of a series of offenses, all of which were committed within a period of five years, by a fine of not less than \$2,500 and not more than \$10,000 or by imprisonment not exceeding 15 days, or by both.

D. Each week in which the violation continues shall constitute a separate and additional violation and shall be punishable as such pursuant to this section.

E. The Building Inspector is authorized and directed to institute any and all actions and proceedings necessary to enforce this chapter. The Village Attorney is also authorized to seek damages and any civil penalties in any civil action, and such penalties shall be in addition to and not in lieu of any criminal prosecution or other penalties.

§ 163-11. Supplemental remedies.

In addition to the remedies set forth in this chapter, the Village of Brookville reserves the right to pursue any and all remedies available at law or in equity, including, but not limited to, those set forth in Articles 13 and 19-A of the Real Property Actions and Proceedings Law, and the Building Inspector is hereby authorized to take any and all action specified thereunder.

§ 163-12. Emergency.

Whenever the Building Inspector or Code Enforcement Officer determines that an emergency exists which requires immediate action to protect the public health, safety and welfare, he may issue an order, in writing, to the owner, agent or occupant reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this chapter, such order shall be effective immediately. Any party to whom

such order is directed shall comply therewith immediately. If such party does not respond within a reasonable time to address the emergency, then the Building Inspector or Code Enforcement Officer shall have the power to abate, correct or remove the emergency, and any expenses, including any legal expenses, incurred by the Village of Brookville shall be borne by the owner, occupant, or other parties responsible as defined in § 163-5.

§ 163-13. State standards controlling.

The requirements and standards set forth in the Property Maintenance Code of the State of New York, 2012, and all revisions and amendments thereto shall be controlling in the Incorporated Village of Brookville. Where permitted by the Property Maintenance Code of the State of New York, it is the intent of the Board of Trustees to implement greater minimum standards within the Village of Brookville.

§ 163-14. Severability.

If any section, paragraph, subsection or provision of this chapter shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this chapter as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

SECTION 2. Chapter 79, entitled, “*Brush, Grass and Weeds,*” of the Code of the Incorporated Village of Brookville, as last amended by Local Law 2-2013 on March 19, 2013, is hereby repealed.

SECTION 3. This local law shall take effect immediately upon filing with the Secretary of State.