

LOCAL LAW FILING

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Town of Herkimer

Local Law No. 2 of the year 2019

A local law titled **“Property Maintenance Law of the Town of Herkimer”** which will repeal and replace Local Law No. 3 of 2016.

Be it enacted by the Town Board of the Town of Herkimer, as follows:

Chapters:

1. Title.
2. Legislative findings.
3. Purpose.
4. Applicability.
5. Higher standards to prevail.
6. Effect on existing remedies.
7. Definitions.
8. Duties of owners, operators, and occupants.
9. Maintenance standards.
10. Administrative provisions.
11. Violations and penalties.
12. Removal; Charges.
13. Repealer.
14. Effective Date

1. Title

This chapter shall be known as the **“Property Maintenance Law of the Town of Herkimer”** and may be referred to in the short form as the **“Property Maintenance Law”** or in this chapter as **“this law.”**

2. Legislative findings.

It is hereby found and declared that there exist in the Town structures and vacant lots which are or may become in the future substandard with respect to structural integrity, equipment or maintenance, and further such conditions, including but not limited to structural deterioration, lack of maintenance or upkeep of essential facilities and utilities, existence of fire hazards and unsanitary conditions, constitute a menace to the health, safety, welfare, and reasonable comfort of the citizens and inhabitants of the Town. It is further found and declared that by reason of lack of maintenance and ensuing progressive deterioration certain properties have the further effect of creating blighting conditions that, by reason of timely regulations and restrictions, as herein contained, the growth of this blight may be prevented and the neighborhoods enhanced and the public health, safety, and welfare protected and fostered.

3. Purpose.

The purpose of this law is to protect the public health, safety and welfare by establishing minimum standards governing the maintenance and conditions of the exterior of residential and nonresidential premises; to avoid, prevent and eliminate the maintenance of or creation of hazards to the public health or safety; to avoid, prevent, and eliminate conditions which, if permitted to exist or continue will depreciate or tend to depreciate the value of adjacent or surrounding properties; to prevent the creation, continuation, extension or aggravation of blight; to fix certain responsibilities and duties upon owners, operators and occupants or property; and to provide for administration and enforcement of this chapter.

4. Applicability.

Every residential and nonresidential structure and the premises on which they are situated in the Town used or intended to be used for dwelling, commercial, business or industrial occupancy shall comply with the provisions of this law, whether or not such structure shall have been constructed, altered, or repaired before or after enactment of this law and irrespective of any permits or licenses which shall have been issued for the use of equipment or facilities prior to the effective date of this law.

5. Higher standards to prevail.

In any case where the provisions of this law impose a higher standard than that set forth in any law of the Town or under the laws of the State of New York, then the standards as set forth herein shall prevail; but if the provisions of this law impose a lower standard than any law of the Town or of the laws of the State of New York, then the higher standard contained in any such ordinance or law shall prevail.

6. Effect on existing remedies.

Nothing in this chapter shall be deemed to abolish or impair existing remedies of the municipality or its officers or agencies relating to the removal or demolition of any buildings or structures which are deemed to be dangerous, unsafe, or unsanitary.

7. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose of this chapter, be defined as follows:

DETERIORATION- The condition of a structure or part thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or other evidence of physical decay or neglect, lack of maintenance or excessive use.

ENFORCEMENT OFFICER- Except as defined in Section 10-A, the Codes Enforcement Officer or his/her authorized representative.

EXTERIOR OF PREMISES- Those portions of a building or structure which are exposed to the public view or are visible from adjoining or adjacent properties, including all outside surfaces and appurtenances thereto, and the open space on the premises outside any building or structure erected thereon.

EXTERMINATION- The control or elimination of insects, rodents or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

FIRE HAZARD- Anything or any act which increases or may cause any increase of the hazard or menace of fire to a greater degree than the customarily recognized as normal by persons in the public service or preventing, suppressing or extinguishing fire or which may obstruct, delay, hazard, or hindrance to the prevention, suppression or extinguishment of fire.

GARBAGE- Animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

NUISANCE- Any public or private condition that would constitute a "nuisance" according to the statuses, laws and regulations of the State of New York, any of its agencies or this law; any physical condition existing in or on the exterior of any premises which is potentially dangerous, detrimental or hazardous to the health or safety of the persons on, near, or passing in proximity of the premises where said condition exists.

OCCUPANT- Any occupant, owner, agent, tenant, lessee, caretaker or other person or corporation in charge of, residing, living or sleeping in or on the premises of or having actual possession or use of business, dwelling unit or rooming unit or other premises affected by this chapter.

OPERATOR- Any person, persons, or entity not the owner, who has charge, care or control of a structure or part thereof, with or without the knowledge, consent or authority of the owner.

PREMISES- A lot, plot, or parcel of land, including the buildings, structures, and improvements thereon.

RUBBISH, CLUTTER, LITTER, DEBRIS- All combustible and noncombustible waste materials other than garbage; and the term shall include paper, rags, cartons, boxes, wood,

excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and the residue from burning wood, coal, coke, or other combustible material and solid commercial industrial waste. No chemicals such as those used in swimming pools, oil, gasoline, or any other chemical which could cause of fire, explosion or obnoxious gas shall be considered "rubbish, clutter, litter or debris."

DUMPSTER- A large metal bin usually with a lid for refuse designed to be hoisted onto a specially equipped truck for emptying or hauling away.

ROLL-OFF - A large metal bin for refuse designed to be hoisted onto a specially equipped truck for hauling away.

TOTE- Any container usually with a lid used to store trash/garbage and transport trash/garbage to pick up area.

GARBAGE/TRASH CAN - Any container usually with a cover used to store trash/garbage and transport trash/garbage to pick up area.

GARBAGE/TRASH BAG-Any plastic bag used to store garbage or trash and used to transport trash/garbage to pick up area.

8. Duties of owners, operators, and occupants.

Owners, operators and occupants shall have all duties, obligations and responsibilities prescribed in this chapter, and no such person or entity shall be relieved of any obligation or responsibility hereunder, nor may any such person or entity assert as a defense against any charge made under this chapter that another owner, operator or occupant or any other third person or entity is also responsible therefore and in violation thereof.

9. Maintenance standards.

A. Exterior of premises. The exterior of all premises shall be kept free from hazards, which include but are not limited to the following:

- (1) Garbage, rubbish, clutter, and debris: As defined in this law.
- (2) Unsafe structures: Structurally unsafe or unsound buildings, structures, junk mobile homes or fences abandoned, uncovered or structurally unsound wells, shafts, towers, exterior cellar openings, basement hatchways, foundations or other excavations.
- (3) Discarded appliances and electronics: Any stove, washing machine, dryer, freezer, refrigeration, boilers, hot-water heaters, television sets and other similar appliances and equipment abandoned, junked, discarded or wholly or partially dismantled
- (4) Natural Growth: Dead and dying trees and limbs or other natural growth which, by reason of rotting or deterioration condition or storm damage, constitute a hazard to persons in the vicinity thereof. Trees shall be kept pruned and trimmed to prevent such condition. The growth of weeds,

grass or other rank vegetation greater than ten (10) inches, or any accumulation of dead weeds, grass or brush.

- (5) Over hangings: Loose and over hanging objects, whether natural or man-made, and accumulations of ice and snow which by reason of location above ground level constitute a threat to the health and safety of people if caused to fall.
- (6) Ground surface hazards: Hidden or uncovered ground or surface hazards, such as holes, sudden depressions, uncovered septic tanks, uncovered or collapsed dry wells, excavations, sharp or jagged projections or obstructions.
- (7) Recurring accumulations of storm waters: Stagnant surface or groundwater accumulations which create or are likely to create mosquito or other insect breeding areas.
- (8) Infestation: Rodents, vermin, pest infestations and conditions causing same.
- (9) Nuisances: As defined in this chapter.
- (10) Inoperable vehicles: Vehicles or parts thereof, all recreational vehicles including but not limited to all-terrain vehicles, snow mobiles, boats, and trailers, motorized or not, regardless of whether licensed or registered, which vehicles or parts thereof are or have been abandoned, dismantled, or are in a state of visible disrepair. Section-9, A. paragraph-10 applies to Town of Herkimer designated zone areas R1 and R2 exclusively.
- (11) Junk mobile homes: Any enclosed dwelling built upon a chassis, motor vehicle or trailer used or designed to be used for either permanent or temporary living and/or sleeping purposed including but not limited to motor homes, truck campers, camping trailers, campers, travel trailers, pop-up trailers, tent trailers and overnight trailers, which are no longer suitable for human habitation.
- (12) Trash/garbage bags, cans, and totes; All trash/garbage bags, cans and totes cannot be brought out for pick-up more than 24 hours before scheduled pickup. When not out for pick-up trash/garbage bags, cans and totes will not be stored in front of Residential Homes or front lots, or near roadways.
- (13) Dumpsters & Roll-Offs. The use of such will only be through the permit process of the Town of Herkimer. Such permits expire after 30 days, but are renewable through the Town's permit process. Section-9, paragraph-13 applies to Town of Herkimer designated zone areas R1 and R2 exclusively. Any Dumpster or Roll-Off used for more than two consecutive months or permit cycles must be enclosed with an acceptable structure and built according to the New York State Building Codes with required permit fees for such structure.

(14) Discarded lawn and recreational equipment. Any riding or manual lawn mowers, lawn tractors, rollers, swing sets, all-terrain vehicles, bikes, motorized or not and other similar equipment abandoned, junked, discarded or wholly or partially dismantled.

B. Structural soundness. Every structure and accessory structure and every part thereof shall be kept structurally sound and in a state of good repair to avoid safety, health, or fire hazards, including but not limited to the following:

- (1) Foundation walls: Inadequate or unsafe foundation walls, piers and columns and other similarly unsound, damaged or defective load-bearing components which are incapable of supporting the imposed loads safely at all points.
- (2) Exterior porches, landings, decks, balconies, stairs, and fire escapes: Structurally unsound, loose, dangerous, crumbling, missing, broken, rotted or unsafe exterior portions of buildings and structures, including but not limited to porches, landings, balconies, decks, stairways, handrails, steps, walls, overhangs, roofs, fences, supporting members, timbers, abutments, fire escapes, signs and loose, crumbling or falling bricks, stones, mortar or plaster.
- (3) Projecting surfaces: Exterior surfaces or parts of buildings or structures containing sharp, rough, or projecting surfaces or objects which might cause injury to persons coming in contact therewith.
- (4) Windows, doors, etc: Broken glass or windows, rotten, missing or substantially destroyed window frames and sashes, door frames, exterior doors, or other deteriorated exterior component parts of buildings or structures.
- (5) Exterior walls, sidings, and roofs: Exterior walls, sidings, gutters down spouts and leaders, and roof shall be kept structurally sound, in good repair and free from defects.
- (6) Exterior chimneys: Exterior chimneys shall be maintained structurally sound, free from defects and so maintained as to capably perform at all times the functions for which they were designed or for purposes they are currently used.

C. Steps, walks, driveways and parking lots. Steps, walks, driveways, parking lots, parking spaces, and similar paved areas shall be maintained so as to afford safe passage under normal use and weather conditions. Any holes or other hazards that may exist shall be filled, or necessary repairs or replacement shall be performed promptly.

D. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall

contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches (102 mm) in height with a minimum stroke width of 0.5 inch (12.7 mm).

- E. Signs: All signs, graffiti signs, banners and printed manufactured signs larger than 2'x4' will be prohibited. Signage 2'x 4' or smaller is allowable for no more than 5 consecutive days and is the responsibility of the sign owner to dispose of. Any sign, of any size, using profanity, sexually explicit, or socially derogatory language will be prohibited. Section-9-E, applies to Town of Herkimer designated zone areas R1 and R2 exclusively.
- F. Political signs. Political signage will be allowed for 30 days prior to the primary or general election date, and must be picked-up with-in 2 days after the primary or general election for which the sign was posted. Section-9-F, applies to Town of Herkimer designated zone areas R1 and R2 exclusively.

10. Administrative provisions.

- A. Town enforcement officer. It shall be the duty and responsibility of the Codes Enforcement Officer of the Town to enforce the provisions of this law as herein provided. "Codes Enforcement Officer" throughout this chapter shall also mean subordinates of the Codes Enforcement Officer.
- B. Coordination of enforcement. Inspection of premises and the issuing of orders in connection therewith under the provisions of this law shall be the exclusive responsibility of the Codes Enforcement Officer of the Town. Wherever in the opinion of the Codes Enforcement Officer it is necessary or desirable to have inspections of any condition by any other department, government or agency, he/she shall arrange for this to be done. No order for correction of any violation under this law shall be issued without approval of the Codes Enforcement Officer, and it shall be the responsibility of that official of the department, government or agency concerned to correct any other matter involved on the case in question.
- C. Inspections. Codes Enforcement Officer is authorized to enter upon any and all premises and at any reasonable time for the purpose of performing his duty under this law.
- D. Enforcement procedure. Whenever a Codes Enforcement Officer determines that there is or has been a violation of any provision of this chapter, the Codes Enforcement Officer shall give notice of such violation to the person, persons or entities responsible therefore under this section. Such notice shall be in writing and shall include a concise statement of the reasons for its issuance. Such a notice shall be deemed to be properly and sufficiently served if a copy thereof is sent by certified mail, return receipt requested, to the last known address of the person or entity upon which the same is served, as shown by the most recent tax records of the municipality, or a copy thereof handed to said person or persons, or a copy thereof

left at the usual place of abode of office of said persons or entities. Notice shall be given as aforesaid within or without the municipality. The notice shall also state that unless the violation is abated, removed, cured, prevented, or desisted within thirty (30) days of the date of service of such notice (exclusive of the date of service), a summons shall be issued for such violation. The Codes Enforcement Officer may extend the period for compliance with the requirements of this section in regard to the violation stated in the notice for a period in excess of the aforesaid thirty (30) days if, in his judgment, the abatement, removal, prevention, cessation, or cure of the condition violated cannot reasonably be effected within the thirty-day period; in such cases the Codes Enforcement Officer shall state such reasonably required extended period in the notice, which shall then be applicable instead of the foreaid thirty (30) days. In the event that the violation is not abated, removed, cured, prevented, or desisted from or otherwise fully remedied within said thirty-day period or within such extended period as set forth in the notice, pursuant to the foregoing, a summons shall be issued against the person, persons, entity or entities so notified. Any extension beyond sixty (60) days must be approved by the Town Board.

- E. Emergency conditions. Whenever the Codes Enforcement Officer finds that an emergency condition is in violation of this chapter exists, which condition requires immediate attention in order to protect the public health or safety, he may issue an order by service of notice as set forth in Subsection D above, reciting the existence of such emergency condition requiring that such action be taken by the violator as soon as is reasonably necessary to the emergency. Notwithstanding any other provision of this chapter to the contrary, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon objection in writing to the enforcement officer, any such person shall be afforded a hearing before the governing body as to the existence or nonexistence of the emergency condition, the Town Board may continue such order in effect, or modify or withdraw it, subject to the issuance of a summons for violation thereof if such order is continued.

11. Violations and penalties.

Any person or entity who shall violate any of the provisions of this chapter or any other promulgated hereunder shall, after a summons is issued under the terms hereof, be punished as follows:

- A. For the first offense, by a fine not to exceed two hundred fifty (\$250.00) dollars.
- B. For a second offense, by a fine not to exceed five hundred (\$750.00) dollars.
- C. For a third offense or any subsequent offenses, by a fine not to exceed seven hundred fifty (\$1,000.00) dollars.

12. Removal by Town; charges.

- A. The Town Board, by resolution, may cause any Nuisance; hazard or litter as herein defined to be removed from any property within the Town of Herkimer upon failure of such owner, tenant or occupant to comply with the written notice aforementioned within the time limit. Said removal may be performed by the Highway Department or other designee, including a private contractor. The Town Board shall ascertain the cost of such removal, and such cost shall be charged and assessed against the owner, tenant or occupant of the real property on which it is levied until paid or otherwise satisfied or discharged, and shall be collected in the same manner and at the same time as other Town charges. Any of the above charges/costs not paid in the time frame required as levied will result in a lien on the property for which the charges and costs were made.

- B. The removal of any nuisance, hazard or litter by the Town of Herkimer or its designee shall not operate to excuse such owner, tenant, or occupant from properly maintaining their property as hereinabove set forth, and such owner, tenant or occupant shall, notwithstanding, be subject to the penalties above mentioned.

13. Repealer.

In any case where a provision of this law is found to be in conflict with or inconsistent with a provision of any other ordinance or local law which establishes a lower standard for the promotion and protection of the safety, health and welfare of its inhabitants, the provisions of this chapter shall prevail, and such other law or parts thereof are hereby declared to be repealed to the extent that they be so found to be in conflict with this law.

14. Effective Date

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

1. I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2019 of the Town of Herkimer, was duly passed by the Town Board on April 15, 2019 in accordance with the applicable provisions of law.
2. I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

(SEAL)

Jennifer M. DeMetro
Jennifer M. DeMetro, Town Clerk
Dated: April 26, 2019

STATE OF NEW YORK
COUNTY OF HERKIMER

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Christopher R. Bray
Christopher R. Bray, Esq.
Town Attorney
Town of Herkimer
Dated: April 26, 2019