

Local Law No. 2, 2005 Town of Porter

Be it enacted by the Town Board of the Town of Porter that a new Chapter of the Code of the Town of Porter entitled "Property Maintenance" be added as follows:

Section 1: Legislative Intent

A. The Town Board of the Town of Porter hereby determines that it is necessary for the health, safety, appearance, and general welfare of the public, the residents of the Town of Porter, and the owners of real property located within the portion of the Town of Porter outside of the Village of Youngstown, to provide a method whereby vacant lands, improved properties and public lands, including roads and right-of-ways are properly maintained, properly repaired, kept clean, and kept free from vermin, nuisances, hazards, debris and litter. The outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste upon private property constitutes a public nuisance.

Section 2: Definitions

A. For the specific purpose of this chapter, the following terms, whenever used herein or referred to in this chapter, shall have the respective meanings assigned to them hereunder unless a different meaning clearly appears from the context. All other terms used in this chapter shall have their common and ordinary meaning.

ACCESSORY BUILDING: A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

BUILDING: Any structure having a roof supported by columns or by walls and intended for shelter, housing, protection or enclosure of persons, animals or property. Depending upon its applicability, the use herein of "building" shall include the term "structure".

BUILDING INSPECTOR: The Building Inspector or his duly authorized representative.

CODE ENFORCEMENT OFFICER: The officers employed by the Town of Porter to enforce the State Uniform Fire Prevention and Building Code.

COMMERCIAL VEHICLE: All trucks, vans, construction equipment and limousines, bearing commercial license plates

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

DWELLING, MULTIPLE: a building or portion thereof containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other. Motels/hotels are excluded.

DWELLING UNIT: A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

EXPOSED TO PUBLIC VIEW: Any premises or open space or any part thereof or any building or structure that may be lawfully viewed by any member of the public from a sidewalk, street, alleyway or from any other adjoining or neighboring premises.

EXTERIOR OF PREMISES: Open space on the premises outside of any building located thereon.

EXTERMINATION: The control and elimination of insects, rodents and vermin.

FRONT YARD: That space on the same lot with a principal building situated between the front street line or lines and the front line of the building projected to the side property lines. The depth of the front yard shall be measured along a line perpendicular to the front street line or right-of-way line from the point of the foundation of the structure or building closest from such street line.

GARBAGE: Putrescible animal and vegetable waste resulting from the handling, preparation, cooking and/or consumption of food.

GOOD WORKING REPAIR: A standard of maintenance that renders a building safe, habitable, and possessed of a neat and orderly appearance.

HARBORAGE: Any condition, man-made or natural, which affords a breeding place or hiding place for rodents, insects, or other pests

INFESTATION: The presence of insects, rodents, vermin or other pests on the premises which constitute a health hazard, either to the occupants of the premises and/or to surrounding properties and/or residents.

JUNKYARD: An area of land with or without buildings, used for the deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as wastepaper, rags or scrap metal; or used building material, house furnishing, machinery, vehicle or parts thereof; with or without the dismantling, processing, salvage, sale or other use or deposition of the same. A deposit or the storage on a lot of two (2) or more wrecked or broken-down vehicles or parts of two (2) or more such vehicles one (1) month or more in any district or at any time in a front yard shall be deemed a “junkyard”.

NUISANCE:

- Any public or private condition so defined by common law, or that would constitute a nuisance according to the statutes, laws, and regulation of the State of New York, its governmental agencies or the code or ordinances of the Town of Porter;
- Any physical condition existing in or on the exterior of any premises which is potentially dangerous, detrimental, or hazardous to the life, health or safety of the persons on, near or passing with the proximity of the premises where such conditions exist;
- Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, swimming pools, abandoned appliances, motor vehicles, excavations and unsafe fences or structures; or detrimental to the health or safety of children, whether in a building on the premises or a building or upon an unoccupied lot;
- Any premises which are manifestly capable of being a fire hazard or are manifestly unsafe or unsecured as to endanger life, limb or property;
- Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or conditions which render air, food, or drink unwholesome or detrimental to the health of human beings; or
- Any structure or building that is in a state of dilapidation, deterioration or decay; faulty construction; overcrowded; open, vacant or abandoned; damaged by fire to an extent as not to provide shelter; in danger of collapse or failure; and is dangerous to anyone on or near the premises.

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

OWNER: Any person having individual or joint title to real property in any form defined by the laws as an estate or interest therein, whether legal or equitable, and however acquired.

PREMISES: A building, dwelling, lot, plot or parcel of land.

PROPERTY: Land and whatever is erected on, growing on, placed on or affixed to.

REFUSE OR RUBBISH: All discarded, useless, unusable or worthless solid waste matter or materials, combustible or noncombustible, including but not limited to garbage; trash; ashes; paper; paper goods and products; wrappings, cans; bottles; containers; yard clippings; garden waste; debris; pet excrement; junk; glass; boxes; crockery; wood; mineral matter; plastic; rubber; leather; furniture; household goods; appliances; bedding; scrap metal; construction material; dead or rotting vegetation; tires; abandoned, inoperative or unusable automobiles, farm implements and/or other vehicles; and solid commercial or industrial waste.

STRUCTURE: A combination of materials assembled, constructed or erected at a fixed location, including, for example, a building, stationary or portable carports and swimming pools, the use of which requires location on the ground or attachment to something having location on the ground.

Section 3: Compliance Required

A. All structures and premises, residential, commercial and industrial, shall comply with the provisions of this chapter, whether or not those structures and premises have been constructed, altered, or repaired before or after the enactment of this chapter and irrespective of any permits or licenses which may have been issued for their use or occupancy prior to the effective date of this chapter. Vacant lots, land and premises are also required to comply with the provisions of this chapter. This chapter does not replace or modify standards otherwise established for the construction, repair, alteration or use of the structure, the premises or equipment or use of the structure, the premises or the equipment of facilities contained therein, as are required by the New York State Uniform Fire Prevention and Building Code.

B. In any case where a provision is found to be in conflict with any applicable zoning, building, plumbing, electrical, heating, ventilation, fire or safety code of the Town of Porter, Niagara County, State of New York or United States of America, the provision that establishes the higher standard, as determined by the Code Enforcement Officer, shall prevail.

Section 4: Maintenance

A. It shall be the duty of the owner, operator and/or occupant to keep the exterior of the premises free of nuisances, which include but are not limited to the following:

- 1) Garbage and/or other refuse.

- 2) Natural growth, such as dead and dying or storm-damaged trees and limbs or other growth, which by reason of its condition or nature, constitutes a hazard to persons lawfully in the vicinity. Trees shall be kept pruned and trimmed to prevent such conditions. Owners of vacant premises must keep them free of nuisances.
- 3) Ground surface hazards, such as holes, excavations, breaks or projections. On residential premises within five (5) feet of an unfenced property line or on any part of a nonresidential premise to which the public has lawful access.
- 4) Sources of infestation, including all environments and conditions conducive to the increase or spread of vermin. The owner of any structure found to be infested with rats, termites, roaches and/or other insects or vermin shall undertake an expedient mean of extermination of such nuisances.
- 5) Surface or subsurface water shall be appropriately drained to protect buildings and structures and to prevent the development of stagnant ponds.
- 6) Lawns, except for pastureland, woodland, or land under cultivation, shall be cut and bushes, shrubs and hedges shall be trimmed regularly during the growing season so as to avoid an unsightly appearance.

Section 5: Exterior Standards

A. The exterior of all premises, whether vacant, unoccupied, or occupied shall be kept free of the following matter, materials or conditions:

- 1) Abandoned, uncovered or structurally unsound wells, shafts, towers, exterior cellar openings, basement hatchways, foundations or excavations.
- 2) Abandoned iceboxes, refrigerators, heaters, television sets, and other similar major appliances.
- 3) Animal excrement.
- 4) Buried or open to view any rubble, refuse or rubbish as herein above defined.
- 5) Nuisances as herein above defined.

B. The exterior of a structure shall be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants and so as to protect the occupants from the environment. Structures shall be maintained so as to reflect a level of maintenance in keeping with the appearance of the neighborhood and such that the appearance of the premises and structures shall not constitute a blighting factor for adjoining property owners nor an element leading to the progressive deterioration and downgrading of the neighborhood with the accompanying diminution of property values.

C. All exposed exterior surfaces shall be maintained free of broken or cracked glass, loose shingles or loose or crumbling stones or bricks, loose shutters, railings, aerials, excessive peeling paint or other conditions reflective of

deterioration or inadequate maintenance. Said conditions shall be corrected by repair or removal. All exposed exterior surfaces not inherently resistant to deterioration shall be coated, treated or sealed to protect them from deterioration or weathering. Wood, masonry or other exterior materials that will naturally resist deterioration do not have to be treated, but must be maintained in a sound, secure workmanlike manner. Exterior surfaces that have been painted or otherwise coated must be maintained in a neat, orderly, serviceable manner so as to prevent the collapse of the same or injury to the occupants of the building or to the public.

D. Residential, commercial and industrial premises, whether improved or vacant, shall be maintained free of litter. Dumpsters and similar large receptacles shall be screened from the public view by means of landscaping, hedges, fences or screening.

E. An occupant of premises shall be responsible for compliance with this chapter in regard to the following:

- Maintenance of that part of the premises which he occupies or controls in a clean, sanitary and safe condition.
- Keeping exits from the building or occupant's portion thereof clear and unobstructed.
- Disposal of garbage and refuse into appropriate facilities in a clean and sanitary manner.
- Maintenance of yards in appropriate manner for the part of yard he occupies.
- Installation and removal of required screens.
- Keeping domestic animals and pets in an appropriate manner and under control, in accordance with other regulations of the Town.
- Elimination of all prohibited uses for that part of the premises which he occupies, controls, or to which he has accessibility.

F. The owner of the premises shall be responsible for compliance with this chapter in regard to the following:

- Owners shall be responsible for compliance with the provisions prescribed herein and shall remain responsible regardless of the fact that this chapter may also place certain responsibilities on operators and occupants and regardless as to which party shall assume such responsibility.
- Owners and operators of buildings shall be responsible for the proper installation, maintenance, condition and operation of service facilities and for furnishing adequate heat and hot water supply where they have contracted to do so.
- Whenever any person or persons shall be in actual possession of or have charge, care or control of any property within the town as executor, administrator, trustee, guardian, operator or agent, such persons shall be deemed and taken to be the owner or owners of

said property within the intent and meaning of this chapter and shall comply with the provisions of this chapter to the same extent as the record owner, and notice to any such person of any order or decision of the Code Enforcement Officer shall be deemed and taken to be good and sufficient notice, as if such person or persons were actually the record owner. In instances where an occupant is responsible or shares responsibility with the owner for the existence of one or more violations of this chapter, said occupant shall be deemed and taken to be an owner within the intent and meaning of this chapter.

Section 6: Inspection and Enforcement

A. The Building Inspector or his designee, or the Code Enforcement Officer of the Town of Porter is hereby designated as the officer(s) in charge with the enforcement of this code, and is hereafter referred to as the enforcement officer.

B. The enforcement officer shall be authorized and directed to make inspections of premises within the Town of Porter as (s)he shall deem necessary to effect compliance with this chapter and shall have the authority to use the services and public authority in the enforcement of this code.

C. Whenever the enforcement officer determines that there is a violation of the provisions of this chapter, (s)he shall cause a written notice to be served upon the owner or operator, which shall include:

1). An enumeration of conditions which violate the provisions of this chapter.

2). An enumeration of the remedial action required to meet the standards of this chapter.

3). A statement of a definite number of days from the date of the notice in which the owner or operator must commence and complete such remedial action, not to exceed thirty (30) days, except in the case of citation for grass and/or weeds, in which case remediation must be complete within ten (10) days.

4). A statement of the penalties for noncompliance, as set forth herein.

5). In the case where the violation presents a clear and present danger to public health and safety, the complaint is to be turned over to the Niagara County Health Department, and/or the complaint is to be processed in Town Court for prompt action within its jurisdictions.

6). Where the violation or conditions existing on the premises are of such a nature as to constitute an immediate threat to life and limb unless abated without delay, the enforcement officer may either abate the violation or condition immediately, or order the owner, occupant or operator to correct the violation or condition within a period of time not to exceed three (3) days. Upon failure to do so, the enforcement officer shall abate the condition subject to the provisions of Section 7 of this chapter.

D. A copy of such notice shall be filed in the Town Clerk's office, and such notices shall be deemed sufficient if served upon the owner or operator as follows:

- 1). In person;
- 2). By certified mail with return receipt requested; or
- 3). By posting a copy of said notice on the building, only if attempts to serve the owner or occupant by the first two methods is unsuccessful.

E. Upon failure to comply with said notice, the enforcement officer shall issue an appearance ticket returnable in Town of Porter Court.

Section 7: Abatement by Town

A. Where abatement of any nuisance, as defined herein, correction of a defect in the premises or work necessary to place the premises in a proper condition so as to conform to ordinances of the Town of Porter or applicable laws of the State of New York required expending town moneys, the enforcement officer shall present a report of work proposed to be done to accomplish the foregoing to the Town Board with an estimate of the cost, along with a summary of the proceedings undertaken by the enforcement officer to secure compliance, including notices served upon the owners, occupants or operators or their agents, as the case may be. The Town Board may thereupon, by resolution, authorize the abatement of the nuisance, correction of the defect or work necessary to place the premises in proper condition and in compliance with this code. The enforcement officer shall thereafter proceed to have the work performed in accordance with the resolution at municipal expense, not to exceed the amount specified in the resolution, and shall, upon completion thereof, submit a report of the moneys expended and costs, whereupon the same shall become a lien against the premises, collectible as provided by law. A copy of the resolution approving the expenses and costs shall be certified by the Town Clerk and filed with the Assessor of the Town, who shall assess such expense against the record owner of the property. The charge shall be collected in the same manner and at the same time as other town charges. A copy of the report and resolution shall be sent by certified mail, return receipt requested, to the owner of the effected premises.

Section 8: Violations and Penalties

A. Where any owner, operator or occupant fails to comply with an order issued pursuant to this chapter, he shall be deemed in violation of this chapter and subject to the penalties provided therein. It shall be the duty of the enforcement officer to cause a summons to be issued from the Town Court for such violation, but nothing contained herein shall limit the power of the enforcement officer to take further action under the criminal and civil laws of this state through any court of competent jurisdiction as may be necessary to remove or abate any nuisance.

B. Each violation of any of the provisions of this chapter and each day that the violation existed shall constitute a separate and distinct offense and shall be punishable by a fine not to exceed two hundred fifty dollars (\$250) per day, per offense, levied against the owner, operator or occupant, and/or imprisonment for not more than 15 days.

Section 9: Severability

If any clause, sentence, subdivision, paragraph, section, or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof and shall continue in full force.