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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Tusten

Local Law No. \_\_ of 2019 (Proposed)

A local law to amend the Code to add Chapter 131 entitled, “Unsafe Buildings”

**BE IT ENACTED** by the Town Board of the Town of Tusten as follows:

**Section 1. Legislative Intent and Purpose.**

Unsafe buildings, structures and/or property conditions pose a threat to life and property in the Town of Tusten. Buildings, structures and/or property conditions may become unsafe by reason of damage by fire, the elements, vandalism, abandonment, age or general deterioration. Vacant buildings not properly secured also serve as attractive nuisances for children or a shelter for transients, who may be injured therein. A dilapidated building may also serve as a place for rodent infestation, thereby creating a health menace to the community. Deteriorated property conditions may pose a threat to the health, safety and welfare of adjoining property owners, neighbors and the general public, thereby creating a health and safety menace to the community. Unmaintained and deteriorated structures also detract significantly from the aesthetic and visual qualities of the Town, fostering blight and creating unwanted eyesores. The purposes of this chapter are to promote the health, safety and welfare of persons within the Town of Tusten and to preserve the Town’s rural character by providing for the removal, demolition or repair of buildings or structures with physical conditions, that from any cause may now or hereafter become dangerous or unsafe to the public and to provide for the repair, removal or remediation of any unsafe property condition.

**Section 2. Chapter 131 of the Town Code, entitled, “Buildings, Unsafe” is hereby deleted and replaced with a new Chapter 131 entitled, “Buildings, Unsafe”, to read as follows:**

131-1. Definitions

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

**BUILDING** - A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals, or property.

**CODE ENFORCEMENT OFFICER** - The Code Enforcement Officer/Building Inspector appointed pursuant to § 126-3B of the Town Code.

131-2. Unsafe or Dangerous Conditions

A building is or may become dangerous or unsafe to the general public if:

- A. It is open at the doorways making it accessible or an object of attraction to minors, vagrants and/or trespassers.
- B. Its interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle third of its base.
- C. Exclusive of its foundation, it shows 33% or more of damage to or deterioration of the supporting member or members, or 50% of damage to or deterioration of the non-supporting, enclosing or outside walls or covering.
- D. It has improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.
- E. It has been damaged by fire, wind or other causes so as to have become dangerous to life, safety or the general health and welfare of the occupants or the people of this Town.
- F. It has become or is so dilapidated, decayed, unsafe or unsanitary, or utterly fails to provide the amenities essential to decent living and is unfit for human habitation or is likely to cause sickness or disease so as to jeopardize the health, safety or general welfare of those living therein or adjacent thereto.
- G. It has light, air and sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who live or may live therein, with particular reference to the requirements of the New York State Uniform Fire Prevention and Building Code as a determinant.
- H. It has inadequate facilities for egress in cases of fire or panic, or has insufficient stairways, elevators, fire escapes or other means of access or egress, again referencing the New York State Uniform Fire Prevention and Building Code as a determinant.
- I. It has parts which have become so detached they may fail and injure members of the public or others' property.
- J. Is or may become a place of rodent infestation.
- K. Presents any other danger to the health, safety, morals or general welfare of the public.
- L. Is unfit for the purposes for which it may be lawfully used.

131-3. Responsibilities of Owners.

All property owners shall be responsible for compliance with the provisions of this chapter. If the owner of the property is a bank, lender, mortgage company, or like business or institution, the

maintenance requirements contained in Section 1307 of the New York Real Property Actions and Proceedings Law shall be complied with, as applicable, in addition to the requirements of this chapter.

#### 131-4. Powers and Duties of the Code Enforcement Officer

A. The Code Enforcement Officer is charged with the duty of administering the applicable standards of this chapter.

B. It shall be the duty of the Code Enforcement Officer:

- 1) To inspect and to cause inspection to be made of buildings and structures within the scope of the applicable standards of this chapter, as necessary, in accordance with Section 131-7 of this Chapter.
- 2) To investigate and to cause an investigation of all complaints of alleged violations of this chapter. The Code Enforcement Officer shall keep records of all complaints received, inspections made, and violations found on properties and premises regulated by this chapter.
- 3) To issue notices of violation in accordance with this chapter and to order, in writing, the remedy of all conditions found to exist on any property or structure thereon in violation of the provisions of this chapter and to state in the notice of violation a thirty-day limit for compliance, except in emergency situations in accordance with § 131-7.

#### 5. Administrative Remedy.

A. Inspection and Report. The Code Enforcement Officer, upon notification or awareness that a property appears to be in violation of any standard enumerated in §131-2A. through L, shall conduct or cause to be conducted an inspection of the subject property and file a record in his or her office to include the date of notification or awareness of violation, the date of inspection, and the inspection findings.

B. Notice to Correct Violation

- 1) If the findings of the inspection indicate a violation of this chapter, the Code Enforcement Officer shall, within one week of the inspection, serve or cause to be served a written notice of such violation. The notice shall be served on the property owner by certified mail to the address as appears on the most recent Town of Tusten tax assessment rolls and by posting of the notice on the subject property. ~~Prior to service and posting of the Notice to Correct Violation, the Code Enforcement Officer shall contact the Sullivan County Department of Real Property Tax Services to verify property ownership and shall file a record of this communication.~~
- 2) The Notice to Correct Violation shall contain the following:
  - a. the name of the owner as it appears on the most recent tax assessment roll (and lessee or occupant of the premises, as applicable)
  - b. the address or location of the premises
  - c. the identification of the premises as the same appears on the current tax assessment roll
  - d. a statement of the conditions of the building or structure deemed upon inspection to be in violation of this chapter, with reference to specific applicable standards in §131-2A through L.

e. a statement specifying that the owner has 30 days or a lesser period of time as specified by the Code Enforcement Officer after service of notice thereof to bring the property into full compliance with the standards in § 131-2A. through L.

### C. Second Inspection and Notice of Public Hearing

Upon expiration of the compliance period stated in the notice to correct violation, the Code Enforcement Officer shall conduct a second property inspection and file the findings of this inspection in his or her office within one week.

If the violation is not brought within full compliance with the standards enumerated in § 131-2 A through L of this chapter, the Code Enforcement Officer shall, within one week of the second inspection, send a memo to the Town Board asking it to schedule a public hearing and cause the owner to be served a written Notice of Public Hearing. The notice shall be served on the property owner by certified mail to the address as appears on the most recent Town of Tusten tax rolls and by posting of the notice on the property. **Prior to service and posting of the Notice of Public Hearing, the Code Enforcement Officer shall contact the Sullivan County Department of Real Property Tax Services to verify property ownership and shall file a record of this communication.**

- 1) The Notice of Public Hearing shall contain the following:
  - a. The information required in § 131-5B(2) (a)-(d).
  - b. the date, time and location of the public hearing. The public hearing shall be held at a regular meeting of the Town Board. The date of the public hearing must be at least 10 days after the date of the mailing of the Notice of Public Hearing. The Town Clerk shall issue notice of the public hearing in a newspaper of general circulation to be published at least 10 days in advance of the hearing.
  - c) 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
  - d) a statement specifying that a failure or refusal to comply with the provisions of this chapter may result in a duly authorized officer, agent or employee of the Town entering upon the property and securing the repair or removal of such building or structure and causing, as necessary, the same to be disposed of or otherwise destroyed, and further, that the cost and expense of such repair, removal, and disposal or destruction or site restoration shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

### D. Failure to comply; Authority to Enter Property and Assess Costs.

Following the close of the public hearing, if the Property Owner fails to demonstrate that he/ she will bring the building or structure into compliance with the standards enumerated in §131-2A and B to the satisfaction of the Town Board, the Town Board may adopt a resolution authorizing entrance upon the property in order to bring the property into compliance with the standards of this Chapter, to provide for the costs incurred, to assess the cost and expense of such action against the property, or authorizing its attorney to seek a court order to do so. The total costs and expenses shall be determined by the Town Board and shall be reported to the assessor of the Town as an amount to be levied and assessed against the property, and the expense so assessed shall constitute a lien and charge on the 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.

131-6. Special Considerations.

Special consideration shall be given to individuals that are elderly, disabled, or in a low-income situation. If it is determined that an individual cannot maintain a reasonable level of upkeep of the owner-occupied residence because the individual is elderly, disabled, or in a low-income situation, and no capable person resides in the residence, the compliance period may be extended by the CEO for a reasonable period of time.

131-7. Inspections.

A. The Code Enforcement Officer or his or her authorized designee may enter any building or property during regular business hours and at other reasonable times to conduct an inspection in accordance with this chapter.

1. If the building or property to be inspected is occupied, the Code Enforcement Officer or authorized designee shall present credentials including photo identification to the owner or person responsible for the building or property, state the reason for the inspection, and request entry.
2. If the building or property to be inspected is unoccupied, the Code Enforcement Officer or authorized designee shall make a reasonable effort to locate the owner or other person having charge or control of the building or property and request entry.
3. Consent to enter buildings or property may be obtained by any means, including but not limited to written, facsimile, telephonic, or in-person consent. In addition, a property owner's application for any permit, license or approval with respect to an activity in or on a building or property shall be deemed to be consent for the Code Enforcement Officer or authorized designee to enter the property or building to conduct an inspection, provided, that if the Code Enforcement Officer or authorized designee intends to enter a structure or building, the Code Enforcement Officer shall first contact the owner or occupant and arrange a mutually convenient time for the entry. The owner's or occupant's failure to consent to entry or to arrange a mutually convenient time for entry shall be grounds for the Town to deny the application for the permit, license or approval.
4. If entry is refused or if the Code Enforcement Officer is unable to obtain consent, the Town shall have recourse to every remedy provided by law to secure entry, including but not limited to application to any court of competent jurisdiction for an administrative search warrant, criminal search warrant or other remedy.
5. Nothing in this chapter requires the Town to obtain the property owner's consent (1) to an inspection that is conducted while the Code Enforcement Officer or authorized designee remains on adjacent public property, such as a public right-of-way, or on other adjacent property for which consent to entry has been obtained, or (2) to enter property in which the Town has a written easement for purposes authorized in the easement instrument

131-8. Emergency actions.

A. Nothing in this chapter shall prohibit a municipality from entering onto private property to repair or remove any building or structure or portions thereof whenever there exists an imminent

threat to the life or safety of persons. Municipal authority pursuant to this section may only be exercised where there is a dire necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition and must be limited to those actions necessary to eliminate the emergency situation.

B. 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.

**Section 3. Severability**

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated.

**Section 4. Authority**

This local law is enacted in accordance with the powers vested in the Town by the Municipal Home Rule Law.

**Section 5. Effective Date**

This local law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.