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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 215 entitled, “Property Maintenance”

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

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

The Town Board of the Town of Tusten hereby finds that 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 threatens the health, safety, and welfare of the Town residents and can harm the quality of the natural environment. In addition to such accumulation of materials, the lack of maintenance of structures can depreciate property values and have a deteriorating and blighting effect upon the neighborhood and community.

This law provides basic standards governing property conditions and maintenance, including exteriors of structures, to help protect the health, safety and welfare of the Town residents and to preserve the rural character, quality of neighborhoods, and values of properties. This law provides procedures for notifying a property owner of violations, corrects the failure of general property maintenance and, upon default, corrects the violation, and assesses the costs against the real properties on which such conditions are found.

**Section 2. A new Chapter 215 of the Town Code, entitled, “Property Maintenance”, is hereby added to the Town Code to read as follows:**

215-1. Definitions.

As used herein, the following terms shall have the following definitions:

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

DEBRIS - 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 materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, window frames, electrical wiring and components, plastics, carpeting, foam padding, linoleum, metals, or any combination thereof which are incidental to construction, excavation, renovation, equipping, remodeling, repair or demolition.

**GARBAGE** - All putrescible animal and vegetable waste resulting from processing, marketing and preparation of food items, including the container in which packaged.

**MOTOR VEHICLE** - Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. A motor vehicle includes all vehicles as defined by NYS Vehicle and Traffic Law § 125, all-terrain vehicles as defined by NYS Vehicle and Traffic Law § 2281, and snowmobiles as defined by NYS Vehicle and Traffic Law § 2221.

**OUTDOORS** - Any area not housed in a fully enclosed building.

**OWNER (Also PROPERTY OWNER)** - The owner of property as identified on the current assessment roll.

**RUBBISH** - All 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 and similar items.

**SOLID WASTE** - All putrescible and nonputrescible materials and substances, whether solid, liquid or gaseous, having served their original intended use or being spent, useless, worthless or in excess to the owner, including but not limited to household and commercial garbage, industrial waste, rubbish, debris, garbage, litter and ashes.

All other terms as used in this chapter shall have their common or ordinary meaning.

#### 215-2. Property Maintenance Standards

No property owner, tenant, or agent thereof, shall cause, permit, or allow any of the following standards to be violated:

##### A. Outdoor Areas

- 1) Every property within the Town shall be maintained free and clear of all garbage, rubbish, debris, solid waste, physical hazards, and rodent harborage and infestation. Such refuse shall be kept inside the building or buildings on the property, inside a structure screening the refuse from neighbors and the public, or in an enclosed and secured container. Such refuse shall be regularly collected and removed from the property.
- 2) Open wells, cesspools or cisterns shall be securely closed or barricaded.

- 3) The outdoor storage of any boat, snowmobile, all-terrain vehicle, or other such device, which is in a state of disrepair or is otherwise dilapidated, broken, or abandoned is prohibited.
- 4) Abandoned, discarded, broken, or inoperable refrigerators, washing machines or other appliances or machinery or parts thereof stored on any yard or lot for a period of more than 60 days shall be presumed to be abandoned and removed from the property.
- 5) The outdoor storage of any automobile, truck, or other vehicle originally intended for use on the public highways which is no longer intended or in condition for legal use on the public highways, including such vehicles which are in a state of disrepair or otherwise dilapidated, broken, or abandoned, is prohibited. Such vehicles shall only be parked or stored inside a building or structure, as defined in Chapter 300 of the Town Code, or screened by vegetation or screening the vehicle from neighbors and public highways. For the purpose of this subsection, a vehicle shall be presumed to be no longer intended or in condition for legal use on the public highways if any of the following apply:
  - a. It does not bear and display upon such vehicle, in a location prescribed by the Commissioner of Motor Vehicles, a current registration from the State of New York or other recognized registering jurisdiction; or
  - b. It does not bear and display upon such vehicle, in a location prescribed by the Commissioner of Motor Vehicles, an inspection certificate issued within the last 12 months in accordance with the laws of the State of New York or the laws of any other recognized inspecting jurisdiction if required for use on public highways; or
  - c. Such vehicle is not able to be moved by its own power.
  - d. Notwithstanding the foregoing, the following vehicles, or any combination thereof, are allowed to be kept outside a building:
    - i. Farm vehicles able to be moved by their own power.
    - ii. One motor vehicle meeting criteria a. and/or b. and/or c. above that is offered for sale or is being stored for no longer than a 180-day period.

## B. Buildings and Structures

- 1) All exterior exposed surfaces shall be repaired, coated, treated or sealed to protect them from deterioration or weathering, which includes rusting and peeling paint.
- 2) The foundation walls of every building shall be maintained in good repair and be structurally sound.
- 3) Exterior walls, including doors and windows, roofs, porches and related appurtenances and the areas around doors, windows, chimneys and other parts of a building, shall be so maintained as to keep water from entering the buildings. Materials which have been damaged or show evidences of dry rot or other deterioration shall be repaired or replaced and refinished in a 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 material. Such objects or materials shall be removed, repaired or replaced.
- 4) The owner of a vacated building shall take such steps and perform such acts as may be required of him or her from time to time to ensure that the building and its adjoining yards and any structures thereon remain safe and secure and do not present a hazard to adjoining property or the public.
- 5) Buildings and structures shall be maintained free of insect, vermin, and rodent harborage and infestation. Methods used for exterminating insects, vermin, and rodents shall conform

with generally accepted practices and in conformance with all state and federal rules, regulations and codes applicable thereto.

C. Exceptions. This chapter shall not apply to:

- 1) Any solid waste, rubbish or debris temporarily stored or placed in a container for collection or disposal.
- 2) The maintenance of a mulch or compost pile used for on-premises gardening or landscaping confined to an area to the rear or side of a residence and not exceeding 50 square feet, provided such area is free of rodent harborage and infestation.
- 3) The maintenance of any motor vehicle on a duly licensed automobile repair or sales business lot, properly zoned, while said vehicle is being repaired or sold, provided that this exception shall not permit storage of vehicles which will not pass a New York State Vehicle inspection on any premises for a period in excess of 60 days.
- 4) The maintenance or storage of farm equipment or materials used in a farming or agricultural operation on a premises in actual use for agricultural purposes.

215-3. Responsibilities of Owners.

All property owners shall be responsible for compliance with the provisions of this chapter. If the owner of a 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.

215-4. 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 properties within the scope of the applicable standards of this chapter, as necessary, in accordance with Section 215-7 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 § 215-7.

215-5. 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 § 215-2, shall conduct an inspection of the subject property and file a record 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 property 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 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 on the property deemed upon inspection to be in violation of this chapter, with reference to specific applicable standards in § 215-2.
  - 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 identified in in § 215-2.

### 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 § 215-2 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 by § 215-5B (2)
  - 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 removing such debris, rubbish, solid waste, or motor vehicle and causing the same to be disposed of or otherwise destroyed, and further, that the cost and expense of such removal and disposal or destruction 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 property into compliance with the standards enumerated in § 215-2 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.

**215-6. 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 Code Enforcement Officer for a reasonable period of time.

**215-7. 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, occupant 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.

#### 215-8. Emergency actions.

A. Nothing in this chapter shall prohibit a municipality from entering onto private property to remove any solid waste, motor vehicle, appliance, rubbish or debris 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.