

[New Language]

[~~Language to be Deleted~~]

## Chapter 180. BUILDINGS, PROPERTIES AND STRUCTURES, UNSAFE

[HISTORY: Adopted by the Board of Trustees of the Village of Mastic Beach 3-13-2012 by L.L. No. 2-2012.<sup>[1]</sup> Amendments noted where applicable.]

### GENERAL REFERENCES

Building Code — See Ch. 178.

Moving of buildings — See Ch. 190.

Electrical standards — See Ch. 200.

Fire prevention — See Ch. 220.

Housing standards — See Ch. 260.

Property maintenance — See Ch. 350.

Abandoned refrigerators — See Ch. 360.

Rental property — See Ch. 380.

Abandoned and junked vehicles — See Ch. 500.

[1] *Editor's Note: This local law superseded former Ch. 180, Buildings and Structures, Unsafe, adopted 9-13-2011 by L.L. No. 4-2011, as amended.*

### § 180-1. Definitions.

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

#### **BUILDING**

Any building, structure or portion thereof.

#### **BUILDING INSPECTOR**

The Building Inspector of the Village of Mastic Beach, appointed pursuant to § 178-3B, and his duly appointed assistants or deputies or such other person appointed by the Village Board to enforce the provisions of this chapter.

#### **BUILDING INSPECTORS**

The Building Inspector and all Assistant Building Inspectors.

#### **CONDITION**

Any condition of a property in the Village, whether man-made or created by disaster, act of God, erosion or similar ongoing condition or process.

#### **ENGINEER**

The Village Engineer, as may be appointed by the Village Board or another licensed professional engineer engaged by the Village, to provide services required by this chapter.

#### **PORTION OF BUILDING OR STRUCTURE**

Any debris, rubble or parts of buildings which remain on the ground or on the premises after demolition, reconstruction, fire or other casualty.

## PROPERTY

Any parcel of real property in the Village of Mastic Beach.

### UNSAFE OR HAZARDOUS BUILDING, CONDITION, PROPERTY OR STRUCTURE

A. Any building, property, or structure, or portion thereof, which, due to its state or condition, creates or poses a threat to the public health or safety or an imminent danger to life, or to adjoining or nearby properties or structures, or public roads, rights-of-way or structures, or which may contain one of the following conditions:

- (1) Those whose 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 of the middle third of its base.
- (2) Those which, exclusive of the foundation, show 33% or more of damage or deterioration of the supporting member or members or 50% of damage or deterioration of the nonsupporting enclosing or outside walls or covering.
- (3) Those which have 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.
- (4) Those which have 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 public.
- (5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, safety, or general welfare of those living therein.
- (6) Those having light, air and sanitation facilities which are inadequate to protect the health, safety, or general welfare of persons who live or may live therein.
- (7) Those having inadequate facilities for egress in cases of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of communication.
- (8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.
- (9) Those which, because of their condition, are unsafe, unsanitary, or dangerous to the health, safety or general welfare of the people of this Village.

B. Unsafe Equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety or general welfare of the people of the Village of Mastic Beach.

C. Structure Unfit For Human Occupancy. A structure is unfit for human occupancy whenever such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

D. Unlawful Structure. An unlawful structure is one which was erected, altered or occupied contrary to law.

## **§ 180-2. Prohibition.**

All buildings, conditions, properties and/or structures which are structurally or otherwise hazardous or unsafe, dangerous, unsanitary or not provided with adequate egress or which, in relation to an existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, erosion or other natural processes, obsolescence or abandonment are, for the purposes of this chapter, unsafe buildings, conditions, properties or structures. All such buildings, conditions, properties and structures are hereby declared to be illegal and are prohibited and shall be abated by correcting repair and rehabilitation or by demolition and removal in accordance with the procedures of this chapter.

## **§ 180-3. Investigation and report.**

~~When, in the opinion of the Building Inspector any building, condition, property or structure located in the Village of Mastic Beach shall be deemed to be dangerous or hazardous and unsafe to the public, as defined in § 180-1, the Building Inspector shall make a formal inspection thereof and report in writing to the Village Board his findings and recommendations in regard to the building or structure's removal or repair.~~

The Building Inspector, Village Engineer or a New York State licensed professional engineer, and/or other Village official as designated by the Village Board, upon information and belief that a building, structure, property or equipment, from any cause, may now be or shall become unsafe as defined in § 180-1 hereof, shall cause an inspection thereof to be made by the Building Inspector, Village Engineer or New York State licensed professional engineer, or other Village official as may be designated by the Village Board, and shall report his/her findings and recommendations to the Village Board.

## **§ 180-4. Notice to repair or remove.**

~~A. When it shall be determined by the Building Inspector that a building, property or structure is dangerous, hazardous, or unsafe to the public, or that a condition is hazardous or unsafe, he it shall promptly serve or cause to be served a written notice on the owner or other persons having an interest in such property or structure as hereinafter provided.~~

~~B. The aforementioned notice shall be served on the owner of the premises, the owner's executors, legal representatives, agents, lessees, or other person having a vested or contingent interest in the same as shown by the last completed assessment roll of the Village, either personally or by registered mail, addressed to the person intended to be served at the last known place of business or residence as indicated on the last completed assessment roll. The Building Inspector shall cause a copy of such notice to be posted on the premises, and a copy of the notice shall be filed with the Suffolk County Clerk.~~

If the Village Board determines that a building, property, structure or equipment is unsafe to the public as defined herein, it shall make an order directing notice to be served upon the owner, the owner's executor, legal representative, agent, lessee, or other person, including but not limited to his/her lender and mortgagee, having a secured vested or contingent interest in the premises where such building or structure is located, either personally or by registered mail, addressed to the person intended to be served at the last known place of business or residence as indicated on the last completed Village assessment roll and in the office of the Suffolk County Clerk.

## **§ 180-5. Contents of notice.**

The notice referred to in § 180-4 hereof shall contain the following:

- A. A description of the premises.
- B. A statement of the particulars in which the building, property, structure or equipment is dangerous, hazardous, or unsafe as defined herein and an order requiring same to be made safe or secure, or removed.
- C. ~~An order requiring the building, property, or structure to be made safe and secure or removed or the condition to be remedied or removed. A time within which the person served with such notice may commence the securing or removal of the building, property, structure or equipment as specified in said notice.~~
- D. A date, time and place at which a hearing shall be held before the Village Board, at which hearing the owner or other persons having an interest in the building, property, structure or equipment may be heard with respect to the condition of the building, property, structure or equipment and the actions necessary to secure or remove same.
- E. ~~A statement that the securing or removal of the building or structure or removal of the condition shall commence within 10 days of the date of the service of the notice and shall be completed within 30 days thereafter. The Building Inspector may extend the time of compliance specified in the notice where there is evidence of intent to comply within the time specified and conditions exist which prevent immediate compliance. In granting any such extension of time, the Building Inspector may impose such conditions as he may deem appropriate.~~
- F. ~~A statement that, in the event of neglect or refusal of the person served with the notice to comply with the same, a hearing will be held before the Board of Trustees of the Village Board of Mastic Beach, notice of which and the time and place thereof to be specified in the notice to the owner referred to in § 180-5 hereof.~~
- E. ~~A statement that, in the event that the Village Board, after the hearing specified in § 180-7, shall determine that the building, property, or structure or condition thereon is dangerous, hazardous, or unsafe to the public, the Village Board may order the building, property, structure, or condition to be corrected, repaired or secured or taken down, abated or removed.~~  
A statement that after such hearing the Village Board may provide for the securing or removal of such building, property, structure or equipment by the Village in the event such owner fails or refuses to secure or remove same within the time provided.

G. ~~A statement that, in the event that the building, property, structure or condition equipment shall be determined by the Village, or a New York State licensed professional engineer or licensed architect, to be dangerous, hazardous, or unsafe, and in the event of the neglect or refusal of the owner to correct, repair or remove the condition, building or structure within the time provided, the Village may correct the condition or remove such building or structure by whatever means it deems appropriate and assess all costs and expenses incurred by the Village in connection with the proceedings to remove or secure, including the cost of actually remedying said unsafe or dangerous building, condition, or structure, or removing said building or structure and any engineering, legal or other expenses, as an assessment against the land on which said building or structure is located, to be charged to the owner of the property on the next Village tax roll, although the levying of an assessment by the Village against the property on the next Village tax roll shall not be an exclusive remedy and shall not preclude the Village from any other available remedy, including but not limited to pursuing a civil judgment against the owner of the property to recover the costs.~~

### **~~§ 180-6. Filing of copy of notice.~~**

~~A copy of the notice referred to in **§ 180-4** hereof may shall be filed with the office of the Suffolk County Clerk, which notice shall be filed by the Suffolk County Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this section. A notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of appropriate jurisdiction or upon consent of the Village Attorney.~~

### **§ 180-6. Service of notice.**

Such notice, together with the report prepared pursuant to §180-3, shall be posted on the premises, and shall be filed in the office of the Suffolk County clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules, and shall be served upon the owner or some of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in the premises as hereinbefore specified, either personally or by registered or certified mail addressed to the last known address, if any, of the owner or some of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in the premise as hereinbefore specified.

### **§ 180-77. Hearing.**

The Village Board shall conduct the public hearing at the time and place specified in the notice to cure, remedy, repair, or demolish, or to remove or correct the unsafe ~~or hazardous~~ building, property, structure or equipment condition, property or structure as necessary. ~~It may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of the hearing, the Village Board shall determine by resolution to:~~

A. ~~Revoke the forementioned notice; order of the Building Inspector;~~

B. ~~Modify said order notice; or~~

~~C. Continue and affirm said order notice to direct the owner or other persons to complete the work within the time specified in the order notice or such other time as shall be determined by the Village Board.~~

## ~~§ 180-8. Emergency measures.~~

~~If the Building Inspector determines, in his inspection of any building, condition, property or structure, that there is actual and immediate danger of failure or collapse or so as to endanger life, or other imminent hazard creating a danger to the public or public order and safety in the Village of Mastic Beach, the Building Inspector shall promptly require the building, condition, property or structure or a portion thereof, to be vacated forthwith and not to be reoccupied until the specified repairs are completed and inspected and approved by the Building Inspector or take such other action as may be appropriate under the circumstances. For this purpose, the Building Inspector may enter such building, property, structure, equipment or land on which it stands or adjoining land or structures with such assistance and at such costs as may be necessary. The Building Inspector may also order adjacent buildings, properties or structures or portions thereof to be vacated and protect the public and public order and safety by appropriate barricades or such other means as may be necessary and for this purpose may close a private or public right-of-way. The Building Inspector shall cause to be posted at each entrance to such building, property or structure a notice stating: "This building (property, structure) is unsafe, and its use or occupancy has been prohibited by the Building Inspector." Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation or their agents or other persons to remove such notice without written permission of the Building Inspector or for any person to enter the building except for the purpose of making the required repairs or the demolition thereof. The costs of any such action, including but not limited to labor, materials, management, professional and or legal fees and costs and expenses, shall be assessed as a lien against the property on which the condition exists and shall be collected in the same manner as if real property taxes.~~

## **§ 180-8. Procedure for Placarding of Unsafe Structures.**

### **A. NOTIFICATION OF APPROPRIATE AGENCIES**

Prior to, or at the time of the placarding of a residential structure, in accordance with the provisions of the New York State Property Maintenance Code and New York State Fire Code, the Building Inspector or his designee shall notify the following agencies, either telephonically, by electronic mail or in writing via facsimile:

- (1) The Suffolk County Department of Social Services, to ensure the relocation of all residents, if needed; and
- (2) The Suffolk County Department of Health;
- (3) The Suffolk County Police Department to ensure that the dangerous structure remains unoccupied.

**B.** The Building Inspector(s), after making the above notifications, shall keep a record of the date, time and manner of such notifications.

### **C. PROCEDURES AFTER PLACARDING**

At all times while the placarding of a structure pursuant to the provisions of the New York State Property Maintenance Code is in effect, there shall be bi-weekly inspections by

either the Building Inspector or its designee until such time as all conditions are met for the removal of the placard on the subject structure.

**D. PROHIBITED OCCUPANCY**

Pursuant to the New York State Property Maintenance Code and New York State Fire Code, no person shall occupy a placarded premises or operate placarded equipment. A violation of this Section shall be punishable pursuant to §180-132 of this Chapter.

**~~§ 180-9. Request for Judicial Action.~~**

~~In the event that he believes that judicial action is required to enforce any provision of this chapter, the Chief Building Inspector shall seek approval and direction from the Board of Trustees to the Village Attorney to institute such proceedings in the Supreme Court as are necessary to effect the purposes of this chapter.~~

**§ 180-9. Emergency action.**

- A. In case there shall be, in the opinion of the Building Inspector, actual and immediate danger of the falling of a building or structure or a hazardous excavation so as to endanger public safety, life or property or actual or immediate menace to health or public welfare as a result of the conditions present in or about a building or structure or excavation, he shall direct the appropriate Village employees to perform the necessary work to render such building or structure or excavation temporarily safe, whether the procedure prescribed in this chapter for unsafe or dangerous buildings or structures or excavated lands has been instituted or not.
- B. When emergency work is to be performed under this section, the Chief Building Inspector shall cause the owner and mortgagee thereof, if any, as shown on the records of the Village Assessor, to be served personally or by certified mail, return receipt requested, and shall post the premises with a notice to comply containing a description of the premises, a statement of facts describing the structure or excavation as unsafe or dangerous, and orders and directions to correct the same conditions which constitute an emergency within a specified period not to exceed three days from actual or constructive service of the notice.
- C. In the event that the emergency does not permit any delay in correction, the notice shall state that the Village has corrected the emergency condition.
- D. In both cases, the notice shall state that the corrective costs of the emergency will be assessed against the owner pursuant to the provisions of this chapter.

**§ 180-10. Judicial intervention.**

The Village Board, in its discretion, may elect to commence a civil action in a court of appropriate jurisdiction for an order directing that the unsafe building, property, structure or equipment be remedied or corrected or that the building, property, structure or equipment be repaired, secured or demolished and removed, and for a judgment in favor of the Village and against the owner of the property for the costs, including but not limited to all professional, administrative and legal fees for the abatement or actions of the Village with respect to the unsafe building, property, structure or equipment; and the election by the Village to commence or pursue a civil action shall not be an exclusive remedy and shall not waive or preclude the right of the Village to pursue any other available remedy.

## **§ 180-4011. Assessment of costs and expenses.**

All costs and expenses incurred by the Village of Mastic Beach in connection with any proceeding or any work done to remove the danger or condition or to render the building, property or structure temporarily safe or in connection with the correction or demolition or removal of any such building or structure shall be assessed against the land on which such building or structure is located, and a statement of such expenses shall be presented to the owner of the property, or, if the owner cannot be ascertained or located, then such statement shall be posted in a conspicuous place on the premises. Such assessment shall be and constitute a lien upon such land. If the owner shall fail to pay such expenses within 10 days after the statement is presented or posted, a legal action may be brought to collect such assessment or to foreclose such lien. As an alternative to the maintenance of any such action, the Building Inspector may file a certificate of the actual expenses incurred as aforesaid, together with a statement identifying the property in connection with which the expenses were incurred and the owner thereof, with the Assessor, who shall, in preparation of the next assessment roll, assess such amount upon such property. Such amount shall be included in the levy against such property, shall constitute a lien and shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalties as provided by law for the collection and enforcement of real property taxes in the Village of Mastic Beach.

A. Whenever a building or structure or part thereof has been removed, demolished or made safe and secure by the Village Board or pursuant to its order under this Chapter, the cost and expense thereof shall be charged against the land on which said building or structure is located as a special assessment.

(1) Prior to making the assessment of said costs and expenses against the land, the Village Board shall serve a notice of at least ten (10) days upon the owner or person who may have a vested or contingent interest in said building or structure or the lands on which the same may be situated, as said interest may be shown by the records of the assessment roll of the Incorporated Village of Mastic Beach for the current year. Such notice shall state that such costs and expenses have been incurred; their amount and that at a specified time and place the Village Board will meet to make an assessment of the costs and expenses upon the land. Such notice may be served personally or by registered mail.

(2) The Village Board shall meet at the time and place specified. It shall hear and determine all objections that may be made to such assessment, including the amount thereof. Whether or not the owner or person served appears at the hearing, said Board shall make said assessment.

(3) The Village Board shall assess upon the land the amount of such costs and expenses which have been incurred or so much thereof as the said Board may deem just and reasonable; provided, however, that the amount assessed shall not exceed the amount stated in the notice.

B. If the amount assessed is not paid within fifteen (15) days after such assessment, an action to recover the amount may be maintained by the Incorporated Village of Mastic Beach against the owner or person having a vested or contingent interest in said building or structure or the land on which the same may be situated, as said interest may be shown by the records of the assessment roll of said village for the current year, or a special warrant may be issued by the Village Board for the collection of said assessment

or the amount thereof may be included in the next annual tax levy and be deemed to be a part of the annual tax of said village.

### **~~§ 180-12. Application for court order.~~**

~~The Village Board, in its discretion, may elect to commence a civil action to apply to the Supreme Court of the State of New York for an order directing that the hazardous or unsafe building, condition, property or structure be remedied or corrected or that the building, property or structure be repaired, secured or demolished and removed, and for a judgment in favor of the Village and against the owner of the property for the costs, including but not limited to all professional, administrative and legal fees for the abatement or actions of the Village with respect to the dangerous or unsafe building, condition, or structure; and the election by the Village to commence or pursue a civil action shall not be an exclusive remedy and shall not waive or preclude the right of the Village to pursue any other available remedy.~~

### **§ 180-13~~12~~. Collection of costs.**

The Village Board may commence a special proceeding pursuant to § 78-b of the General Municipal Law to collect the costs of demolition, including reasonable and necessary legal expenses.

### **§ 180-14~~13~~. Penalties for offenses.**

The following is a fine schedule for violations of this chapter or any notice or order issued or made hereunder and/or the New York State Property Maintenance Code and the New York State Fire Code:

- A. First convicted violation: \$250.
- B. Second convicted violation \$1,000.
- C. Third convicted violation: \$2,500 and/or 10 days in jail.
- D. Each day that a violation of this chapter exists shall constitute a separate offense and violation of this chapter with a separate and additional penalty.

### **§ 180-14~~14~~. Trespassing.**

In addition to serving the notice provided in § 180-5, the Village Board may, if it determines that the purposes of this chapter will be further effectuated, order that no person other than the owner or its agent shall enter upon the property and shall post on such property signs indicating: "No trespassing." Anyone found trespassing in violation of this section shall be liable for a fine not to exceed \$250 for each offense.

### **§ 180-15~~15~~. Proceedings to obtain title to abandoned buildings or properties.**

Notwithstanding anything contained in the prior sections of this chapter with regard to securing and removing unsafe buildings, the Building Inspector and/or the Department of Code Enforcement of the Village of Mastic Beach is hereby authorized to request that the Village Board of Trustees institute proceedings in accordance with the Real Property Actions and

Proceedings Law of the State of New York in order to obtain a judgment vesting in the Village of Mastic Beach title to any dwelling which has been abandoned by the owner thereof, except for an owner-occupied one- or two-family dwelling, all as contained within the Real Property Actions and Proceedings Law.

### **§ 180-16. Severability.**

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.