

# **Proposed Local Law**

## **VILLAGE OF SHERMAN LOCAL LAW No. 2 of 2023**

### **Pest Remediation**

#### **A Local Law Establishing an Approved Process for the Village of Sherman to Enforce Remediation of Infestation, Vermin, or Removal of Pests**

##### **SECTION 1. AUTHORITY.**

This local law is promulgated pursuant to the authority granted by:

- A. Article IX of the New York State Constitution, § 2(c)(10);
- B. New York Statute of Local Governments, § 10(1) and (7);
- C. New York Municipal Home Rule Law, § 10(1)(i) and (ii) and § 10(1)(a), (11), (12), and (14);
- D. New York Village Law Section 4-412.

##### **SECTION 2. TITLE.**

The Village Board of the Village of Sherman hereby adopts the Pest Remediation Local Law as follows:

##### **SECTION 3. PURPOSE AND INTENT.**

The purpose of this Chapter is to protect the health, safety, wellbeing, and quality of living of persons and property by establishing an approved process for remediation of infestations of insects, rodents, or other pests and vermin as described, defined, and identified in accordance with the State adopted Property Maintenance Code.

##### **SECTION 4. DEFINITIONS.**

As used in this Chapter, the terms shall have the meanings as defined by the New York State adopted Property Maintenance Code:

**DAY** – any reference to “day” shall herein represent a calendar day.

##### **SECTION 5. APPROVED PROCESS.**

The New York State adopted Property Maintenance Code requires prompt extermination of insect and rodent infestations; and the adoption of this Chapter herein provides for the Village of Sherman’s approved process for remediation:

- A. Once an infestation is identified, the Enforcement Officer shall notify the owner and/or occupant by serving notice in person or by certified mail.

- B. The owner and/or occupant responsible as described in the State adopted Property Maintenance Code has five days to respond to the notice by informing the Enforcement Office of the plan to remediate.
- C. The remediation plan must be approved by the Enforcement Officer.
- D. The active remediation plan must be initiated within ten (10) days of the original notice served.
- E. The Enforcement Officer may require professional abatement for remediation, (at any time).
- F. The remediation plan is to remain ongoing until the infestation is fully eliminated.
- G. A plan must be implemented to prevent re-infestation.
- H. All remediation costs incurred are the responsibility of the owner and/or occupant and shall be levied and collected in the same manner as provided for the levy and collection of Municipal taxes.

#### **SECTION 6. DUTIES OF ENFORCEMENT OFFICIAL.**

The Enforcement Officer(s) of Code, Zoning, Building Inspection, and Fire Inspection are herein authorized to identify and make the determination, in accordance with the State adopted Property Maintenance Code, whether an infestation of insects, rodents, or other pests and vermin exists, approve the plan, and enforce the process for remediation.

#### **SECTION 7. MUNICIPAL BOARD ORDER.**

- A. The Municipal Board may authorize an inspector with appropriate credentials to be retained to assist in further inspection.
- B. The Municipal Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such infestation or nuisance continues to exist and further order to remediate the infestation or remove the pest, to which the cost incurred by the Village would be the responsibility of the owner and/or occupant and shall be levied and collected in the same manner as provided for the levy and collection of Municipal taxes, and as provided in Section 12 herein.

#### **SECTION 8. CONTENTS OF NOTICE.**

This notice shall contain the following:

- A. A description of the premises.
- B. A statement of the particulars regarding the infestation.
- C. A statement providing five (5) days to respond to the notice with a remediation plan to be approved by the Enforcement Office; that the plan is to outline the manner in which the infested property shall be remediated or in which pests be removed.
- D. An order that the remediation or removal of such pests or condition (nuisance) shall commence within ten (10) days of the service of the notice and shall be completed according to the remediation plan as approved by the Enforcement Officer, unless for good cause shown such time shall be extended.
- E. A failure to provide a remediation plan within five (5) days will initiate a second notice with a statement including a date, time, and place for a hearing before the Municipal Board in relation to such remediation of the infestation, which hearing shall be scheduled not less than five (5) business days from the date of service of the second notice.
- F. A statement on the first and second notice stating that in the event of neglect or refusal to comply with the order to remediate and remove or correct such condition (nuisance), the Municipal Board is authorized to provide for its remediation or removal as the case may be, to assess all expenses thereof

against the land on which it is located and shall be levied and collected in the same manner as provided for the levy and collection of Municipal taxes.

**SECTION 9. SERVICE OF NOTICE(S).**

The notice(s) required under this Chapter shall be served by personal service of a copy thereof upon the owner, executor, administrator, agent, lessee, or any person having a vested or contingent interest in such property as shown on the records of the Assessor of the Village or of the County Clerk; if no such person can be reasonably found, service shall be made by mailing to such owner by certified mail, return receipt requested, a copy of such notice directed to his last known address as shown on the assessment rolls of the Village of Sherman and by personal service of a copy of such notice upon any person residing in or occupying said premises if such person can be reasonably found and by securely affixing a copy of such notice upon the building or property.

- A. A copy of the notice served as provided herein shall be filed in the office of the Village Clerk-Treasurer of the Village of Sherman.

**SECTION 10. REOCCURRING INFESTATION.**

- A. If the determination of the Enforcement Officer for Code or Zoning, or a Building Inspector, is that a violation is reoccurring and there is continued refusal or neglect of the person so notified to comply with said order, the authority having jurisdiction shall notify the owner, in writing, and he shall be required to correct the violation within ten (10) working days or be subject to the penalties for the violations.
- B. Violations are subject to further fees, fines, and possible jail time.

**SECTION 11. FAILURE TO COMPLY.**

In the event of the refusal or neglect of the person so notified to comply with said order of the Municipal Board, and after the hearing, the Municipal Board shall provide for the remediation and removal, as the case may be, of such infestation on a property either by Village employees or by contract. Except in emergency cases, as provided for herein, any contract for remediation or removal of pest, as the case may be, shall be awarded in accordance with the provisions of the General Municipal Law of the State of New York.

**SECTION 12. ASSESSMENT OF EXPENSES.**

All expenses incurred by the Village in connection with the proceedings to remediate the infestation or provide removal of pests shall be assessed against the land on which such condition or nuisance is located and shall be levied and collected in the same manner as provided for the levy and collection of Municipal taxes.

**SECTION 13. EMERGENCY CASES.**

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless the infestation is immediately remediated or pest is removed, the Enforcement Official shall report such

facts to the Municipal Board, and it shall cause the immediate remediation or removal. The cost of such emergency remediation of such infestation shall be collected in the same manner as provided in Section 12 herein.

#### **SECTION 14. ADMINISTRATIVE LIABILITY.**

No officer, agent, or employee of the Village shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this Chapter. Any suit brought against any officer, agent, or employee of the Village as a result of any act required or permitted in the discharge of his duties under this Chapter shall be defended by the Village Counsel until the final determination of the proceedings therein.

#### **SECTION 15. PENALTIES FOR OFFENSES.**

- A. Liability** – Any person, firm, corporation, or other entity violating the provisions of this Chapter may be liable for any one or more penalties as prescribed below and elsewhere within the Village of Sherman Zoning Law by the Village of Sherman, its Enforcement Officer of Code, Zoning, or Building Inspector. Owners, occupants, and responsible agents may be liable for remuneration for remediation measures taken by the Village of Sherman and its employees and contractors in accordance with Village of Sherman Municipal Code and Zoning Law. Violations may lead to additional fines and imprisonment under the provisions of New York State Law. With notice given by any person authorized by this Chapter to give such notice or order shall be punishable as provided in the penalty provisions of the Village of Sherman:
- a. **By owner.** The owner of any property who shall fail to comply with any notice of order to clean up, remove, remediate, repair, vacate, demolish, or otherwise fail to come into compliance with the law.
  - b. **By occupant.** The occupant or lessee or tenant in possession who fails to comply with any notice given as provided for in this Chapter shall be punishable as provided in the penalty provisions of the Village of Sherman.
  - c. **By agent.** The legal custodian or designated responsible party for a property or operation who fails to comply with any notice given as provided for in this Chapter shall be punishable as provided in the penalty provisions of the Village of Sherman.
  - d. **Removal of notice.** Any person removing notice posted by the Village of Sherman shall receive a penalty fee as provided in the penalty provisions of the Village of Sherman.
- B. Penalty Fees** – Any violation of this Chapter shall be deemed an offense punishable by a penalty fee; the schedule of fees that shall be established by resolution of the Village Board of Trustees of the Village of Sherman. Such Fee Schedule may thereafter be amended from time to time by like resolution.
- C. Remuneration.**
- a. As a result of a violation of this Chapter, all expenses incurred by the Village in connection with the proceedings to remove or remediate conditions on premises specified of any nature including legal costs shall be assessed against the land upon which the violations occurred

and shall be levied and collected in the same manner as provided for the levy and collection of municipal taxes.

- b. Any animal found to be in violation of this Chapter may be subject to collection and impoundment at the cost of the owner and incur a penalty fee per violation.

**D. Orders** – As a result of a violation of this Chapter:

- a. A business shall be subject to immediate closure and incur a penalty fee per violation.
- b. A property shall be subject to an Order to Remediate and incur a penalty fee per violation.

**E. Fines and Imprisonment.**

- a. Any violation of any provision of this Law by any person, corporation, or entity shall be punishable by a fine of up to \$1,500. Each week's continued violation shall constitute a separate additional violation.
- b. Violation of the provisions of New York State Uniform Fire and Building Code and other applicable New York State laws shall be deemed an offense punishable by such fine and imprisonment as stated in the New York State Uniform Fire and Building Code and other applicable New York State laws.

**F. Civil Action** – Notwithstanding the above, the Village Board of Trustees of the Village of Sherman hereby reserves the right to proceed to enforce the provisions of this Chapter by civil action, injunction, and any other remedy afforded to it by the laws of the State of New York and the United States.

**SECTION 16. TERMS AND CONDITIONS.**

**Conflicting Statutes** - All ordinances, local laws, or parts thereof in conflict with the provisions of this local law are hereby repealed to the extent necessary to give this local law full force and effect during the effective period.

**Severability** - Should any clause, sentence, paragraph, subdivision, section, or other part of this local law be adjudicated by any court of competent jurisdiction to be invalid, such judgement, decree or order shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or other part thereof directly involved in the controversy in which such judgement, decree, or order shall have been rendered and to this end, the provisions of each section of this local law are hereby declared to be severable.

**SECTION 17. EFFECTIVE DATE.**

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York, in accordance with the Municipal Home Rule Law Section 27.