

# Local Law Filing

41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

## Village of Minoa

Local Law No. Four (4) of the year 2009.

**A local law establishing a new Chapter 59 of the Village of Minoa Municipal Code entitled “Construction Site Maintenance”**

**Be it enacted by the Board of Trustees of the Village of Minoa as follows:**

### **Section One (1). Purpose/Intent.**

In the development and enactment of this local law, it is recognized that proper conduct of operations on construction sites, buildings under construction and areas, streets, roads and highways abutting or adjacent thereto is essential to the preservation of the public health, safety and general welfare. In addition, the failure to properly handle and promptly remove waste and recyclable materials has severe adverse effects on the community by tending to create a nuisance; creating hazardous conditions which may result in injury to person or property; attracting vermin; causing annoyance to residents and other persons who work in or pass through the Village; and detracting from the aesthetics of the neighborhoods involved. This local law is enacted to eliminate the aforementioned consequences, and it is also recognized that, if the prohibited acts are committed in violation of this local law, the needs of the Village may require expeditious removal of objectionable conditions or materials by the Village itself. To this end, a procedure is hereby established by which the Village, after due notice is given to the contractor, owner and/or other person in possession, control or use of a construction site or building under construction, may remove the objectionable conditions or materials and charge the cost of said removal to such the contractor, owner,, other person and/or other party in interest.

Section Two (2) A new Chapter 59 of the Code of the Village of Minoa to provide as follows:

### **Chapter 59 Construction Site Maintenance**

#### **§59-1. Title.**

This Chapter 59 shall be known as the “Construction Site Maintenance” local law of the Village of Minoa.

#### **§59-2. Definitions.**

In this local law:

“Contractor” shall mean a person who owns, contracts, subcontracts, or otherwise possesses or controls a construction site.

“Commercially Licensed Hauler” shall mean any person licensed by New York State Department of Conservation who is engaged in the business of receiving, collecting, transporting or disposing of rubbish, nonrecyclable waste material or recyclable waste material for hire/and/or salvage.

“Construction Site” shall mean any real property which any person proposes to or does engage in clearing/grubbing, topsoil stripping, or excavation upon or in the construction, reconstruction or demolition (wholly or partially) of any building, structure or other improvement located upon said real property.

“Construction Equipment” (s) shall mean but is not limited to any trailer, tool, equipment, material, supply, dumpster, container, roll-back-type container, can or any other item or combination of materials.

“Debris” shall mean any accumulation of materials, broke or detached matter, including, but not limited to, construction materials, pieces of stone, brick, cement, plaster, lumber, pipe, wallboard and shingles.

“Due Notice” (or “Notice”) shall mean having been given or served with notice as required hereunder.

“Owner” shall mean a person who owns or has contracted for the ownership of a Construction Site, and as to the latter, is in possession, control or use of the site

“Parking” shall mean the act or condition of putting or leaving construction equipment as defined herein in a public place for longer than 15 minutes.

“Person” shall mean any individual, partnership, copartnership, limited partnership, association or corporation and their lessees, trustees or receivers appointed by any court. In the instance of a legal entity, the individual(s) who is (are) the general partners of a partnership, whether limited or not, the trustee(s) and any beneficiary having the power to appoint or constitute a trustee of a trust, the officers and directors of a corporation and any receiver thereof shall equally liable with the legal entity for any requirements or penalties provided in this Chapter. In any instance, an agent having the apparent authority to control the use or occupation of such persons having property regulated by this Chapter shall be equally liable with his, her or its principal for any requirements or penalties provided in this Chapter.

“Public Place(s)” shall mean any public street or sidewalk, alley, promenade, mall, park or any other place of public right-of-way or publicly owned property. Public Place(s) shall also include any of the foregoing that has been partially or fully constructed and offered (or contemplated to be offered) for dedication as public property.

“Recyclable Material” shall mean any recyclable materials and construction debris as defined by New York State Department of Conservation and/or Onondaga County Resource Recovery Agency that a contractor, owner or other person is required to or elects to be sent to a licensed recycling facility, construction transfer station or construction landfill.

“Responsible Person” (or “Person Responsible”) – shall mean the Owner and such Person(s) as are legally responsible hereunder.

“Waste Material” shall mean all putrescible and nonputrescible solid waste (except body waste), including, but not limited to, garbage, litter, debris, uprooted vegetation and herbage, tree limbs and stumps and any other matter which, if thrown, dumped, placed, left or deposited as herein prohibited, may tend to create a danger to the public health, safety or general welfare.

### **§59-3. Mandatory Action.**

Any person who owns, controls or is in possession of a Construction Site shall:

- A. Contract with a Commercially Licensed Hauler to provide Recyclable and/or Waste Material receptacles at each Construction Site and building (including dwellings) under construction, which shall be of sufficient size and dimensions to adequately contain all Recyclable and Waste Materials as may be found at or around the Construction Site.
- B. Place all Recyclable and Waste Materials within said receptacle or receptacles and securely cover said receptacle or receptacles when work is not being done on the Construction Site.
- C. Ensure that each Recyclable and Waste Materials receptacle(s) shall, unless securely covered, be removed from the Construction Site within twenty-four (24) hours when full. The foregoing requirement of a secure covering notwithstanding, such Person(s) nonetheless shall be and remain responsible for any Waste Material on or off the Construction Site emanating from the receptacles(s) including as a result of vandalism or weather conditions.
- D. Ensure that no full Recyclable and Waste Materials receptacle(s), unless securely covered, shall remain on the Construction Site after 3:00 PM Friday of each week. The foregoing requirement of a secure covering notwithstanding, such Person(s) nonetheless shall be and remain responsible for any Waste Material on or off the Construction Site emanating from the receptacles(s) including as a result of vandalism or weather conditions.
- E. Stage, load, unload, place and maintain all Construction Equipment on the Construction Site, except as may be permitted under §59-3F hereof.
- F. Gravel (or pave) roads, access driveways, and parking areas of sufficient width and length prior to any excavation or topsoil stripping on the Construction Site sufficient and in order to prevent sediment from being tracked onto public or private roadways.
  1. Any sediment or mud tracking from the Construction Site or Construction Equipment serving the Construction Site, reaching a public or private road shall be removed by street cleaning or similar means (but not flushing) before the end of each work day.
  2. Graveled access driveways shall consist of single access driveway using a two- to three-inch stone aggregate. The driveway shall have gravel six inches deep and a minimum of 10 feet in width. The graveled driveways shall be a minimum of 50 feet in length or the distance from the road to the Construction Site, whichever is less. All gravel driveways shall be maintained by the builder or contractor throughout the construction project.

3. Each Construction Site shall provide sufficient graveled parking areas on site for all Construction Equipment.
- G. Sweep all streets, roads or highways adjacent to or abutting the Construction Site at least once per week and more frequently to prevent any Waste Material from being dumped, deposited, placed or thrown on said streets, roads or highways.
- H. No person shall operate, place or park (nor permit the same by others) any Construction Equipment on any Public Place nor drive or permit driving of any Construction Equipment through any Public Place, unless specific written permission (including any conditions) has been granted by of the Village Codes Enforcement Officer or by the Village Board.
- I. Ensure that all Public Places located upon or nearby the Construction Site shall be maintained free from obstacles during construction or demolition, as the case may be.

#### **§59-4. Site Restoration.**

Any applicant for a building permit (including for any site work) shall, in the discretion of the Village Codes Enforcement Officer or as directed by resolution of the Village Board of Trustees, and independent of any other requirements for security under the Village of Minoa Code or other applicable law(s), be requested to deposit with his application security for site maintenance and restoration, the same being in cash, letter of credit or bond in an amount to be determined by the Village Codes Enforcement Officer or Village Board, upon initial application or at such later time prior to issuance of a final/unconditional Certificate of Occupancy, sufficient to guarantee the following:

- A. The establishment or reestablishment of ditches and culverts to properly drain the building area and the reopening or reestablishment of any drainage ways that may have been interrupted by the course of construction.
- B. The repair, replacement and reconstruction of any Public Places damaged in the course of construction so that the same shall be in comparable status as they existed prior to the commencement of construction. All repairs to and replacements of such Public Places shall be completed in compliance with requirements of the Village Codes Enforcement Officer.
- C. The repair of all public utility structures damaged during the course of construction and the restoration and adjustment of all manholes, catch basins, grate wells, hydrants and shut-off boxes to the same conditions that they were in prior to the commencement of construction.
- D. Construction Sites to comply, in all respects, with Chapter 135 of the Village Code, including, without limitation, stabilizing and maintaining the Construction Site (including, seeding and mulching within fourteen (14) days after disturbing soil areas except for disturbed areas of 5 acres where it shall be seed and mulched within 7 days), and installing and maintaining silt fencing until final seeding and mulching of bare soils has been done.

- E. All Construction Sites that have been disturbed to be adequately seeded and mulched prior to the transfer of title.
- F. The full and complete compliance with all of the provisions of this Chapter 59 and other chapters of the Village Code relevant to such work on the Construction Site.

**§59-5. Forfeiture of Security.**

If any person(s) shall fail to perform as required under §§59-3 or 59-4 hereof within ten (10) days after Notice is given (in the manner required under §59-8 hereof) requiring said person(s) to correct or fulfill unperformed provisions, the applicable site maintenance and restoration security may be declared by the Village Board of Trustees forfeited and deposited in the general fund of the Village. The funds so deposited shall be returned by the Village Treasurer to the applicant if, after final inspection, a determination is made by the Village Codes Enforcement Officer or his designated representative that all of the provisions of §§59-4 and 59-5 have been properly performed. All such funds shall be held by the Village and returned to the applicant on demand. If no such demand is made within one year after the issuance of the Certificate of Occupancy, any such funds so held shall be forfeited.

**§59-6. Enforcement.**

- A. The provisions of this Chapter shall be enforced by the Village of Minoa Codes Enforcement Officer, or other individual authorized by law to enforce the provisions of the Code of the Village of Minoa.
- B. Stop-work Order. The Village Codes Enforcement Officer or his designated representative may post a stop-work order if there is any violation of the provisions hereof that is not corrected within the time period directed by the Village Codes Enforcement Officer.
- C. Permit Revocation. If a Person responsible does not cease the violative activity correct or fulfill underperformed permit conditions, or otherwise comply with the permit conditions within ten (10) days, the Village Codes Enforcement Officer may revoke the permit.
- D. Cease and Desist Order. If such Person responsible where no permit has been issued, does not cease the activity within ten (10) days, the Village Codes Enforcement Officer or the Zoning Board of Appeals may request the Village Attorney obtain a cease and desist order.
- E. Stop-work Order Retraction. The Village Codes Enforcement Office may retract the stop-work order or any revocation.
- F. Failure to comply. In addition to the foregoing remedies under §59-5 and this 59-6 hereof, whenever a Notice or Notices referred to in §59-5 advising of the provisions thereof, and of the rights of the Village under §§ 59-6(G) and (H) hereof, requiring such Person(s) to correct or perform as required hereunder is given, and if such Person(s) shall neglect or fail to comply with the requirements of such notice(s) within the time provided herein, or raise a meritorious defense or objection to same, the Mayor, Superintendent of Public Works or Codes Enforcement Officer may authorize the work to be done, and the Village may, in addition, proceed under §§59-6(G) and (H) hereof.

- G. Reimbursement of Costs; Assessment Upon Real Property. Upon review by and a finding of the Village Board that the requirements of this Chapter have not after due Notice been complied with by a responsible Person(s), that such Person(s) failed to raise a meritorious defense or objection, that the actions of the Village were reasonably justified based upon the provisions hereof, and that the Village has taken the required procedural steps as required herein, the Village Board may adopt a resolution authorizing that the costs incurred by the Village in performance of the work be paid for out of general Village funds appropriated by the Village Board for such purpose or any security deposit under §59-5. The Village shall be reimbursed for the cost of the work performed plus a service charge of 30% thereof to cover the cost of supervision and administration, and in addition for any penalties assessed under §59-7 hereof. The Village Board may in addition, order that any such unreimbursed charges be assessed and levied upon the Real Property subject of the enforcement action.
- H. Filing of Notice of Intent to Levy. Whenever the Village has ordered the reimbursement for the costs of the work performed or services rendered as hereinabove provided by assessment and levy upon the lot or parcels of lands whereon such work was performed or such services rendered, the Village Clerk may cause a notice of intent to levy such costs and expenses against said lots or parcels of land in a form approved by resolution of Village Board from time to time hereinafter, to be recorded in the records of the Onondaga County Clerk's Office in order that such notice shall be indexed against the said premises or parcels of land as notice to subsequent transferees or other acquiring any interest in said lots or parcels of land of the intention by the Village to assess and levy the amount of such expenses upon said lots or parcels of land. Any recorded fees of the Onondaga County Clerk shall be included in the costs and expenses assessed and levied upon such lots or parcels. The failure of the Village Clerk to record such notice of intent to levy shall not, however, affect or impair the validity of any lien or assessment of such costs and expenses later imposed against such lots or parcels of land, the owner(s) hereof or any subsequent transferees or others acquiring any interest in such lots or parcels of land.
- I. Additional Rights/Remedies. In addition to and separate from any of the foregoing standards, enforcement procedures and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article and which are/is determined to be a threat to public health, safety, and welfare is hereby deemed a nuisance, and as such, may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken as provided for under applicable law. This remedy shall be in addition to and separate from the remedies otherwise provided for hereunder.

#### **§59-7. Penalties for Violations.**

Any violation hereunder shall be considered an offense punishable by a fine not to exceed \$500.00 for each offense or imprisonment for a term not exceeding 90 days, or both. The following rules shall apply in determining responsibility for violations and penalties:

- A. The Owner, and Contractor or other person in possession, use or control of a Construction Site where a violation has been committed or does exist shall be guilty of such offense.

- B. Any other person who commits, takes part in or assists in such violation shall be guilty of such offense.
- C. Each day that a violation continues after written notification shall constitute a separate offense.
- D. In the event that the penalties established by this Section 59-7 are inconsistent with the penalty section of any other applicable provision contained within the Code of the Village of Minoa, then the inconsistency shall be resolved in favor of the provision providing the more severe penalty except in those cases wherein the penalty is prescribed by state statute.

**§59-8. Notice.**

Notice to an Owner or other responsible Person hereunder shall be made: (i) via personal delivery in the manner required under the Civil Practice Law and Rules of the State of New York, or (ii) via registered or certified mail at the property address according to the Village or Town's most recent assessment records, any address(es) shown on applications/permits filed with the Village of Minoa, any address(es) provided by the United States Postal Services, or such address(es) as listed in current publications (printed/online) of local telephone services; any "legal" address(es) derived from an official or other reliable source; and other address(es) reasonably likely to provide actual notice, to the extent known or easily ascertainable. Notice by personal service shall be deemed given as of the date of same; Notice by mail shall be deemed given as of the day following the date of posting. Any Notice time period hereunder may be shortened in the event of emergency or imminent danger by resolution of the Village Board, duly adopted (or ratified at the next following regular or special meeting).

**Section Two (2). Illegality/Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances is adjudged invalid or unconstitutional by any court of competent jurisdiction, such order or judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances. Further, in adjudging such invalid provision, the court shall attempt to modify same to a provision which is not invalid or unconstitutional and which best achieves the intent of the invalid provision.

**Section Three (3). EFFECTIVE DATE.**

This Local Law shall take effect immediately upon its filing in the office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 4 of 2009 of the ~~(County)~~(City)(Town)(Village) of Minoa was duly passed by the Village Board of Trustees of the Village of Minoa on July 13, 2009 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_, and was (approved)(not approved)(repassed

\_\_\_\_\_ (Name of Legislative Body) disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 199\_ (Elective Chief Executive Officer\*)

in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of 199\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_, 19\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_. Such local law was \_\_\_\_\_ (Elective Chief Executive Officer\*)

to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of 19\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_, and was (approved)(not approved)(repassed after \_\_\_\_\_ (Name of Legislative Body)

disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_. Such local law was subject to \_\_\_\_\_ (Elective Chief Executive Officer\*)

permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_, in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

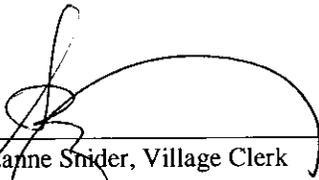
I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No \_\_\_\_\_ of 19\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one (1) above.

  
\_\_\_\_\_  
Suzanne Snider, Village Clerk  
Date: July 29, 2009

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_  
Signature  
Steven J. Primo

Attorney for the Village  
Title  
~~County~~  
City of Minoa  
~~Town~~ Village

Date: 7/20, 2009

\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a countywide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.