

VILLAGE OF ALLEGANY. NEW YORK

LOCAL LAW NO.2-2000

A Local Law to Amend Article II of the General Municipal Code of the Village of Allegany, New York and to Replace, in its Entirety, Local Law No.3-1989

BE IT ENACTED by the Board of Trustees of the Village of Allegany, New York, as follows:

SECTION 1.

This Local Law shall be entitled "A Local Law Relating to the Construction, Repairs, Alteration, Cleaning, and Maintenance of Sidewalks".

SECTION 2.

It is the purpose of this Local Law to provide for the safety, health, protection, and general welfare of persons in the Village of Allegany by providing for the construction, repair, alteration, cleaning, and maintenance of sidewalks within the Village of Allegany.

SECTION 3.

Definitions.

Words used in the present tense include the future, words in the masculine gender include the feminine and neuter, the singular number includes the plural, and the plural the singular.

- A. Owner-Any individual, firm, partnership, company, corporation, association, society or group having a legal interest in real property.
- B. Sidewalk-That portion of a street outside of the traveled roadway used, set aside or intended for the use by pedestrians, or that portion of land abutting a roadway used, set aside or intended for the use by pedestrians.
- C. Street-The entire area conveyed, acquired or dedicated to public use and passage. The word "Street" shall include in its meaning the words "Highway", "Avenue", "Alley", "Drive", "Place", or any other words used to designate the public thoroughfare as above defined.

SECTION 4.

Construction of Sidewalks

The Board of Trustees shall have the power to cause sidewalks on the streets and highways in the Village of Allegany to be constructed or to otherwise improve the space between the outside limits of the street and the curb or improved portion of the street-and to determine and prescribe the manner of doing the same, the materials to be used thereon, the quality of the materials to be used and to direct that the whole, or any part of the cost of any improvement or work so directed to be then assessed upon the property deemed to be benefitted, or that the whole or part of the cost thereof be charged to the Village at large, and the remainder, if any, be assessed to the property deemed benefitted and that the cost thereof, if not paid by the property owner, be collected in the same manner as other taxes are collected by virtue of the Local Law and the same shall be a lien on said land or lot.

SECTION 5

Repair, Alteration, Cleaning and Maintenance of Sidewalks

- A. It shall be the duty of every owner of any premises or parcel of land abutting on any public street in the Village of Allegany to keep the sidewalk abutting the same in good order and repair.
- B. It is the responsibility, and on notice from the Village of Allegany Board of Trustees, through its Village of Allegany Sidewalk Committee or the Director of Public Works and/or Code Enforcement Officer, it shall be the duty of any owner of any premises or parcel of land within the Village of Allegany to repair, alter, clean, maintain and/or reconstruct the sidewalk located on the parcel between the street line and the curb or improved portion of the street.

SECTION 6

Construction, Repair, Alteration, Cleaning and Maintenance

In cases where there is no sidewalk on premises, within the Village of Allegany or State of New York right-of-way, abutting on any street in the Village of Allegany, the Board of Trustees, through the Village of Allegany Sidewalk Committee, or the Director of the Department of Public Works and/or the Code Enforcement Officer, may determine to require the property owner to construct sidewalks on said premises.

In case where a sidewalk has previously been constructed or installed, and if the same is determined to be a defective sidewalk, and therefore in need of repair, alteration, cleaning, or maintenance, as determined by the Village of Allegany Sidewalk Committee or the Director of the Village of Allegany Department of Public Works and/or the Code Enforcement Officer, the

property owner abutting said defective sidewalk may be directed to repair, alter, clean, reconstruct and/or maintain said sidewalk.

The following conditions, although not all inclusive, of a sidewalk, and any other conditions that the Village of Allegany Sidewalk Committee or the Director of the Department of Public Works and/or the Code Enforcement Officer determines present a danger or risk of injury to person, shall constitute a defective sidewalk:

- A. Unsafe surface, including but not limited to holes, depressions, breaks, or protrusions.
- B. Ridges or gaps adjoining sidewalk blocks.
- C. Difference in elevation of surface or of adjoining walk blocks.
- D. Peeling or crumbling of the surface of the sidewalk.
- E. Tilting of sidewalk or sidewalk blocks, except in case of handicapped ramps, driveway approaches or other similar situations.

SECTION 7

Notice

Said construction, repair, alteration, cleaning and maintenance of sidewalks shall be completed within sixty (60) days after service of written notice upon said property owner. Service of said written notice may be made personally, by regular U.S. Mail or by certified mail addressed to the last known address of said owner as shown on the records of the Village of Allegany.

Where there is more than one (1) owner, service upon any of the owners shall be sufficient notice.

Service by personal delivery shall be deemed completed on the date said service is made.

Service by mail shall be deemed complete upon deposition of same in a post office or official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

SECTION 8

Hearing

Within ten (10) days of personal service, or within fifteen (15) days of service being completed by mailing, the affected property owner so served shall have the right to file a written request for a hearing with the Village of Allegany Sidewalk Committee. Said written request shall be delivered to the Village of Allegany Clerk's Office. The request shall state the reasons for requesting the hearing and the action or relief sought by the owner.

If a property owner does not file a timely request for a hearing in accordance with the proceeding paragraph, the decision of the Village of Allegany Sidewalk Committee, regarding the nature and extent of the construction, repair, alteration, cleaning and maintenance of the sidewalk, as well as the cost of the same to be charged to the owner, if the work is performed by or for the Village, shall become final.

If the property owner complies with a written request for a hearing, such hearing shall be scheduled promptly by the Village of Allegany Sidewalk Committee, but in no event later than ten (10) days after receipt, by the Village Clerk, of the request for said hearing by the property owner. Said time and place shall be reasonably convenient to both the property owner and the Village of Allegany Sidewalk Committee. Written notification specifying the time, place and procedure governing the hearing shall be mailed to the property owner at the address designated by him/her, for his/her request for a hearing filed with the Village Clerk.

Conduct of Hearing. The Village of Allegany Sidewalk Committee shall conduct the hearing at the time and place specified in the Notice. The hearing shall be conducted informally by the Village of Allegany Sidewalk Committee and oral or documentary evidence pertinent to the facts and issues raised by the Village and the property owner may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Village of Allegany Sidewalk Committee shall require participants and spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Village of Allegany Sidewalk Committee to maintain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of their relief sought, as appropriate. All parties to the hearing shall further be afforded a fair hearing providing the basic safeguards of due process.

Determination. Within five (5) days following the close of the hearing the Village of Allegany Sidewalk Committee shall affirm, reverse or modify the Notice regarding the nature and extent of the construction, the repairs, alteration, cleaning or maintenance of the sidewalk required and the resulting costs of same to the owner if the work is performed by or for the Village. The Village of Allegany Sidewalk Committee decision shall be made in writing and a copy either served personally on the owner or forwarded by first-class mail to the address designated by the property owner in his/her written request for a hearing. The original of said decision shall be filed with the Village Clerk. The decision of the Village of Allegany Sidewalk Committee shall be final and conclusive.

Compliance. The final decision of the Village of Allegany Sidewalk Committee, after a hearing, shall be complied with by the property owner within sixty (60) days of the date of that final decision.

SECTION 9

Responsibility for Costs

The cost or expense and the duty to construct and/or repair, alter, clean and maintain sidewalks within the Village of Allegany shall be the obligation and responsibility of the property owner of the lands deemed benefitted.

SECTION 10

Method of Payment

In the event that the owners of the lands deemed benefitted elect to make the improvements, construction, repair, alteration, cleaning or maintenance upon receiving the Notice from the Village of Allegany, as provided in SECTION 7 of this Local Law, the owner shall notify the Village of Allegany of his/her election before the improvement is commenced, and the Village of Allegany shall be obligated to oversee the construction, repair, alteration, cleaning or maintenance in order to insure that the improvements, repair, alteration, cleaning or maintenance meet the Village of Allegany specifications.

If, upon receiving the Notice from the Village of Allegany as provided in SECTION 7 of this Local Law, a sidewalk is not installed, constructed, repaired, altered, cleaned or maintained by the property owner as required by this Local law, and the Village of Allegany undertakes to construct, repair, alter, clean or maintain said sidewalk, then the Village Clerk, upon completion of the work, shall promptly present the owner of the premises benefitted with a bill for the aforesaid costs. If the same is not paid within thirty (30) days of such presentation such costs shall be assessed against the parcel of real property adjoining the sidewalk and the cost shall become a lien thereon, collectible in the same manner as delinquent Village taxes and/or the Village may proceed to collect by any other lawful manner against the property owner, including the method permitted by SECTION 12 of this Local Law.

SECTION 11

Exception

Notwithstanding the provisions of SECTION 9 the expenses assessed to any owner of real property pursuant to the Local Law shall not include the following:

1. The expense of installing, repairing or altering that portion of a sidewalk exceeding a width of ten (10) feet.

2. The expense of installing curbs or curb cuts when such work is caused to be done pursuant to this Local Law.
3. The expense of ornamentation with trees and the cost of tree removal when such work is caused to be undertaken pursuant to this Local Law.
4. The expense of construction superstructures over streams or streambeds.
5. The expense of preparing the property to proper grade (excessive fill or excavation), will be done at the expense of the Village of Allegany.
6. The Village of Allegany shall be responsible for and pay all survey costs incurred and necessary to ensure the proper location of any new or relocated sidewalk which is required to be constructed or relocated by order of the Village Board of Trustees pursuant to this Local Law.

In the event that owners shall, within the required time, and at their own cost and expense, elect to undertake and make the improvements, construction, alteration, repair, cleaning and maintenance of the sidewalk which the Board of Trustees has caused to be required pursuant to this Local Law, the expense incurred by the owner for that portion of sidewalk wider than ten (10) feet, curbs, cuts, or superstructures over streams or streambeds, shall be reimbursed to the owner by the Village and be paid from the General Fund of the Village.

SECTION 12

Costs

The Village Board of Trustees recognizes that the construction of sidewalks can be costly and that it may impose a difficult economic hardship on the owner of the real property benefitted thereby.

Purely as an accommodation to the Village property owner, in the event the Village of Allegany undertakes the ordered work and constructs, repairs, alters, cleans or maintains the ordered sidewalk on behalf of, and at the expense of, the adjoining property owner, said adjoining property owner shall repay the cost of such construction, repair, alteration, cleaning or maintenance to the Village of Allegany in equal annual installments, with installation, construction, repair, alteration, cleaning or maintenance of sidewalk equal a total cost between Two-Hundred Dollars (\$200.00) and Three-Thousand Six-Hundred Dollars (\$3,600.00), the same shall be paid to the Village, at the same time Village taxes are paid, in three (3) equal annual installments of principal plus interest on the unpaid balance of principal at the rate of six percent (6%) per annum over a period of three (3) years. In the event the total cost, for any one particular property or lot, within the Village of Allegany exceeds the sum of Three-

Thousand Six-Hundred Dollars (\$3,600.00) then the Village Board of Trustees may, for good cause shown, extend the repayment period but in no event to exceed five (5) years.

All charges billed by the Clerk Treasurer under this Local Law shall be assessed against and become a lien on the lands deemed benefitted to the same extent as Village taxes; included in the General Village Tax Roll, and collected in the same manner as other Village taxes.

SECTION 13

Village Ordered Relocation

Whenever the relocation of any installed sidewalks, meeting Village standards, is necessitated because of the construction of a widening of pavement of any street or because of any other reason, request or demand by the Village of Allegany, the cost or expense thereof shall be paid solely by the Village of Allegany from the General Fund; and no part of such cost or expense shall be assessed against the premise which abut or upon which the sidewalk lies.

SECTION 14

Change of Grade

If the owner of any lands, the grade or level of which is above the established grade of the sidewalk in front of his/her lands, shall neglect or refuse to protect such land and to grade such lands as to prevent dirt, earth, stones or other material from falling or being washed upon the sidewalk of such lands, for twenty (20) days after service upon him/her of such Notice, the Director of Public Works shall cause such work to be done in the same manner as hereinbefore provided and the cost and expense of such work shall be paid by the property owner in the manner set forth in SECTION 10 of this Local Law.

SECTION 15

Permit Requirements

Before engaging upon sidewalk construction, repair or alteration, the owner, or the contractor on behalf of the owner, must first obtain a Permit from the Village Board of Trustees or the Village of Allegany Code Enforcement Officer. Applications shall be made to the Village Clerk, who shall refer the completed applications to the Village Board or Village of Allegany Code Enforcement Officer.

At the time of making application to the Village for a Permit to construct, repair or alter a sidewalk, the owner or contractor shall pay to the Village a permit fee in such amount as the Board of Trustees may, from time to time, determine by resolution.

At such time as the Village Board of Trustees or the Village of Allegany Code Enforcement Officer approves the construction, repair or alteration application, a Permit shall be issued by the Village of Allegany Code Enforcement Officer and the Village Clerk, on behalf of the Village of Allegany Code Enforcement Officer, at the time of the issuance of the Permit, shall deliver to the property owner or his/her contractor a copy of the required specification for the construction, repair or alteration of the sidewalk.

SECTION 16

Inspection

The property owner is responsible for the quality of the finished sidewalk. A representative of the Department of Public Works and/or Code Enforcement Officer will inspect the project, from time to time, and may require the owner to remove or replace any construction or repair that does not meet the construction standards set forth by the Village.

A copy of any Permit issued in accordance with this Local Law shall be in the possession of the persons actually doing the work and shall be available for inspection by the Director of Public Works, his representatives and/or the Code Enforcement Officer.

Any person constructing, repairing or altering a sidewalk shall provide barricades during construction, repair or alteration and appropriate lighting during the hours of darkness around any excavation or other hazards caused by such work.

SECTION 17

Penalties

Any person violating any of the provisions of this Local Law shall be subject to a fine, such fine not to exceed Two-Hundred Fifty Dollars (\$250.00). Such penalties may be in addition to any other remedies or actions that may be taken by the Village of Allegany either as provided herein or as may otherwise be permitted by law.

SECTION 18

Repeal of Existing Local Laws

Except as hereafter provided, Village Local Law No. 3-1989 and Article II of the General Municipal Code of the Village of Allegany are hereby repealed. The repeal provided by this Local Law shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of the prior Local Laws hereby repealed prior to the taking effect of this Local Law.

SECTION 19

Severability

If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any Court to be invalid, 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 in which such judgment shall have been rendered.

SECTION 20

Effective Date

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