

*ADOPTION OF AN AMENDMENT TO
CHAPTER 46 (HEALTH OR SAFETY MENACES)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, December 2, 2014, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 46 (Health or Safety Menaces) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX

COUNTY, VIRGINIA:

That Chapter 46 (Health or Safety Menaces), is amended as follows:

Chapter 46: HEALTH OR SAFETY MENACES

Section 46-1-1. - Definitions.

Section 46-1-2. - Inspection for health or safety menaces.

Section 46-1-3. - Abatement of health or safety menaces generally.

~~**Section 46-1-4.** - Failure to abate a health or safety menace.~~

Section 46-1-5~~4~~. - Hearing and appeals procedure.

~~**Section 46-1-6.** - Penalty.~~

Section 46-1-1. - Definitions.

(a) A *public health or safety menace* ~~or public nuisance~~ means any condition which might endanger the health or safety of the public, including but not limited to:

- (1) Unsanitary or improper storage or disposal of trash, garbage, refuse, debris, other solid waste or hazardous waste;
- (2) Unburied dead animals;
- (3) Accumulation of water causing mosquito or other vector breeding or proliferation;
- (4) Rodent or insect infestation;
- (5) Accumulation of bees, fowl or animals in such a manner to create a condition that may be injurious to the public health or safety;
- (6) Hazards such as open excavations, open wells, pits, trees or parts thereof in danger of falling, ~~discarded refrigerators and freezers with doors attached, unsecured vacant structures,~~ or habitation for bats, wasps or other venomous pests;
- (7) Garbage which is not contained in a water-tight, rodent-proof container which is equipped with a tight-fitting lid;
- (8) Improper disposal of medical, dental, veterinary or pharmaceutical equipment or supplies, including but not limited to syringes, needles, scalpels, and blades or other medicinal items in solid or liquid form, in such a manner as to make it possible for any other person to retrieve and utilize said equipment or supplies;
- (9) Any building or structure that is deteriorated, improperly maintained, of faulty construction, deficient in adequate exit facilities, a fire hazard, or dangerous to life or the public welfare, or both;
- (10) Any building or structure that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely;
- (11) Any unsecured or open vacant structure.
- (12) Any structure that is determined to be dangerous to the occupants or the public because of the degree to which the structure is in disrepair or lacks maintenance, ventilation,

illumination, sanitary or heating facilities or other essential equipment or if the required plumbing and sanitary facilities are inoperable.

(913) Any other condition that may be injurious to the public health or safety.

(b) *County Executive* shall mean the County Executive or his designee.

(c) *Director* shall mean the Director of the Health Department Services or his designee.

~~(d) *Director of the Department of Public Works and Environmental Services or his designee* shall mean the designee of the Director responsible for the enforcement of the hazardous tree provision of this Chapter.~~

(d) *Code Official* shall mean the Building Code Official or the Property Maintenance Code Official as applicable or his designee.

(e) *Disposal* means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, include groundwaters.

(f) *Hazardous waste* means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(g) *Occupant* shall include the lessee of vacant land.

(h) *Public nuisance* means, but is not limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls or structures which constitute a menace to the health and safety of the occupants thereof or the public.

(hi) *Sanitary landfill* means a disposal facility for solid waste so located, designed and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or groundwater.

(ij) *Solid waste* means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include (i) solid or dissolved material in domestic sewage (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended. (6-7-61; 1961 Code, § 15A-1; 4-78-46; 39-88-46; 3-92-46; 78-08-46.)

Section 46-1-2. - Inspection for health or safety menaces.

The Director is authorized to inspect occupied or vacant land or premises to ascertain the existence of health or safety menaces on such land or premises. The Director shall inspect the land or premises at reasonable daylight times in a reasonable manner. If the owner or occupant of the land or premises denies the Director free access for such purposes, the Director may inspect after obtaining a search warrant. (6-14-61, § 8; 1961 Code, § 15B-3; 36-74-15B; 4-78-46; 39-88-46.)

Section 46-1-3. - Abatement of health or safety menaces generally.

(a) When any condition that constitutes a public health or safety menace is found on occupied or vacant land or premises, the Director shall notify in writing the owner or occupant of the land or premises on which the condition exists and/or any other person who he believes is responsible for the health or safety menace. Such notice shall contain a description of the health or safety menace and; the time within which the menace shall be abated, corrected or eliminated.

~~(b) Any such notice shall be ; and a statement that the owner, occupant or other person responsible may request a hearing within ten (10) days of the receipt of the notice. Notice (i) sent by registered or certified mail, return receipt requested, to the last-known address of the owner whose name is shown on the current real estate tax assessment records, or the occupant, or any other identified person responsible; and (ii) published once a week for two successive weeks in a newspaper having general circulation within the County.~~

~~(c) The County shall not take any action to remove, repair, or secure any building, wall, or other structure or to otherwise abate any public health or safety menace for at least 30 days following the later of the return of the certified mail receipt or the newspaper publication, except that the County may take action to prevent unauthorized access to the building or location of the public menace or nuisance within seven days of such notice if the condition is deemed to pose a significant threat to public safety, and that fact was stated in the notice. Shall be deemed compliance with the notice requirement to the person responsible. Nothing herein shall prevent the County from correcting or abating any condition determined by the Director to constitute an emergency.~~

~~(b) Upon receipt of the written notice from the Director, the owner, occupant or other person responsible shall abate, correct or health or safety menace. The amount of time allowed to abate, correct or eliminate the health or safety menace condition shall be determined by the Direct, and shall not be less than twenty four (24) hours nor more than ten (10) days. If the Director determines that the menace cannot be abated, corrected or eliminated within ten (10) days, the Director may order temporary abatement measures and allow a longer period of time to abate, correct or eliminate the condition. The Director may allow such a longer period of time only upon request of the owner, occupant or other person responsible and only upon a good faith showing that such longer period of time is. (6-7-61; 1961 Code, § 15A-2, 15A-3; 3-10-71; 4-78; 4-78-46; 39-88-46.)~~

~~(d) Upon compliance with the notice provisions of this section, and except in the case of an emergency if the County, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure, or removes, corrects, or abates any condition that constitutes a public menace or public nuisance, then the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the County in the same manner that taxes are collected. Any such costs or expenses that remain unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and may be enforced in the same manner as provided in Article 3 and Chapter 39 of Title 58.1 of the Virginia Code, and as the same~~

may be amended.

(e) Any lien as set forth herein may be waived by the Director only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

Section 46-1-4. Failure to abate a health or safety menace.

(a) — After receipt of the written notice, it is unlawful for the owner, occupant or other person responsible to fail to abate, correct or eliminate the health or safety menace within the time determined by the Director.

(b) — If the written notice is undeliverable, or if after receipt of the written notice, the owner, occupant or other person responsible fails to abate, correct or eliminate the health or safety menace, the Director may request the Director of the Department of Public Works and Environmental Services to take reasonable steps to abate, correct or eliminate the health or safety menace whether the land or premises are occupied or vacant. If the owner, occupant or other person responsible denies free access for such purposes, the Director may proceed after obtaining a warrant. Costs and expenses incurred by the Director in abating, correcting or eliminating a health or safety menace on private property shall be assessed against the owner and/or occupant of the land or premises and/or any other person responsible for the health or safety menace, and shall be recoverable from the owner in the same way as taxes and levies. Costs and expenses incurred by the Director in abating, correcting or eliminating a health or safety menace on public property shall be recoverable from the person or persons responsible for causing the health or safety menace. (6-7-61; 9-11-68; 1961 Code, §§ 15A-3, 15A-4; 3-10-71; 4-78-46; 39-88-46; 78-08-46.)

Section 46-1-54. - Hearing and appeals procedure.

(a) In the case of an emergency, the Director may request the Director of the Department of Public Works and Environmental Services or Code Official to take reasonable steps to abate, correct or eliminate the health or safety menace without providing the owner, occupant or other person responsible an opportunity to be heard until after the health or safety menace is abated, corrected or eliminated. In such an emergency, the property owner or other responsible party may request a hearing within ten days after the condition is abated, corrected or eliminated.

(b) In the absence of an emergency, the Director may request the Director of the Department of Public Works and Environmental Services or Code Official to take reasonable steps to abate, correct or eliminate the health or safety menace only after providing the owner or occupant or other person responsible with the notice set forth herein and an opportunity to be heard. Such a hearing request shall be made within ten days after receipt by the owner, occupant or other person responsible of the notice to abate, correct or eliminate the health or safety menace. ~~In the case of an emergency, the Director may request the Director of the Department of Public Works and Environmental Services to take reasonable steps to abate, correct or eliminate the health or safety menace without providing the owner, occupant or other person responsible an opportunity to be heard until after the health or safety menace is abated, corrected or eliminated. In such an emergency the hearing request shall be made within ten days after the condition is abated, corrected or~~

eliminated.

(c) All hearing requests shall be in writing and directed to the Director, who shall forward the requests to the County Executive within two days of receipt. All hearings shall be before the County Executive or his designee. The County Executive shall set a time and place for the hearing, which shall occur within ten days of the request for the hearing, and shall so notify the Director and appellant. After the hearing, the County Executive may order the appellant to abate, correct or eliminate the health or safety menace in the same manner as the Director may require. Any person who fails, refuses or neglects to comply with any such order shall be guilty violating the provisions of this Chapter. (6 14 61, § 10; 1951 15B 20; 4 78 46; 39 88 46; 78 08 46.) Any request for a hearing as set forth herein shall be in addition to, and not in lieu of, any other hearing required under any other provision of Virginia law.

~~Section 46-1-6. Penalty.~~

~~If after receipt of the written notice or an order from the County Executive, the owner, occupant or other person responsible refuses or neglects to abate, correct or eliminate the condition as required, such individual shall, upon conviction, be guilty of a Class 2 misdemeanor as provided in Section 1-1-14 of the Fairfax County Code, with penalty as provided therein or of confinement in jail for not more than six (6) months and a fine of not more than Five Hundred Dollars (\$500.00), either or both. Further, each day any violations of this Chapter shall continue shall constitute a separate offense.~~

This amendment shall become effective upon adoption.

GIVEN under my hand this 2nd day of December, 2014.

*CATHERINE A. CHIANESE
Clerk to the Board of Supervisors*