

**VILLAGE OF PORT CHESTER
 BOARD OF TRUSTEES
 Meeting, Thursday, August 1, 2013
 PROPOSED EXECUTIVE SESSION 5:00-6:00PM
Regular Meeting: 5:00 P.M.
 VILLAGE HALL CONFERENCE ROOM
 220 Grace Church Street
 Port Chester, New York**

TIME: 5:00 P.M.

	PROPOSED MOTION FOR EXECUTIVE SESSION	ACTION
1	Consultation with Village Attorney regarding Code Enforcement legal strategy.	

TIME: 6:00 P.M.

I	WORK SESSION	ACTION
1	Regarding Local Law modifying Permit Amnesty Program to provide additional relief for one and two-family residences.	

	PROPOSED MOTION FOR EXECUTIVE SESSION	ACTION
1	Collective negotiations involving the PBA pursuant to Article 14 of the Civil Service Law.	

TIME: _____

**PROPOSED MOTION
FOR
EXECUTIVE SESSION**

WORK SESSION



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Manager

Village BOT Meeting Date: August 1st, 2013

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact		X	Public Hearing Required	x	
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
			Public Safety		
Agreement		x	Manager Priorities		
Strategic Plan Related	x		Amnesty Program		

Sponsor's Name: Christopher D. Steers, Village Manager

AN INTERIM LOCAL LAW MODIFYING THE PERMIT AMNESTY PROGRAM SO AS TO PROVIDE ADDITIONAL RELIEF FOR OWNERS OF ONE AND TWO-FAMILY RESIDENCES AND PROVIDING ADDITIONAL RELIEF TO PRE-EXISTING STRUCTURES AND PROVIDING ADDITIONAL RELIEF TO PRE-EXISTING STRUCTURES AND/OR USES EXISTING PRIOR TO 2010

Summary

Background:

Local Law No. 4 of 2012 established a Permit Amnesty Program that applies to all properties in the Village of Port Chester with the purpose of complementing and assisting in the Village's comprehensive, non-discriminatory code enforcement program. Local Law No. 1 of 2013 extended the amnesty period from December 31, 2012 to May 1, 2013. Local Law No. 10 of 2013 extended the amnesty period to October 31, 2013.

Based on now three years of experience, public input, and BOT concerns; Village staff was requested to divine a course of action that would provide relief to owners of one and two-family dwellings. Staff was further challenged to recommend a means of providing additional relief to owners of properties throughout the Village based on the apparent systemic lack of certificates of occupancy and open permits. In consultation with the Building Inspector, the Village Manager has provided the Board with a recommended course of action.

This is reflected in a proposed local law that would further modify Local Law No. 4 of 2102. As stated in the proposed law, the Board should regard the legislation as a means to more effectively address the significant issues confronting the Village in this area, retain community support on a the matter, and build on the past three years of effort to as to ensure a sustained commitment towards the goal of Village-wide code compliance.

The substance of the proposed amendments is as follows:

1. First: they allow for self certification of existing construction (for which a prior building permit was issued / open expired permit) with reasonable drawings instead of full construction documents, within certain prescribed parameters for One and Two Family residences;
2. Second: they allow for the granting of “Lawful Non-conforming “ status for uses and/or structures issued a building permit (open expired permit) prior to 1955 provided however that they are in compliance with all other aspects of the code in effect at the time;
3. Third: they allow for the granting of “Lawful Non-conforming” status for pre-existing uses and/or structures issued a building permit (open expired permit) between 1975 and 2010, that may involve the need for some dimensional and or use variance from the requirements under the applicable zoning regulation; within certain prescribed parameters including;
 - a. The building or structure must be pre-existing and have been issued a lawful building permit and/or other substantive documentation from the Village or any other bona-fide documentation as to the existence of the use and/or structure preexisting without interruption for 10 years or more prior to January 1, 2010.
 - b. Further, said documentation shall include verified tax records showing said use and/or structure pre-existing as aforesaid with proof of property tax payments made. Additional bona-fide documentation may include but not be limited to:
 - Paid Property Tax Receipts

- Leases
- Utility Bills
- Building Permits
- Other Recorded Documents

Properties and/or pre-existing uses that can exhibit the paid tax receipts and any verifiable combination of documentation as aforementioned shall be deemed eligible for such nonconforming status. Such determination shall be made by the Building Inspector.

- c. The building or structure complies with all other provisions of Chapter 345 of the Village Code and the Building Code in effect at the time of construction.

Befitting the importance of the issues presented and the lessons learned along the way, the intent to promote public transparency and a desire to facilitate an open discussion among the members of the Board in a less formal setting, a workshop has been scheduled for August 1, 2013.

The local law is provided in the format of local law form. **Brackets []** indicate language that is to be deleted from and **underlined** indicates language that is to be added to Local Law No. 4. of 2012 that established the permit amnesty program.

For the Board's convenience, attached are also copies of all three prior local laws.

Proposed Action

Attachments

Memorandum from Christopher D. Steers

Local Law

Local Law No. 4 of 2012, Local Law No. 1 of 2013 and Local Law 10 of 2013

PROPOSED

AN INTERIM LOCAL LAW MODIFYING THE PERMIT AMNESTY PROGRAM SO AS TO PROVIDE ADDITIONAL RELIEF FOR OWNERS OF ONE AND TWO-FAMILY RESIDENCES AND PROVIDING ADDITIONAL RELIEF TO PRE-EXISTING STRUCTURES AND/OR USES EXISTING PRIOR TO 2010

SECTION 1 Purpose and Intent.

Pursuant to Local Law No. 4 of 2012, the Board of Trustees (herein referred to as “Board”) adopted an interim local law establishing a permit amnesty program applicable to all properties within the Village of Port Chester (herein referred to as “Village”) under certain terms and conditions.

By Local Law No. 1 of 2013, Section 2 of Local Law No. 4 of 2012 was amended to authorize the extension of the amnesty period from December 31, 2012 to April 30, 2013. By Local Law No. 10 of 2013, Section 2 of Local Law No. 4 2012 was again amended to authorize a further extension of the amnesty period until October 31, 2013 so as to provide more opportunity for individuals to learn about and participate in the program. All other sections of Local Law No. 4 remained intact.

Based on public input, the Board finds that consideration of modifying Local Law No. 4 of 2012 establishing the amnesty program in substantive respect is now warranted.

At the direction of the Village Mayor and Board of Trustees, staff was challenged with divining substantive relief to those affected by the apparent systemic lack of certificates of occupancy and open permits. In returning to the Board, staff has made recommendations which are the subject of this local law.

The Board is mindful of the often considerable expense that may be incurred in bringing one- and two-family dwellings, other pre-existing structures and/or uses, and any related accessory buildings or structures into code compliance. The Board finds that the owners of such premises typically lack the income stream necessary to retain the design professionals needed to prepare a permit application, and/or pursue relief through local planning or zoning processes. At the same time, however, the Board is aware of the need for the Building Inspector to have all relevant documentation for his review and determination so as not to compromise the integrity of the permitting process and compliance with the state-mandated Uniform Fire Prevention and Building Code. Moreover, the Board finds that relief may also be required to ease the burden of proof ordinarily required of owners to establish legal nonconforming use status where a proper building permit was issued for certain work to such premises and where the use has existed for many years. In accepting staff’s recommendations on this matter, the Board finds that one- and two-family residences are the only occupancy types relegated to the State Residential Code and that the additional relief for owners of these properties on a voluntary basis to be provided herein is both appropriate and desirable and is the minimum necessary to accomplish the Board’s intentions. Finally, the Board finds that

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additional relief is warranted for those structures and/or uses that are pre-existing prior to January 1, 2010. On or about this date, the Village determined to address long-standing deficiencies in Building Department personnel and processes that had heretofore not been adequately addressed. Given the benefit of the past three years of experience, the Board concludes that adoption of this local law modifying Local Law No. 4 of 2012 which established the permit amnesty program will not only enhance these difficult initial efforts, but will also serve to increase the support of the entire community for a matter that will require a significant, sustained commitment of Village resources for many years into the future.

SECTION 2. Section 3 of Local Law No 4 of 2012 and entitled "Permits" is hereby amended as follows:

A. For those applications under the Amnesty Program involving open expired permits, the Building Inspector is authorized to renew said permit(s) under the umbrella of a single new permit that will encompass any number of open expired permits. All work related to an open expired permit (s) may be closed out under a single new permit as may be practical in the judgment of the Building Inspector. Such expedited process would avoid the need for an applicant to obtain a new permit and pay the requisite fees for each expired permit.

B. Applicants are eligible to proceed on a streamlined basis for work in one- and two-family dwellings that involve "minor improvements," which is defined as work that is valued at \$10,000 or less in present construction cost or 500 square feet or less in area.

1. To be accorded the favorable treatment under this section, submissions need not be in the form of full construction documents. They may be in the form of a sealed drawing from a licensed professional. Such drawing shall, however, contain at a minimum the following information satisfactory to the Building Inspector:

(a) Dwelling without an addition

i. An outline that delineates the space(s) in question, measurements of room size, ceiling heights and adequate egress.

ii. Bedrooms shall be required to show window size.

iii. Other rooms, including bedrooms, shall be required to verify adequate light and ventilation.

iv. All spaces shall be required to show placement of required smoke and CO detectors.

(b) Dwelling with an addition

All requirements as stated above and an updated survey to show setbacks.

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(c) Decks

1. Plans must show size of deck, support system (footings, depth and adequate size, framing and structural supports), guards and railings and proper and adequate attachment to dwelling.

2. The applicant's design professional shall certify that the work in question meets the minimum Code at the time of construction and is structurally sound.

Applicants under this section are not required to secure interim inspections by the Building Inspector prior to the inspection for the certificate of occupancy; however, a final inspection for the certificate of occupancy shall be required.

SECTION 3: Section 4 of Local Law No. 4 of 2012 and entitled "Zoning" is hereby amended as follows:

[For those applications under the Permit Amnesty Program regarding open expired permits issued prior to the effective date of the 1975 Zoning Regulation that may involve the need for some dimensional variance from the requirements under the applicable zoning regulation, the Building Inspector is authorized to accept deviance from certain of the requirements as "de minimus". To qualify as eligible for this determination, the following standards must be strictly satisfied:

1. The building or structure must be preexisting and have been issued a building permit prior to the effective date of the 1975 Zoning Regulation.
2. The subject building or structure must otherwise comply with the applicable building code at the time of construction or alteration.
3. The area or dimensional requirement involves front, rear and/or side yard setbacks.
4. The set-back encroachment is ten (10) inches or less.
5. The building or structure complies with all other aspects of the Village of Port Chester planning and zoning regulations.

Such deviances may be deemed "de minimus" as prescribed above and shall not require waiver or variance from the Zoning Board of Appeals.]

A. Those applications under the Permit Amnesty Program regarding open expired permits issued prior to the effective date of the 1955 Zoning Regulation, relating to structures that pre-existed the Code change, or demonstrating the need for some dimensional and/or use variance from the requirements under the applicable zoning regulation are hereby deemed to be lawfully nonconforming. To qualify as eligible for this determination, the following standards must be strictly satisfied:

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1. The building or structure must be pre-existing and have been issued a lawful building permit prior to the effective date of the 1955 Zoning Regulation and any subsequent amendments prior to the effective date of the 1975 Zoning Regulation.

2. The building or structure complies with all other aspects of the Village of Port Chester planning and zoning regulations and the Building Code in effect at the time of construction.

Such buildings or structures are deemed “lawfully nonconforming” as prescribed above and shall not require waiver or variance from the Zoning Board of Appeals.

C. Those applications under the Permit Amnesty Program regarding open expired permits issued after the effective date of the 1975 Zoning Regulation and any, subsequent amendments relating to structures and/or uses that were preexisting prior to January 1, 2010, that may involve the need for some dimensional and or use variance from the requirements under the applicable zoning regulation; are hereby deemed to be lawfully nonconforming. To qualify as eligible for this determination, the following standards must be strictly satisfied:

1. The building or structure must be pre-existing and have been issued a lawful building permit and/or other substantive documentation from the Village or any other bona-fide documentation as to the existence of the use and/or structure preexisting without interruption for 10 years or more prior to January 1, 2010.
2. Further, said documentation shall include verified tax records showing said use and/or structure pre-existing as aforesaid with proof of property tax payments made. Additional bona-fide documentation may include but not be limited to:
 - Paid Property Tax Receipts
 - Leases
 - Utility Bills
 - Building Permits
 - Other Recorded Documents

Properties and/or pre-existing uses that can exhibit the paid tax receipts and any verifiable combination of documentation as aforementioned shall be deemed eligible for such nonconforming status. Such determination shall be made by the Building Inspector.

3. The building or structure complies with all other provisions of Chapter 345 of the Village Code and the Building Code in effect at the time of construction.

Such structures are deemed “lawfully non-conforming” as prescribed above and shall not require waiver or variance from the Zoning Board of Appeals.

PROPOSED

SECTION 4: Supersession

This local law shall supersede any inconsistent or otherwise applicable provisions of the Village Code and/or local law.

SECTION 5: Validity and severability.

Should any section of or provision of this local law be decided by a court of competent jurisdiction be held unconstitutional or otherwise invalid, such decision shall not affect the validity of the local law not in whole or in part so decided to be unconstitutional or otherwise invalid.

SECTION 6: Effective Date.

This local law shall be effective upon due publication and filing with the Secretary of State.

**AN INTERIM LOCAL LAW AMENDING THE CODE
OF THE VILLAGE OF PORT CHESTER ESTABLISHING
A PERMIT AMNESTY PROGRAM**

SECTION 1: Purpose and Intent.

The Board of Trustees has made code enforcement its first policy priority and has taken the initiative by supporting the development and implementation of a comprehensive, non-discriminatory code enforcement program.

The Board has knowledge that work has been done without a building permit, or work that was done with a permit was not properly closed out with the requisite inspection and certificate of occupancy. Such requirements are not new, and have been in effect since the adoption of the initial Village's Zoning Regulation in 1927.

The Board finds that the current situation with regard to such permits and certificates is not only long-standing, but pervasive throughout the entire village and poses a real and present danger to the safety of all residents. The Board has been advised that such situations often include zoning issues involving area and dimensional requirements. The Board finds that existing legal administrative structures in the Zoning Board of Appeals do provide relief, but that there is a need to address deviances that are deemed de minimus, or so minor as to have no appreciable impact on the neighborhood or surrounding properties.

There is currently an active and effective code enforcement program that may otherwise subject property owners to substantial fines who have failed to obtain permits, failed to close out permits, and/or have failed to obtain the required certificate of occupancy. The Building and Code Enforcement Departments have proactively engaged property owners to resolve permit and certificate of occupancy issues on a case-by-case basis. However, the Board finds and declares that an amnesty program herein would provide the necessary legislative sanction to such efforts and ultimately significantly encourage voluntary code compliance.

SECTION 2: Permit Amnesty Program.

- A. There is hereby established a Permit Amnesty Program that shall apply to all properties within the Village of Port Chester. Such program shall include all permitted work without certificates of occupancy, unpermitted past work, and unpermitted work in progress at the time of the adoption of this local law.
- B. The application period for the Permit Amnesty Program shall commence on October 1st, 2012 and end on December 31st, 2012. This shall be known as the Amnesty Period. To be deemed complete all applications shall be accompanied by an application for a "Certificate of Occupancy, Open Permits, Stop Order, Open Violations Verification Request", and an application for a "Zoning Verification Request"; which will thereby provide the initial basis for related permitting, building inspections, fire inspections, and/or applications to any Boards or Commissions.

- C. The Village of Port Chester Building Department shall accept complete applications on the forms designed for such purpose under the Amnesty Program during the Amnesty Period. No applications shall be accepted for amnesty after the end of the Amnesty Period. Applicants with accepted complete applications shall be vested in the Amnesty Program and deemed eligible for same.
- D. Within 18 months after the completion of any such searches and the date of an Amnesty Consultation with the Building Department the applicant shall complete all requirements as may be necessary for and to obtain any required certificate of occupancy. The Building Inspector, upon showing of just cause, may extend this deadline by not more than six (6) additional months. This shall be known as the compliance period.
- E. Failure of the applicant to cooperate and comply with the lawful directives of the Building Inspector in conjunction with the Permit Amnesty Program shall be cause for loss of their eligibility there under.
- F. The Village Manager or his designee may adopt rules of procedure, consistent with this regulation, for the purpose of assuring efficient and uniform administration of its provisions.

SECTION 3: Permits

For those applications under the Amnesty Program involving open expired permits, the Building Inspector is authorized to renew said permit(s) under the umbrella of a single new permit that will encompass any number of open expired permits. All work related to those open expired permit(s) may be closed out under a single new permit as may be practical in the judgment of the Building Inspector. Such expedited process would avoid the need for an applicant to obtain a new permit and pay the requisite fees for each expired permit.

SECTION 4: Zoning

For those applications under the Permit Amnesty Program regarding open expired permits issued prior to the effective date of the 1975 Zoning Regulation that may involve the need for some dimensional variance from the requirements under the applicable zoning regulation, the Building Inspector is authorized to accept deviance from certain of the requirements as "de minimis". To qualify as eligible for this determination, the following standards must be strictly satisfied:

1. The building or structure must be pre-existing and have been issued a building permit prior to the effective date of the 1975 Zoning Regulation.
2. The subject building or structure must otherwise comply with the applicable building code at the time of construction or alteration.
3. The area or dimensional requirement involves front, rear, and/or side yard setback(s).
4. The set-back encroachment is ten (10) inches or less.

5. The building or structure complies with all other aspects of the Village of Port Chester planning and zoning regulations.

Such deviances may be deemed “de minimis” as prescribed above and shall not require waiver or variance from the Zoning Board of Appeals.

SECTION 5: Fees.

Notwithstanding the fees established in Chapter 175 Fees of the Village Code, the following shall apply during the Amnesty Period:

- A. All administrative fees for construction activities without a building permit (i.e. fee of \$250.00 or three (3) times the permit fee) are hereby waived.
- B. For work completed prior to the effective date of the 1975 Zoning Regulation:
 1. Building permit fees shall be reduced by fifty percent (50%). Zoning application fees shall be waived.
 2. Planning application fees may be waived or reduced by fifty percent (50%) depending upon the nature of the application at the discretion of the Village Manager or his designee.

This shall apply to all building, planning, and zoning applications submitted in conjunction with and under the auspices of the Permit Amnesty program within the Amnesty Period intended to correct the targeted violations.

SECTION 6: Inspections.

All premises participating in the Permit Amnesty Program shall be subject to a complete walkthrough inspection by the Building Department prior to the issuance of a certificate of occupancy.

SECTION 7: Exemptions.

The Amnesty Program is based on voluntary participation. Any and all applicants and/or their subject properties that have either been cited for such violations and are currently under enforcement action and any and all applicants and/or their subject properties that are cited and otherwise put under code enforcement action are not eligible for the Permit Amnesty Program.

SECTION 8: Other land use approvals.

Applicants under the Amnesty Program are still required to obtain any necessary approvals from the Planning Commission, Zoning Board of Appeals approval or any other board approval, except as specified in this local law. All supporting documentation and all fees associated with such land use approvals other than those waived or reduced herein, must be submitted. Although

the Board of Trustees strongly encourages that such applications be reviewed and determined in an expeditious manner, the application processes and typical procedures for all such applications shall otherwise be followed.

SECTION 9: Penalties and Notices

- A. Those applicants who properly submit complete applications within the Amnesty Period shall not be subject to enforcement action through the court system unless the apparent violations are deemed to be an immediate threat to the health safety and welfare to the Village and/or the occupants of the subject premises, or if there are additional violations not specifically addressed by the permit application. Such determination shall be made by the Building Inspector and Code Enforcement Director.
- B. Applicants that fail to obtain the required Certificate of Occupancy at the expiration of the Compliance Period shall be subject to enforcement action as may be necessary.

SECTION 10: Supereession, sunset

- A. So as to fully accomplish the intentions of the Board of Trustees, this local law supercedes any inconsistent or otherwise applicable provision of the Village Code, in particular, chapters 151, 175 and 345.
- B. This local law is in the nature of interim legislation and shall terminate by its terms.

SECTION 11: Validity and severability.

Should any section of, or provision, of this local law be decided by a court of competent jurisdiction to be held unconstitutional or otherwise invalid, such decision shall not affect the validity of the local law not in whole or in part so decided to be unconstitutional or otherwise invalid.

SECTION 12: Effective date.

This local law shall be effective upon due publication and filing with the Secretary of State.

First Extension of Amnesty Period

LOCAL LAW NO. 1 OF 2013 AN INTERIM LOCAL LAW MODIFYING THE AMNESTY PERIOD WITH REGARD TO LOCAL LAW NO. 4 OF 2012 ESTABLISHING A PERMIT AMNESTY PROGRAM

SECTION 1: Purpose and Intent.

Pursuant to Local Law No. 4 of 2012, the Board of Trustees adopted an interim local law establishing a permit amnesty program to all properties within the Village of Port Chester under certain terms and conditions. The local law provided for an application period from October 1, 2012 to December 31, 2012. The Board of Trustees finds that this period, described under the local law as the Amnesty Period, should be extended to provide more opportunity for individuals to learn and participate in the program thereby more fully satisfying the Board's intentions in establishing the amnesty program. .

SECTION 2. Section 2 of Local Law No. 4 of 2012 is hereby modified so that the application period for the Permit Amnesty Program shall be deemed to expire on May 1, 2013.

SECTION 3: Effective Date

This local law shall be effective upon due publication and filing with the Secretary of State.

Second Extension of Amnesty Period

AN INTERIM LOCAL LAW FURTHER MODIFYING THE AMNESTY PERIOD WITH REGARD TO LOCAL LAW NO. 4 OF 2012 ESTABLISHING A PERMIT AMNESTY PROGRAM

SECTION 1: Purpose and Intent.

Pursuant to Local Law No. 4 of 2012, the prior Board of Trustees adopted an interim local law establishing a permit amnesty program to all properties within the Village of Port Chester under certain terms and conditions. The local law provided for a time period to make application for such amnesty from October 1, 2012 to December 31, 2012. This time period, described under said local law as the Amnesty Period, was extended by Local Law No. 1 of 2013 to April 31, 2013 in order to provide more opportunity for individuals to learn and participate and thereby more fully satisfy the Board's intentions in establishing the amnesty program. The current Board of Trustees believes that a further extension of the amnesty period is warranted.

SECTION 2. Section 2 of Local Law No. 4 of 2012 is hereby modified so that the amnesty period for the Permit Amnesty Program shall be deemed to expire on October 31, 2013.

SECTION 3: Effective Date

This local law shall be effective upon due publication and filing with the Secretary of State.

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF PORT CHESTER, NEW YORK
NEIL PAGANO, Mayor
JANUSZ R. RICHARDS, Village Clerk

Adopted: April 29, 2013

**PROPOSED MOTION
FOR
EXECUTIVE SESSION**