

Ordinance No.: 4-16-1  
Introduced: April 21, 2016  
Adopted: June 16, 2016  
Effective Date: July 6, 2016

## **THE VILLAGE OF MARTIN'S ADDITIONS**

**SUBJECT:** AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO REVISE THE DEFINITION OF NON-VEGETATIVE SURFACE TO INCLUDE GRAVEL SURFACES; REQUIRE THE ETHICS COMMITTEE TO REVIEW COMPLAINTS WITH COUNSEL; CLARIFY WHEN A STOP WORK ORDER WILL BE LIFTED; CLARIFY HOW THE ESTABLISHED BUILDING LINE FRONT SETBACK AND ESTABLISHED BUILDING HEIGHT RESTRICTIONS ARE CALCULATED; CLARIFY THAT SEPARATE VIOLATIONS OF CODE PROVISIONS SHALL BE SEPARATE INFRACTIONS; TO DECLARE A SECOND VIOLATION OF THE CODE TO BE PUNISHABLE BY A \$250 FINE; TO AMEND AND REORGANIZE PENALTY PROVISIONS; CLARIFY THE DEFINITION OF "BUILDING;" AND CLARIFY OTHER EXISTING PROVISIONS

WHEREAS, Local Government Article, Section 5-202 of the Maryland Code grants to the legislative body of every incorporated municipality in Maryland, including the Village of Martin's Additions, general power to pass such ordinances not contrary to the Constitution of Maryland, or public general law, as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, Maryland Code, Local Government Article, Section 5-211 authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings to be erected within the limits of the municipality, including a building code and the requirement for building permits;

WHEREAS, Maryland Code, Land Use Article, Section 20-509 grants to the legislative body of incorporated municipalities in the Maryland-Washington Regional District general power to adopt building regulations for the protection of the public health, safety, and welfare; the preservation, improvement, and protection of lands, water, and improvements in the municipal corporation; and to regulate the construction, repair, or remodeling of buildings on land zoned for single-family residential uses at it relates to fences, walls, hedges, and similar barriers; signs; residential parking; residential storage; the location of structures, including setback requirements; the dimensions of structures, including height, bulk, massing, and design; and lot coverage, including impervious surfaces;

WHEREAS, Section 501 of the Charter of the Village of Martin's Additions authorizes the Village Council to pass such ordinances as it may deem necessary for the preservation of the property, rights, and privileges of the Village and its residents;

WHEREAS, the Village Council introduced the following Ordinance at a public meeting held on April 21, 2016;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the 23 day of 25<sup>th</sup> day of April, 2016, a copy of following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council did not submit any comments;

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Village Council considered the following Ordinance in public session assembled on the 19<sup>th</sup> day of May, 2016 and the 16<sup>th</sup> day of June, 2016;

WHEREAS, the Village Building Permit Administrator has made certain recommendations to the Village Council for amendment of the Village building regulations concerning the application of the established building line front setback, the permissible encroachment of porches, and the lifting of a stop work order;

WHEREAS, the Village Council asked the Village Ethics Committee to make a recommendation concerning whether complaints submitted to the Committee should be reviewed by the Committee in consultation with counsel and who should appoint special counsel if the Village Attorney cannot provide the consultation;

WHEREAS, the Village Ethics Committee has found such consultation advisable and has recommended that, if the Village attorney cannot perform this function, presumably because of a conflict of interest, the special counsel should be appointed by the Village Council, or, if necessary, by the Ethics Committee;

WHEREAS, the Village Council finds that the foregoing Ordinance would assure the good government of the municipality, protect and preserve the municipality's rights, property, and privileges, preserve peace and good order, secure persons and property from danger and destruction, and protect the health, comfort and convenience of the citizens of the Village of Martin's Additions, and is necessary for the preservation of the property, rights, and privileges of the Village and its residents.

NOW, THEREFORE, the Village Council does hereby adopt the following Ordinance.

BE IT ORDAINED AND ORDERED, this 16<sup>th</sup> day of June, 2016, by the Village Council, acting under and by virtue of the authority given it by the Maryland Code and the Charter of the Village of Martin's Additions, that the Village Code is hereby amended as follows:

**Section 3-103. Continuing Violations**

Any person who violates any provision of this Code or directs or allows another to commit an act that violates this Code, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Code on his or her property, shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in this Code. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each day a violation of this Code continues shall constitute a separate infraction. Each separate violation of a provision of this Code shall constitute a separate or repeat offense or infraction. Each day a violation of this Code continues shall, unless otherwise provided, constitute a separate or repeat offense or infraction.

(Ord. No. 4-16-1; effective 7/6/16).

**Section 3-104. Additional Remedies**

- (a) In addition to any other remedies provided for in this Code, where there is a violation of any provision of this Code, any court of competent jurisdiction may authorize a designee of the Village to enter onto the subject property and cause the violation to be corrected in accord with the court's order and to charge the costs and expenses, including legal expenses, thereof to the property owner, the occupant, or both, responsible for the violation. Such costs and expenses may be collected by way of any appropriate legal proceeding.
- (b) In addition to any other remedies provided in this Code, the Village may institute injunctive or other appropriate action or proceedings to correct any violation of this Code, and any court of competent jurisdiction may issue such injunctions, restraining orders or other appropriate forms of relief.
- (c) Judicial proceedings pursuant to this Chapter shall not be initiated by the Village without the affirmative vote of a minimum of three (3) members of the Village Council.
- (d) In addition to any other remedies provided in this Code, the Village may by contract or otherwise abate a violation that is not abated after ten (10) days' notice of the violation, or such other period as the Council may specify. The cost of any abatement by the Village shall be paid immediately by such person or persons upon demand of the Council, in addition to any penalties that may be imposed. The Village may collect the cost: (1) as a lien on the property tax bill; (2) in an action at law; or (3) in any other way legally available for collection of debts owed to the Village.

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1; effective 7/6/16).

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**Section 3-201. Declaration of Municipal Infractions and Misdemeanors; ~~Civil Penalties;~~**  
**Abatement by the Village**

~~(a) The Village Council, by ordinance, shall determine which violations of this Code shall constitute municipal infractions and may set a specific civil penalty for each such violation. Unless otherwise specified in the Code, civil penalties shall not exceed one hundred dollars (\$100) for each violation. Notwithstanding the declaration of a violation of this Code as a misdemeanor, any violation of any provision of the Code may be prosecuted as a municipal infraction, at the Village's discretion, and, except as otherwise specified in this Code, such violations shall be punishable by a civil penalty not to exceed one hundred dollars (\$100) for each violation and two hundred fifty dollars (\$250) for any subsequent violation.~~

~~(b) The Council may by contract or otherwise abate a violation that is not abated after ten (10) days' notice of the violation, or such other period as the Council may specify. The cost of any abatement by the Council shall be paid immediately by such person or persons upon demand of the Council, in addition to any penalties that may be imposed. The Village may collect the cost: (1) as a lien on the property tax bill; (2) in an action at law; or (3) in any other way legally available for collection of debts owed to the Village.~~

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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**Section 3-301. General Municipal Penalties**

Unless otherwise specified in this Code, any person found guilty of violating any provision of this Code for which violation is a misdemeanor shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00), and/or imprisonment of not more than six (6) months, for each violation. Notwithstanding the declaration of a violation of this Code as a misdemeanor, any violation of any provision of the Code may be prosecuted as a municipal infraction, at the Village's discretion, and, except as otherwise specified in this Code, such violations shall be punishable by a civil penalty not to exceed one hundred dollars (\$100) for each violation and two hundred fifty dollars (\$250) for any subsequent violation.

(Ord. No. 4-16-1, effective 7/6/16).

**Section 3-302. General Municipal Infraction Penalties**

Unless otherwise specified in the Code, the general penalty for commission of a municipal infraction shall be One Hundred Dollars (\$100.00) for each violation and two hundred fifty dollars (\$250) for any subsequent violation.

(Ord. No. 4-16-1, effective 7/6/16).

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**Section 4-202. Disqualification Procedures; Complaints; Records**

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- (b) Any person alleging a violation of this Chapter may file a written complaint, under oath, with the Committee. Upon the receipt of such complaint, the Committee shall send a written acknowledgement of its receipt, notify the Official and the Council of the allegation, and review the complaint with the Village attorney. If the Village attorney recommends that special counsel be appointed, special counsel shall be selected by the Committee and appointed by the Council. If, upon consultation with the Village attorney or special counsel, the Committee determines that the complaint should be addressed by the Committee, the Committee shall request that the Official provide the Committee such information as the Committee finds necessary to determine the presence or absence of a conflict of interest. A written complaint shall not require a formal hearing; such complaints shall be processed under the procedures described in subsections (c), (d), (e), and (f) of this Section. Upon final resolution of the matters alleged, the Committee shall provide a written summary of the resolution to the Official, the Council and the person who filed the complaint.

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(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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**Section 6-101. Definitions**

\* \* \*

- (n) “Non-vegetative surface” means any surface that is not vegetative, including, but not limited to, asphalt, concrete, stone, gravel, sandstone pavers, and the like.

\* \* \*

(Ord. No. 5-13-1, adopted 9/9/13, effective 10/10/13; Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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**Section 6-303. Applications; Investigations and Inspection; Issuance**

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- (c) Written notification of any application for a building permit ~~shall~~will promptly be ~~hand~~-delivered by the Village to all properties in the Village that border or directly face the property with respect to which the permit is sought. The notice shall include, at a minimum, a description of the proposed activity; the identity, address and phone number of the Code Enforcement Officer; and a statement that the full application is available for review through the Code Enforcement Officer. All applications for building permits and decisions thereon by the Code Enforcement Officer and the

Council shall be published in the next edition of the Village’s newsletter, except that application received and decisions made less than five (5) days prior to issuance may be published in the following issue. Decisions by the Council on applications for permits shall be communicated to the applicant in writing.

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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**Section 6-308. Enforcement**

- (a) It shall be unlawful for any person to conduct work without a building permit issued by the Village for which a permit is required. It shall be unlawful for any person to conduct work that is not in strict compliance with the plans and specifications approved by the Village and/or the building permit conditions. Any person who commences any addition, erection, alteration, construction, re-construction, repair or improvement in violation of this Article may be enjoined from proceeding.
- (b) In addition to the other provisions set forth in this Article:
  - (i) When the Code Enforcement Officer determines that work on any structure is being performed in violation of the provisions of this Article, including those conditions upon which the building permit was issued, or in a manner which threatens the safety, health, comfort and welfare of the public, he may order that the work be stopped immediately.
  - (ii) The stop work order shall be issued in writing and posted at the work site. A stop work order does not extend the permit expiration date.
  - (iii) It shall be unlawful for any person to continue or permit the continuance of work in or about a structure after a stop work order has been posted on the structure, except such work as is directed in the order to be performed to remove a violation or unsafe condition.
  - (iv) Any bond or deposit held by the Village may be withheld until such time as the stop work order is lifted and all permit conditions are satisfied.
  - (v) A stop work order will be lifted by the Code Enforcement Officer only once the violation is removed, abated, or otherwise satisfactorily addressed as determined by the Code Enforcement Officer.
- (c) The Council may revoke a permit or approval issued under the provisions of this Article when the application or the plans on which the permit or approval was based contain a false statement or misrepresentation of fact or when any deviation from the approved plans or any violation of the conditions upon which such permit was issued occurs.

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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**Section 6-311. Work Hours and Noise Control.**

- (a) No construction activities shall commence prior to 7:00 a.m. on Monday through Friday, and 9:00 a.m. on Saturdays, Sundays, and all federal holidays. Construction activities shall end no later than 9:00 p.m. on Monday through Thursday, and 7:00 p.m. on Friday through Sunday, and all federal holidays.
- (b) As used herein, “construction activities” means temporary activities directly associated with site preparation, assembly, erection, repair, alteration, renovation, construction, or demolition of improvements, or other activities, including but not limited to, moving heavy equipment onto or off the site, delivering materials, loading or unloading, operating equipment with audible “back-up” warning devices, allowing engines to idle, and any other indoor or outdoor activities which could reasonably be expected to be disturbing to persons beyond the boundary line of the property on which the construction activity is taking place.

~~(c) — The municipal infraction fine for violation of this Section 6-311 is \$100 for the first violation and \$250 for subsequent violations. Any person who violates this Section 6-311 or directs or allows another to commit an act that violates this Section 6-311, the person’s employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Section 6-311 on his or her property, shall be guilty of a violation and shall be jointly and severally subject to the penalties provided herein. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.~~

(Ord. No. 4-16-1, effective 7/6/16).

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**Section 7-101. Definitions**

For the purposes of this Chapter,

\* \* \*

- (b) “Building” means a structure on a lot which has one or more stories and a roof and is designed primarily for the shelter, support or enclosure of persons or property of any kind. “Building” includes above-grade projections and appurtenances, including, but not limited to, porches, decks, breezeways, steps, stoops, exterior stairways, bay windows, oriel entrances, balconies, vestibules, air conditioners, heat pumps, and generators. “Building” excludes projections and appurtenances that are constructed at or below grade, such as a stairwell or patio.

\* \* \*

- (m) “Established building height” means a height building line, which is the average height of all buildings that are:
  - a. within 300 feet of each side property line of the proposed construction site;

- b. along the same side of the street;
- c. between intersecting streets or to the point where public thoroughfare is denied;
- d. existing at the time the building permit application is filed;
- e. ~~not non~~conforming to the maximum building height restriction, not unlawfully constructed, ~~or~~and not constructed pursuant to a lawfully granted variance; or
- f. not located on a pipestem or flag-shaped lot.

Corner lots are subject to the established building height of both of the streets.

(n) “Established building line,” means the average front line of all buildings that are:

- a. within 300 feet of each side property line of the proposed construction site;
- b. on the same side of the street;
- c. between ~~intersecting~~ streets that intersect the block or to the point where public thoroughfare is denied;
- d. existing at the time the building permit application is filed;
- e. ~~not non~~conforming to the required front setback, not unlawfully constructed, ~~or~~and not constructed pursuant to a lawfully granted variance;
- f. not located on a pipestem or flag-shaped lot; and
- g. not on the subject lot or a corner lot.

Corner lots are subject to established building line standards on both of the adjoining streets.

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(~~h~~hi) “Non-vegetative surface” means any surface that is not vegetative, including, but not limited to, asphalt, concrete, stone, gravel, sandstone pavers, and the like.

\* \* \*

(Ord. No. 4-09-2, adopted 5/27/09, effective 6/16/09; Ord. No. 12-09-1, adopted 1/21/10, effective 2/10/10; Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

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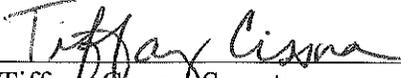
AND BE IT FURTHER ORDAINED AND ORDERED, by the Village Council, acting under and by virtue of the authority granted to it by the Maryland Code, and the Charter of the Village of the Village of Martin's Additions, that:

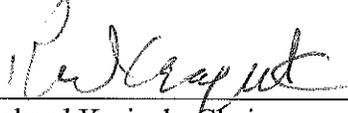
(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the 6<sup>th</sup> day of July, 2016.

ATTEST:

THE VILLAGE OF MARTIN'S ADDITIONS

  
\_\_\_\_\_  
Tiffany Cissna, Secretary

  
\_\_\_\_\_  
Richard Krajeck, Chair  
Village Council

Underline indicates new material  
~~Strikethrough~~ indicates material deleted  
\* \* \* indicates material unchanged