

## **Town of Wilmington – Vacant Building Ordinance**

### **A. Statement of purpose:**

The purpose of this ordinance is to prevent dangers to public health and safety caused by unsecured vacant buildings in the Town of Wilmington. This Ordinance applies to buildings and properties located within the Historic and Design Review Districts of Wilmington. See Zoning Ordinance, Article V.

### **B. Statutory authority:**

- (1) By authority of 24 V.S.A. Ch. 59 (§§ 1971, et seq.), municipalities are authorized to adopt and enforce municipal ordinances and rules.
- (2) By authority of 24 V.S.A. § 2121, municipalities are authorized to seek injunctions in the event of a public nuisance.
- (3) By authority of 24 V.S.A. § 2291(13), municipalities may compel the cleaning or repair of any premises that in the judgment of the Selectboard are dangerous to the health or safety of the public.
- (4) By authority of 24 V.S.A. § 2291(14), municipalities may adopt ordinances to provide procedures for abatement of public nuisances for public health, safety, and/or welfare.
- (5) By authority of 24 V.S.A. § 2291(15), municipalities may provide penalties for violation of any ordinance adopted under the aforementioned authority.

### **C. Statement of findings and purpose:**

- (1) Structures that are vacant and unsecured attract vagrants and criminals and are prime locations to conduct illegal criminal activities, including, but not limited to, arson and drug use.
- (2) Structures that are vacant and unsecured pose serious threats to the public's health and safety, as well as that of adjoining property owners, and therefore are declared to be public nuisances.
- (3) The purpose of this ordinance is to establish the reasonably necessary measures to abate the public nuisance, health and safety hazard caused by unsecured vacant buildings and structures.

### **D. Definitions:**

The words and phrases used in this section have the following meanings unless their context clearly indicates otherwise:

- (1) "Health Officer" - The Town Health Officer shall be the officer appointed by the Town of Wilmington Select Board to enforce this Ordinance. In this capacity the Town Health Officer shall be acting as a Vacant Building Administrative Officer.
- (2) "Dangerous Building or Structure" – A building or structure or part thereof declared by any duly constituted authority, to be structurally unsafe or hazardous, whether it is occupied, unoccupied, or vacant.
- (3) "Vacant Structure" - Any structure or building that is unoccupied by a person or occupied by unauthorized persons for 90 days, excepting permitted warehouse or permitted storage structures, garages, vacation or resort facilities or those buildings or structures only used on a seasonal basis, and those structures being newly constructed within the terms of their building and zoning permits or under substantial rehabilitation for a period of 1 year from the date that the building permit or zoning permit is issued— whichever is later.
- (4) "Unsecured Structure" – Any structure or building to which an unauthorized person may easily gain access to the interior of the building through an opening of any kind.
- (5) "Owner" - Any and all owners of record. The obligations of owners under this article extend to the agents of such owner(s) or other persons interested in the building or structure.

#### **E. Vacant Building Permit**

(1) Application by the owner of a vacant building or structure for a vacant building permit shall be made on a form provided by the Health Officer. Applicants shall provide a maintenance plan covering the permit period which shall disclose all measures to be taken to ensure that the building or structure will be kept weather-tight and secure from trespassers, safe for entry by police officers and firefighters in times of exigent circumstances or emergency, compliant with the obligations set forth below and together with its premises be free from nuisance and in good order in conformance with the vacant building maintenance standards. Applicants shall disclose the expected period of vacancy (including the date of vacancy) and state the plan and timeline for the lawful occupancy, and rehabilitation, removal, or demolition of the structure.

(2) Vacant buildings shall be inspected at or around the beginning of the permit period to determine that they comply with this ordinance. The owner shall cooperate with and attend the inspection. If the Health Officer has reason to believe that an emergency situation exists tending to create an immediate danger to the health, welfare, or safety of the general public, no notification or warrant is necessary and the Health Officer shall enter and inspect the premises.

If the owner of the vacant building or structure does not cooperate with and or attend an inspection, the Health Officer may seek a search warrant from the Vermont Superior

Court for the purpose of determining compliance with this ordinance.

(3) The Health Officer, upon inspection, shall issue any order for work needed to:

(a) Comply with this Ordinance and adequately protect the building from intrusion by trespassers and from deterioration by the weather in accordance with the vacant building maintenance standards set forth in this ordinance; and

(b) Ensure that allowing the building to remain will not be detrimental to the public health, safety and welfare; will not unreasonably interfere with the reasonable and lawful use and enjoyment of other premises within the neighborhood; and will not pose an extraordinary hazard to police officers or firefighters entering the premises in times of emergency.

When issuing such orders, the Health Officer shall specify the time for completion of the work. The order shall act as an interim vacant building permit, the duration of which shall be for the time set forth in the Health Officer's order. No interim permit shall be effective for a period of more than 3 months. All work done pursuant to this Ordinance shall be done in compliance with the applicable building, fire prevention, and zoning codes and ordinances.

(4) The Health Officer shall issue a vacant building permit upon being satisfied that the building has been inspected and is in compliance with this article. This permit shall be effective for a period of up to 3 months.

(5) A vacant building or structure shall be deemed adequately protected from intrusion by trespassers and from deterioration by the weather if it satisfies the following vacant building maintenance standards:

(a) Building openings: Doors, windows, areaways and other openings shall be weather-tight and secured against entry by birds, vermin, and trespassers, and free from graffiti. Missing or broken doors, windows and other such openings shall be covered by glass or other rigid transparent materials which are weather protected, and tightly fitted and secured to the opening.

(b) Roofs: The roof and flashings shall be sound and tight, not admit moisture or have defects which might admit moisture, rain or roof drainage, and allow for drainage to prevent dampness or deterioration in the interior walls or interior of the building.

(c) Drainage: The building storm drainage system shall be functional and installed in an approved manner, allowing discharge in an approved manner.

(d) Building structure: The building shall be maintained in good repair, structurally sound and free from debris, rubbish, and garbage. The building shall be sanitary. The building shall not pose a threat to the public health and safety.

(e) Structural members: The structural members shall be free of deterioration and capable of safely bearing imposed dead and live loads.

(f) Foundation walls: The foundation walls shall be maintained structurally sound and in a sanitary condition so as not to pose a threat to public health and safety, shall be capable of supporting the load which normal use may cause to be placed thereon, and shall be free from open cracks and breaks, free from leaks, free from graffiti, and be animal and rat-proof.

(g) Exterior walls: The exterior walls shall be free of holes, breaks, free from graffiti, and loose or rotting materials. Exposed metal, wood, or other surfaces shall be protected from the elements and against decay, corrosion, or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

(h) Decorative features: The cornices, belt courses, corbels, terra cotta trim, fences, wall facings and similar decorative features shall be safe, anchored, and in good repair and free from graffiti. Exposed metal, wood, or other surfaces shall be protected from the elements and against decay, corrosion, or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

(i) Overhanging extensions: All balconies, canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts, and similar features shall be in good repair, anchored, safe and sound, and free from graffiti. Exposed metal and wood surfaces shall be protected from the elements and against decay, corrosion, or rust by periodic application of weather-coating materials, such as paint or similar surface treatment

(j) Chimneys and towers: Chimneys, cooling towers, smokestacks, and similar appurtenances shall be structurally safe and in good repair, and free from graffiti. Exposed metal and wood surfaces shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment

(k) Walkways: Walkways shall be safe for pedestrian travel.

(l) Accessory and appurtenant structures: Accessory and appurtenant structures such as garages, sheds, and fences shall be free from safety, health, and fire hazards and shall comply with these vacant building maintenance standards.

(m) Premises: The premises upon which the structure or building is located shall be clean, safe, and sanitary, free from waste, rubbish, debris or excessive vegetation, and shall not pose a threat to the public health or safety.

(6) (a) A fee of five hundred dollars (\$500.00) shall be charged for a vacant building permit or renewal of such permits. The fee is to be paid at the time of application or renewal. No permit shall be issued prior to payment of the permit or renewal fee.

(b) All but \$75.00 of this fee shall be waived upon a showing that the building or structure is being actively marketed for sale or lease and maintained pursuant to the requirements of this article and its vacant building permit or renewal thereof. An owner

shall be eligible for the waiver of the fee for no more than 8 permit periods, not including any interim permit period that occurs within a permit period. The full fee shall be tendered with the request for a waiver and shall be refunded if the waiver is granted but for the \$75.00. A person who purchases a vacant building shall have this fee waived for the remainder of the permit period and the permit period immediately following.

(c) All but \$75.00 of this fee shall be waived when a building is being rehabilitated pursuant to applicable building, fire, and zoning permits and the owner has spent at least 5% of the assessed valuation of the building or structure on rehabilitation, not including the cost of permits, in the prior 3-month period. The full fee shall be tendered with the request for a waiver and shall be refunded if the waiver is granted but for the \$75.00.

(d) All but \$75.00 of this fee shall be waived if an owner has secured all the duly required state and local permits to demolish the building or structure. The full fee shall be tendered with the request for a waiver and shall be refunded if the waiver is granted but for the \$75.00. The owner shall demolish the building or structure within 3 months of securing said permits; this waiver shall be void and the vacant building permit fee shall be owed if the owner fails to demolish within this time. The time to demolish may be extended upon a showing of good cause.

## **F. Building Inspection**

Upon receiving information that any building, structure or property, or anything attached or connected therewith is in violation of the specifications of this Ordinance or is otherwise in such unsafe condition that the public safety is endangered, the Health Officer shall cause the building, structure, or property to be inspected. Such inspection shall occur according to the following process:

(1) Written notice of intent to conduct an inspection pursuant to this Ordinance shall be given to the owner of the building, structure, or property at least forty-eight (48) hours prior to the inspection.

(2) If the Health Officer has reason to believe that an emergency situation exists which poses an immediate danger to the health or safety of the public, no notification shall be necessary prior to inspection.

(3) If the owner of a building, structure or property fails or refuses to consent to the inspection, the Health Officer shall be authorized to obtain a search warrant from the Vermont Superior Court for the purpose of determining and ensuring the structural integrity of the building, the repairs necessary to ensure its structural integrity, that it will be safe for entry by police officers and firefighters in times of exigent circumstances or emergency, and that the building and its contents will not present a hazard to the public.

(4) The Health Officer may also view the premises from any public space, or, with the permission of the property owner, from any nearby or adjacent property.

(5) The Health Officer may retain such law enforcement officers, fire officials, engineers, attorneys, and other qualified experts as necessary to assist with a building safety inspection and the preparation of a Safety Order.

### **G. Safety Order**

(1) If, upon inspection, the Health Officer determines that a building, structure or anything attached or connected therewith, or any hazardous condition appears to endanger the public safety, the Health Officer shall commence an abatement action by issuing a Safety Order. The Safety Order shall:

(a) Identify the hazardous conditions that cause the premises, building, structure or anything attached or connected thereto to be dangerous.

(b) Identify the actions that must be taken by the owner to secure the Dangerous Building or Premises and abate the hazardous conditions identified in the order, including, where appropriate, removal of a Dangerous Building.

(c) Set a date by which the actions to secure a Dangerous Building or Structure and abate the hazardous conditions must be completed by the owner, which shall be not less than fifteen (15) days from the date of service of the Safety Order.

(d) Inform the Owner of his/her right to appeal the Safety Order to the Selectboard and the right to be represented by legal counsel at the appeal hearing.

(2) The Safety Order shall be served upon the owner of the Dangerous Building or Premises by certified mail, return receipt requested, and by first class mail. A copy of the Safety Order shall be provided to the Town Selectboard.

(3) If it appears to the Health Officer that such structure or premises would be especially dangerous, the officer may affix a notice of dangerousness in a conspicuous place upon the structure's exterior walls or may affix a posted notice in the ground which shall not be removed or defaced without the officer's authority.

(4) If the owner continues such refusal or neglects to remove or make the building or premises safe, and the Order has become final by the failure to appeal, the Health Officer shall be fully authorized to abate the nuisance, except where removal or demolition of a building is required. The Health Officer may, as necessary, install boards or otherwise secure a dangerous building or order that a building be vacated by any occupants and removed.

(5) For removal or demolition, the Health Officer, or other appropriate Town officer, may seek approval from the appropriate Court for a remedy in equity to remove or demolish a dangerous building, or to order such steps as may be necessary to abate any hazardous condition. The Health Officer may also seek the imposition of fines in accord with Section I of this Ordinance.

(6) The Health Officer may contract with such service providers or use such other Town employees as may be necessary to ensure public safety in the circumstances. The full cost of any work necessitated by a Safety Order, or in preparing a Safety Order, shall constitute a lien chargeable against the property owner and may be recovered in the same manner as taxes for real estate pursuant to 32 V.S.A. Ch. 133.

#### **H. Appeal of Safety Order**

(1) A person aggrieved by a Safety Order may appeal such Order to the Town of Wilmington Selectboard (sitting as Board of Health) within 15 days of service of the Order. The notice of appeal shall be in writing and shall set forth a brief statement of the basis of the appeal.

(1) Within 30 days of service of the notice of appeal, the Selectboard shall hold a hearing on the appeal. The Selectboard shall issue a written decision within 15 days of the close of the hearing. The decision may reverse or sustain the Safety Order and may contain such additional requirements as the Selectboard deems necessary and appropriate to implement the purpose of this Ordinance.

(2) Within 30 days of the decision of the Selectboard, a person aggrieved by the Selectboard's decision may appeal to the Vermont Superior Court.

#### **I. Enforcement authority:**

- (1) The Health Officer appointed by the Town of Wilmington Selectboard shall enforce this Ordinance. Nothing in this Ordinance shall prevent the Health Officer from performing his or her duties under other statutes, regulations or ordinances that he or she may be designated to administer and enforce. The Health Officer shall have the authority to inspect buildings, structures or any portion of a property, interior or exterior, within the territorial limits of the Historic and Design Review Districts of the Town of Wilmington. In the event the Health Officer is unavailable, or has a conflict of interest, the Town Manager or designee shall perform the functions of the Health Officer.
- (2) Nothing in this Ordinance shall affect the authority of the Town of Wilmington Health Officer or the Selectboard to take any action permitted under 18 V.S.A. §§ 126, 127 et. seq. The Health Officer and the Selectboard retain the authority, in their discretion, to take action under Vermont state law or under this Ordinance.
- (3) Upon receipt of information that a building or part thereof that is or becomes dangerous or unsafe or vacant, the Health Officer shall give 48 hours written notice to the building owner or responsible party of such information and shall require the landowner or responsible party to submit a plan of abatement or action. Said notice shall be sent to the building owner or responsible party if an

address is known and tacked to the entrance of said building to provide notice. If the building is a mobile home and the owner cannot be located, the owner of the property where the mobile home is located shall be responsible for correcting any dangerous or unsafe conditions. Upon securing the building the building owner or responsible party may request an extension of time, not to exceed one week, to submit a plan of abatement or action. The Health Officer retains all rights to reject the plan of abatement or action if, in the Health Officer's opinion, the plan of abatement or action is inadequate to abate or solve the issue. The Health Officer's decision is appealable to the Selectboard no later than 15 days following the decision. Nothing in this section limits the powers of the Health Officer as set forth in this Ordinance.

#### **J. Enforcement and Penalties:**

- (1) Beginning 15 calendar days from notification that a building or portion thereof becomes dangerous or unsafe or vacant, for every day's continuance of such refusal or neglect, the owner or person interested shall be assessed a civil penalty of fifty dollars (\$50.00), to be recovered in a civil action. If the owner shall refuse or fail to make the premises secure for an additional period of 15 calendar days, (a total of 30 calendar days from notification), the civil penalty shall increase to one hundred dollars (\$100.00) per day, and the Health Officer shall cause the vacant structure or space to be made secure at the cost of the building owner. The civil penalty shall continue each day until such time as the owner or the health officer has secured the building. Failing payment, all civil penalties and costs incurred shall constitute a lien upon the real estate upon which such building is situated and shall be enforced within the time and in the manner provided for the collection of taxes on land, pursuant to 32 V.S.A. § 5061, so long as the lien is recorded in the office where the land records are kept.
- (2) The Town may pursue any civil remedy, including requesting civil penalties or injunctive relief as set forth in 18 V.S.A. § 130.
- (3) The Town may pursue violations in the Judicial Bureau as set forth in 24 V.S.A. §§ 1974a and 1977 *et. seq.* The Health Officer shall be the designated enforcement officer. The Health Officer may issue tickets and may be the officer appearing on behalf of the Town at any hearing.

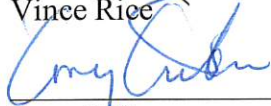


This Ordinance is hereby adopted by the Selectboard of the Town of Wilmington on this the TWENTY-FIRST day of DECEMBER, 2021 and shall, unless a petition is filed as provided by law, become effective upon sixty (60) days from this date.

**Wilmington Selectboard**

  
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Thomas Fitzgerald

  
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Vince Rice

  
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Tony Tribuno

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John Gannon

  
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Sarah Fisher