

TOWN OF MONTGOMERY, VERMONT

VACANT AND DANGEROUS BUILDINGS ORDINANCE (PROPOSED)

Revised Nov. 20, 2017; December 12, 2017

SECTION 1. PURPOSE

Being that there exists in the Town of Montgomery vacant structures or buildings that have become dangerous or unsafe, and numerous other structures that are abandoned, and in disrepair, the Town of Montgomery finds and declares that:

1. Vacant structures which are not properly secured, and which have become dangerous and unsafe, specifically vulnerable to arson or trespass for criminal purposes, are declared a public nuisance and must promptly be made safe and secure to protect the public safety.
2. Many structures which are vacant, whether secured or not, are a blight on their neighborhoods, cause deterioration and instability in their neighborhoods, and have an adverse impact upon adjacent and nearby properties, detrimentally impacting the local housing market and vitality of our neighborhoods, and therefore immediate abatement and rehabilitation of these structures is necessary
3. Communication between owners of dangerous and vacant buildings and the Town is essential for effective allocation of public resources and the maintenance of public health, welfare, and safety in regards to such structures.

Thus the purpose of this Ordinance is to define what constitutes vacant buildings, blighted premises, dangerous property, and public nuisance, and to provide procedures and take action for their abatement or removal as the public health, safety or welfare may require, consistent with the authority vested in the Town of Montgomery in 24 V.S.A. § 2291.

SECTION 2. DEFINITIONS

For purposes of this Ordinance, the following words and/or phrases shall apply:

Blighted Premises: Any vacant building or structure, except exempt property as defined below, in which at least one of the following conditions exists:

1. It is dilapidated or becoming dilapidated as documented by the Selectboard and/or assigns;
2. It is attracting illegal activity as documented by state police, sheriff's office or other law enforcement agency;
3. It is a fire hazard as determined by the Fire Marshal or as documented by the Fire Department;
4. It is determined by a town or state health officer that the condition of the building or structure poses a serious or immediate danger to the safety, health or general welfare of the community.
5. It is not being maintained. The following factors may be considered in determining whether a structure or building is not being adequately maintained: missing, broken or boarded windows or doors; collapsing or missing walls, roof, fireplaces or floors; seriously damaged or missing siding or walls; a structurally faulty foundation; garbage, trash or abandoned/unregistered cars on the premises (unless the premises is a junkyard legally licensed); overgrown grass or weeds of at least one foot in length; graffiti; and fire damage; or
6. It is a factor creating a substantial and unreasonable interference with the reasonable and lawful use and enjoyment of other space within the neighborhood as documented by neighborhood complaints, or cancellation of insurance on the subject property or on adjacent properties.

Building Safety Officer: Appointed by the Selectboard for a two-year term to enforce this Ordinance. The Building Safety officer may hold any other office in the Town of Montgomery. Nothing in this Ordinance shall prevent the Building Safety Officer from performing his duties under other regulations or ordinances that he/she may be designated to administer and enforce. The Building Safety Officer shall have the authority to inspect buildings, structures or any portion of a property within the Town of Montgomery. In the event the Building Safety Officer is unavailable, or has a conflict of interest, another officer may be designated by the Selectboard.

Dangerous Building or Dangerous Structure: Any building or structure, or part thereof, that due to (a) the lack of proper maintenance, repair or sanitation, (b) dilapidation, deterioration or decay, (c) faulty construction, (d) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building, (e) the deterioration, decay or inadequacy of its foundation, or (f) any other cause that is likely to cause the building or structure to partially or completely collapse; is hazardous to the health or safety of the public or likely to endanger other buildings or property.

Fire Hazard: Exists whenever any building or structure, because of dilapidated condition, deterioration, damage, or other cause, is determined by the Fire Marshal or Fire Chief to be a fire hazard.

Hazardous Conditions. Shall include, but not be limited to, situations where a property owner, tenant, any mortgagee in possession, or a designee of any of the foregoing allows:

1. The creation of an unsanitary condition likely to attract or harbor rodents, vermin, or disease-carrying pests;
2. The placement of appliances, cars, and other objects that might constitute an attractive nuisance to children or attract vermin; or
3. Allows a vacant property to be left in an unsecured state.

Inadequate Maintenance: Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage, faulty construction, or otherwise, is determined by any health officer to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.

Trash. Shall include rubbish, waste and refuse, including, but not limited to household wastes, household appliances, automotive parts, automobiles, and furniture, but shall not include junk at a duly licensed junkyard.

Vacant building: Any structure or building that is unoccupied by a person or occupied by unauthorized persons for one hundred and eighty (180) days, excepting permitted warehouse structures, garages, vacation or resort facilities, hunting or seasonal camps, agricultural operations, or those buildings or structures otherwise only used on a seasonal basis.

Vacant Nuisance Property: Any property that has been vacant for one hundred and eighty (180) days and has also been determined to be a Dangerous Property.

SECTION 3. AUTHORITY OF TOWN HEALTH OFFICER AND SELECTBOARD

Nothing in this Ordinance shall affect the authority of the Town of Montgomery Health Officer or Selectboard to take any action permitted under 18 V.S.A. 126, 127 et. Seq. The Health Officer and Selectboard retain the authority, in their discretion, to take action under Vermont state law or under this Ordinance.

SECTION 4. BUILDING AND PROPERTY OWNER OBLIGATIONS AND STANDARDS

Vacant building property owners shall ensure that the following measures have been undertaken to secure the building or structure by satisfying the following building maintenance standards:

1. **Building Openings.** Doors, windows and other openings shall be weather-tight and secured against entry by birds, vermin and trespassers. Missing or broken doors, windows and other such openings shall be covered by glass or other rigid materials which are weather protected, and tightly fitted and secured to the opening.
2. **Roofs.** The roof and flashings shall be sound and tight, protecting against the deterioration of the interior walls or interior of the building.
3. **Building Structure.** The building shall be maintained in good repair and be structurally sound. Structural members shall be free of deterioration and capable of safely bearing imposed dead and live loads.
4. **Foundation Walls.** 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 be free from open cracks and breaks, free from leaks, and be animal and rodent-proof.
5. **Exterior Walls.** Exterior walls shall be free of holes, breaks and loose or rotting materials.
6. **Exterior Features.** Cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be safe, anchored and in good repair.
7. **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.
8. **Exposed Metal and Wood.** All exposed metal and wood surfaces shall be protected from the elements against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
9. **Chimneys and Towers.** Chimneys, smokestacks and similar appurtenances shall be structurally safe and in good repair.
10. **Walkways.** Walkways shall be safe for pedestrian travel.
11. **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 building maintenance standards.
12. **Premises.** All properties located in the Town of Montgomery shall be kept clean, safe and sanitary, free from waste, trash, rubbish, debris, and free from any hazardous condition or threat to the public health or safety.

SECTION 5. BUILDING INSPECTION

Upon receiving a written, signed complaint 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 Building Safety 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 seventy-two (72) hours prior to the inspection.
2. If the Building Safety 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 Building Safety Officer shall be authorized to obtain a search warrant from the Vermont District 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 or its contents will not present a hazard to the public.

4. The Building Safety Officer may also view the premises from any public space, or, from any nearby or adjacent property with the permission of the owner of that nearby or adjacent property.
5. The Building Safety 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 Building Safety Order.

SECTION 6. SAFETY ORDER

If, upon inspection, the Building Safety Officer determines that a building, structure or anything attached or connected therewith, constitutes a Dangerous Structure or Building, or any Hazardous Condition appears to endanger the public safety, the Building Safety Officer shall commence an abatement action by issuing a Safety Order. The Safety Order shall:

1. Identify the hazardous conditions that cause the premises, building, structure or anything attached or connected thereto to be dangerous.
2. 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.
3. Set a date by which the actions to secure a Dangerous Building or Premises and abate the hazardous conditions must be completed by the owner, which shall be not less than thirty (30) days from the date of the service of the order.
4. Inform the owner of his/her right to appeal the Building Safety Order and the right to be represented by legal counsel at the appeal hearing.

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 order shall be provided to the Selectboard of the Town of Montgomery.

If it appears to the Building Safety 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 exterior walls, or may affix a posted notice in the ground which shall not be removed or defaced without the officer's authority.

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 Building Safety Officer shall be fully authorized to abate the nuisance, except where removal or demolition of a building is required. The Building Safety Officer may, as necessary, install boards or otherwise secure a dangerous building or order that a building be vacated by any occupants.

For removal or demolition, the Building Safety 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 Building Safety Officer may also seek the imposition of fines in accord with Section 8 of this Ordinance.

The Building Safety Officer may contract with such service providers or use such other Town employees as may be necessary to secure public safety in the circumstances. The full cost of any work necessitated by 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. 133.

SECTION 7. APPEAL OF SAFETY ORDER

A person aggrieved by a Safety Order may appeal such Order to the Selectboard of the Town of Montgomery within fifteen (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.

Within thirty (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 fifteen (15) days of the close of the hearing. The decision may reverse or sustain the Safety Order and may contain such additional requirements at the Selectboard deems necessary and appropriate to implement the purpose of this Ordinance.

SECTION 8. PENALTY AND ENFORCEMENT

If the owner fails to comply with a Safety Order, the owner shall be considered in violation of the Order and this Ordinance. The Town shall be authorized to take such steps as may be allowed under Section 6 of this Ordinance. In addition, any violation shall be a civil matter which may be enforced in the Vermont Judicial Bureau or in the Franklin County Superior Court, at the election of the Building Safety officer.

A civil penalty of not more than \$100.00 per violation may be imposed for violation of this Ordinance. Each day that the violation continues shall constitute a separate violation of this Ordinance.

Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24 V.S.A. 1974a and 1977 *et seq.* For purposes of enforcement in the Judicial Bureau, the Building Safety Officer shall be the designated enforcement officer. The Building Safety Officer shall issue tickets and may be the appearing officer at any hearing.

Violations enforced in the Superior Court shall be in accordance with the Vermont Rules of Civil Procedure. The Town of Montgomery may pursue any and all remedies available at law or in equity.

SECTION 9. VACANT BUILDING PERMIT AND STANDARDS

Application by the owner of a vacant building or structure for a Vacant Building Permit shall be made on a form provided by the Building Safety Officer. Applicants shall disclose all measures to be taken to ensure that the building will be kept weather-tight and secure from trespassers, safe for entry by police officers and firefighters in times of exigent circumstances or emergency, and together with its premises be free from nuisance and in good order in conformance with the Building Maintenance Standards outlined in Section 4 of this Ordinance.

The application shall include a "statement of intent." The statement of intent shall include but not necessarily be limited to information as to the expected period of vacancy (including the date of initial vacancy), the plan for regular maintenance during the vacancy to comply with the maintenance safety requirements of this subsection, and a plan and timeline for the lawful occupancy, rehabilitation or removal or demotion of the structure.

Upon and at the time of application, the owner of a vacant building or structure shall arrange for an inspection of the premises by the Building Safety Officer and the appropriate police and fire officials. The purpose of such inspection is to determine and ensure the structural integrity of the building, the repairs necessary to ensure its structural integrity, that it will be safety for entry by police officers and firefighters in times of exigent circumstances or emergency, that the building and its contents do not present a hazard to the public health or safety during the time that the building remains vacant, and that the building or structure is in compliances with the standards of this Ordinance.

The Building Safety Officer, upon inspection, shall issue any order for work needed to:

1. Adequately protect the building from intrusion by trespassers and from deterioration by the weather in accordance with the standards set forth in this Ordinance.

2. 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.
3. When issuing such orders, the Building Safety 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 Building Safety Officer's order. No interim permit shall be effective for a period of more than ninety (90) days. All work done pursuant to this article shall be done in compliance with the applicable building, fire prevention, and zoning statutes and ordinances.
4. The Building Safety Officer shall issue a vacant building permit upon his or her satisfaction that the building has been inspected and is in compliance with the standards set forth in this Ordinance, and is adequately protected from intrusion by trespassers and from deterioration by the weather. This permit shall be effective for a period of three hundred sixty-five (365) days.
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 building maintenance standards in Section 4 of this Ordinance.

SECTION 10. NONCOMPLIANT BUILDINGS OR PROPERTY.

Any building or property in violation of this Ordinance shall not be accepted for review by the Planning Commission or Development Review Board until the violation is rectified.

SECTION 11. REPEAL OF PRIOR CONFLICTING ORDINANCES

The enactment of this Ordinance shall repeal all other ordinances of the Town of Montgomery that regulate the topics addressed herein.

SECTION 12. SEVERABILITY

If any section of this Ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this Ordinances.

SECTION 13. EFFECTIVE DATE

This Ordinance shall become effective upon its adoption by the Selectboard of the Town of Montgomery in accordance with 24A V.S.A. 11