

## CHAPTER 33: ABANDONED AND UNSAFE BUILDINGS

### ARTICLE I: REPEAL, TITLE, PURPOSE, DEFINITIONS

- §1. The Town Board hereby repeals and replaces Chapter 33 of the Laws of the Town of Camillus, previously entitled "Unsafe Buildings".
- §2. This new Chapter shall be known as the "Abandoned and Unsafe Buildings" law.
- §3. The express purpose of this Chapter is to provide for the removal or securing and maintenance of buildings that, from any cause, may now be or shall hereafter become, dangerous or unsafe to the public.
- §4. Unless otherwise specified in section five or elsewhere within this Chapter, all terms will carry the same meanings and definitions as one would use in normal parlance.
- §5. The following terms have specific definitions as they relate to this chapter:
- A. *"Abandoned"* shall be interchangeable with *"unoccupied"* and shall mean an uninhabited building.
  - B. *"Improperly Secured"* shall mean a building which is open to the weather, or wild feral animals, or unsecured windows or doors:
  - C. *"Interested Party"* shall mean any person with a vested or contingent interest in the property, and shall include the owner, any last known occupant, lessee, mortgagor, judgment creditor, or lienholder provided that their identities and addresses are reasonably ascertainable.
  - D. *"Order"* shall mean a directive that either is a reasonably specific identification of a condition to be remedied or is a clear and unambiguous authorization of an action to remediate a dangerous or unsafe condition.
    - 1. An order shall only provide for the remediation of those unsafe or dangerous conditions present at the time of the order. Any further unsafe or dangerous conditions that arise must be subject to a new order under this Chapter.
  - E. *"Point of Entry"* shall mean any unboarded, or inadequately boarded window; any door or other entrance that does not lock, or is easily unlocked; any other opening that would provide access to the building by an animal or person.
  - F. *"Reasonably Ascertainable"* shall mean, based upon an owner and lien search in the Onondaga County Clerk's office, the identity and address of an interested party to the unoccupied property in question can be found.
  - G. *"Unoccupied"* shall mean no person is lawfully residing in the building. Vagrants shall, under no circumstances, be considered lawfully residing in a building.

## **ARTICLE II: INITIAL INSPECTION AND REPORT**

**§10.** The Town Code Enforcement Officer is hereby designated as the Enforcement Officer of this Chapter.

**§11.** When, in the opinion of the Code Enforcement Officer, or upon referral from the Town Board, any building or structure located in the town is deemed dangerous or unsafe, the Enforcement Officer shall make a formal inspection of the building or structure. During this inspection, the Enforcement Officer shall also inspect the grass, brush, rubbish, or weeds on the property to see if they comply with §74.3 of the municipal code.

**§12.**

- A. After the inspection, the Enforcement Officer shall write a report and deliver it to the Town Board. The report shall include the Enforcement Officer's findings regarding the state of the security of the premises, its structural integrity, its appearance and its condition and the course of action that the Enforcement Officer recommends.
- B. If the grass, brush, or weeds do not comply with § 74.3 of the Municipal Code, then the Enforcement Officer shall initiate the procedure for abatement of violations of the same pursuant to Chapter 74 of the Municipal Code. The notice for abatement of violations of Chapter 74 of the Municipal Code pursuant to § 74.4 shall be served upon the owner of the property in question and any interested parties as provided in an owner and lien search. In the event that the owner's and/or interested parties' identity and address cannot be reasonably ascertained, then service may be completed upon the owner by sending such notice to the owner's last known address and then posting the notice on the door of the property in question. Service may be completed on the aforementioned parties pursuant to the procedure outlined in Chapter 74 of the Municipal Code.

**§13.** The Enforcement Officer, while preparing the report, shall inform the Town Attorney of the property that is the subject of the report and the Enforcement Officer shall request that the Town Attorney perform an owner and lien search to ascertain the interested parties associated with the property in question.

## **ARTICLE III: INITIAL TOWN BOARD HEARING**

**§20.** Upon receiving a proper written report, the Town Board shall consider the report and make one of the following findings:

- A. That there are grounds to believe that the building or structure in question is dangerous or unsafe to the public, and requires action to end the danger and/or to minimize the safety risk;
- B. That there are not sufficient grounds to believe that the building or structure in question is a danger or presents a safety risk to the public; or
- C. That there are grounds to believe that the building or structure in question could be dangerous or unsafe to the public, but that it is not dangerous or unsafe at this time,

and must be revisited by the Enforcement Officer at reasonable intervals.

**§21.** If the Enforcement Officer has determined that the property in question is in violation of Chapter 74 of the Municipal Code, abatement of such violation(s) shall be accomplished by following the procedure outlined in Chapter 74 of the Municipal Code without the need of Town Board resolution.

**§22.** If the Town Board makes a finding under subdivision A of section twenty, then it shall order a Notice of Hearing to be prepared and served as hereinafter provided.

**§23.** The Town Board's Notice of Hearing shall contain:

- A. A description of the premises;
- B. A specific statement of the conditions that make the building or structure unsafe or dangerous;
- C. An order requiring the conditions in subdivision B, *supra*, to be made safe and secure.
- D. The time and place of the public Town Board meeting scheduled in the Notice Of Hearing, and a statement that "Failure to comply with the order contained herein, authorized by subdivision (C) of section twenty or section twenty-one of the Abandoned and Unsafe Building Law of the Town of Camillus, prior to the aforementioned Town Board meeting scheduled in this Notice of Hearing, without furnishing to the Enforcement Officer, in writing, or the Town Board, in person, compelling reasons why said order is unwarranted or imposes an unreasonable obligation, may result in a Town Board Order at such meeting whereby the Town authorizes the remediation of the building or structure's unsafe and dangerous conditions. Such an Order shall provide that all charges connected therewith, including the actual expense of the repairs or removal of a structure, be placed on the tax levy against the property on which the building or structure is situated. Such charges shall enjoy the same legal status as other town charges.
- E. Affixed to the Notice of Hearing shall be a copy of the owner and lien search preformed by the Town Attorney.

**§24.** In the event that the interested parties' identities and addresses are reasonably ascertainable, service of the Notice of Hearing shall be accomplished by personal service or by certified mail, return receipt requested.

- A. Service shall be completed no less than five days prior to the Town Board's scheduled hearing.
- B. When serving an interested party by certified mail, return receipt requested, service shall not be deemed completed until five days after the actual date on which the notice was mailed.

**§25.** In the event that the owner's identity and address cannot be reasonably ascertained, then service may be completed upon the owner by sending the Notice of Hearing, via

certified mail, return receipt requested, to the owner's last known address and then posting the Notice on the door of the property in question. If this method of service is used, then the mailing must take place no less than ten days prior to the hearing (five days before the hearing, with five days required to complete service) and the Notice must be posted no less than five days prior to the hearing.

#### **ARTICLE IV: FILING OF THE NOTICE IN THE OFFICE OF THE COUNTY CLERK**

§30. A copy of the Notice referenced in Article III of this Chapter shall be filed in the Onondaga County Clerk's Office. The notice shall be filed by the Onondaga County Clerk in the same manner as a Notice of Pendency pursuant to Article Sixty-Five of the Civil Practice Law and Rules. Such notice shall have the same effect as a Notice of Pendency.

§31. The notice that is filed in accordance with section thirty shall be effective for a period of one year from the date of filing, provided, however, that it may be vacated upon:

- A. The order of a court of competent jurisdiction; or,
- B. By consent of the Town Attorney.

§32. The Onondaga County Clerk shall mark such notice and any record or docket thereof as cancelled of record upon the presentation and filing of a certified copy of such order or a consent stipulation from the Town Attorney.

#### **ARTICLE V: SUBSEQUENT TOWN BOARD HEARINGS**

§40. The Town Board, at the scheduled public meeting contained in the Notice of Hearing, shall review the status of the building or structure in question. The Town Board may adjourn the matter from time to time and until the hearing is completed such that all interested parties have had an opportunity to be heard. At that time, the Town Board may make a determination that:

- A. The interested parties have not complied with the Notice of Hearing, but have responded to the Enforcement Officer and have given him or her a reasonable plan and timeframe to remedy the unsafe and dangerous conditions.
- B. The interested parties have not complied with the Notice of Hearing, but have personally appeared before the Town Board and have either provided a compelling reason why an extension of the period to remediate or provided a compelling reason why the conditions stated in the Notice of Hearing are not actually unsafe or dangerous.
- C. The interested parties have not complied with or responded to the Notice of Hearing. In this eventuality, the Town may choose to authorize the repairs to, or removal of, the unsafe and dangerous conditions. Any costs incurred as a result of said repair or removal, including the actual charges incurred to the Town as a result of repairing or removing those unsafe or dangerous conditions, shall be assessed as Town Charges

against the land on which such building or structure is situated and shall be placed on the tax levy for that property.

- D. The interested parties have complied with the Notice of Hearing, and thus the matter is closed.

## **ARTICLE VI – EMERGENCIES**

**§50.** Notwithstanding the foregoing provisions of this Chapter, in case there is an immediate danger to the life or safety of any person or property that can only be avoided if an unsafe building or structure is immediately repaired, vacated, or demolished, and only if the owner or other responsible person in charge fails to take immediate action, or cannot be located with due diligence, the Enforcement Officer shall report such facts immediately to the Town Board. If the Town Board confirms the findings of the Enforcement Officer, it shall cause the immediate repair, vacation, or demolition of such unsafe building or structure. The costs of such emergency repair, vacation, or demolition of such unsafe building or structure shall be collected in the same manner as provided in the normal course of this Chapter's dealings.

## **ARTICLE VII-ENFORCEMENT PROVISIONS**

- §60.** The transfer of title by the owner of the premises upon which an unsafe building or structure is located shall be no defense to any proceedings under this Chapter.
- §61.** Notwithstanding any provision herein to the contrary, the Town may, at its election, institute suit against the owner of said premises for the direct costs, together with a charge of fifty (50) percent in addition thereto, as compensation to the Town for administering, supervising, and handling said work, and enter judgment thereon against the owner personally for the aforesaid amount. The imposition and collection of any fine or penalty hereinafter prescribed shall not bar the right of the Town to collect the costs of the removal or repair of any unsafe building or structure as herein prescribed.
- §62.** Pursuant to the authority of the Municipal Home Rule Law section 10, subdivision 1, paragraph (d), subparagraph (3), the provisions of subdivision 16 of section 130 of the Town Law is hereby modified and superseded in its application to the Town of Camillus so as to authorize the additional or alternate procedures and penalties specified in this Chapter.
- §63.** Any person upon whom a notice, as provided in this Chapter, has been served, who fails, neglects, or refuses to place such unsafe building or structure in a safe condition or does not maintain the grass, brush, or weeds, as designated in such notice, or who shall violate any of the provisions of this Chapter or orders given pursuant thereto or who shall resist or obstruct the town or the designated officer, agent, or independent contractor in carrying out the provisions of this Chapter, shall, upon conviction thereof, be subject to a fine of not more than Two Hundred and Fifty Dollars (\$250.00). Each week in which such violation continues shall constitute a separate offense.

## **ARTICLE VIII: SEVERABILITY**

**§70.** Should any section of this Chapter be invalidated by any court of competent jurisdiction, the other sections of this Chapter shall survive and shall continue to operate to their fullest capacity extent.

## Historical Notes

§12, §21, & §23(D) amended, §41, §42, & §43 repealed, LL#3-2024

Authority: Town Law §130 (16); Town Law §64 (5-a); Municipal Home Rule Law §10 (1) (d) (3).

Cross References: Code Book Chapter 26 "Fire Prevention"; Chapter 29 Subdivision Regulations"; "Chapter 30: Zoning"; Chapter 74 "Brush, Grass, Rubbish, or Weeds".

References: Abandoned building, which is unsightly and deteriorated, constitutes a nuisance in upgraded neighborhood, and owner may be compelled to pay damages to adjacent property holder. *Puritan Holding Co. v. Holloschiz*, 82 Misc.2d 905.

Authority to Enact: Town Law §130 (16); Town Law §64 (5-a)

Constitutional Due Process. "The Right to be heard ... must include a clear and complete notice of the violations charged, and an opportunity to contest, defend against and rebut by affirmative showing the allegations made." *Moses v. City Counsel of Long Beach*, 71 Misc.2d 925 (citations omitted). See also *Matter of City of New York v. Unsafe Building*, 77 Misc.2d 562.

Costs: recover of, in special proceeding. General Municipal Law §78-b.

Emergency. Mere passage of time will not undo an emergency situation. *Seven South Main v. Common Council*, 95 Misc.2d 596.

Inspections by fire department. Village Law § 1 0-1 020

Liability. Owner of vacant building can be held liable for cost of demolishing the structure if city fails to take title through tax sale certificates. *Young v. Englestein*, 53 N.Y.2d 973. Order directing demolition or securing building within 24 hours violates due process of law in that owner is not being given adequate notice and reasonable opportunity to be heard and is unconstitutional. *Matter of the City of New York v. Unsafe Building & Structure Located at 344 East 110th Street*, 77 Misc.2d 565.

Recovery of costs to demolish by municipality in a special proceeding. General Municipal Law §78-b.

Search warrant. A conviction of permitting unsafe building conditions will not be upheld where evidence was obtained by unlawful search. A nonresident owner has the right to restrict entrance to premises unless a search warrant is obtained. *People v. Rosenthal*, 59 Misc.2d 565.

Village may adopt a local law to remove unsafe or dangerous buildings constituting a nuisance. 1974 Op. Atty. Gen. (Inf.) September 25. See Municipal Home Rule Law §10 (1)(d)(3) for power of town to adopt.