

TOWN OF RUTLAND ORDINANCE

PUBLIC NUISANCE

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I. FINDINGS, PURPOSE, and AUTHORITY

- A. Any premises and/or property within the Town of Rutland which is in a state of disrepair and deterioration, including vacant buildings, unsafe structures and potentially dangerous land conditions, are deemed to be public nuisances because their existence contributes to the decrease in value of surrounding properties, precipitates disinvestment by neighboring owners, provides a location for criminal activity, undermines the aesthetic character of the Town and its neighborhoods and environs, and has other undesirable effects.
- B. When the owner of a vacant building fails to actively maintain and manage a building the building can become a major cause of blight in both residential and nonresidential neighborhoods. Vacant buildings that are boarded, substandard or on unkempt properties, and long-term vacancies discourage economic development and retard appreciation of property values. One vacant property that is not actively and well maintained and managed can become the core and cause of the spread of blight.
- C. It is a responsibility of a property owner to prevent their property from becoming a burden to the neighborhood and community and/or a threat to the public health, safety, or welfare.
- D. Allowing public nuisances to remain indefinitely, even in the absence of code violations, structural boarding and other security measures, is detrimental to the public health, safety and welfare, unreasonably interferes with the reasonable and lawful use and enjoyment of other neighboring or adjacent property, may pose a danger to first responders in an emergency, and detracts from the appearance and good order of the neighborhood.
- E. A public nuisance constitutes a danger or threat to the health, safety, and/or welfare of the public.

- F. The purpose of this ordinance is to abate public nuisances and to mitigate their impacts.
- G. The Select Board of the Town of Rutland hereby adopts and promulgates the following Ordinance pursuant to 24 V.S.A. § 2121 and §2291(13), (14), and (15) in order to regulate public nuisances and compel the cleaning, maintenance, and/or repair of any buildings, structures, or premises which in the judgment of the Select Board qualify as a public nuisance.
- H. This is a civil ordinance.

II. DEFINITIONS.

Actual notice - written notice hand-delivered or mailed to the last known address.

Dangerous building - a building or structure, or any portion thereof, that:

1. Presents a fire hazard; or
2. Presents a significant risk of partial or complete collapse due to one or more of the following:
 - a. Dilapidation, deterioration, or decay.
 - b. Damage due to fire, flooding, or other casualty.
 - c. Faulty construction.
 - d. The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building or structure.
 - e. The deterioration, decay, or inadequacy of the foundation of a building or structure; or
 - f. Any other cause that creates a significant risk of partial or complete collapse.

Fire hazard - A building or structure that is determined by the Fire Chief to presents a significant risk of fire because of dilapidated condition, deterioration, damage, or other cause.

Hazardous waste - carries the meaning set forth in 10 V.S.A. §6602(4).

Inspection Official -The Town Public Nuisance Inspector, Town Health Officer, Town Constable, Chief of the Town Fire Department, or such other person so designated and appointed by the Select Board.

Public health hazard - The potential to harm the public health by virtue of any condition or any biological, chemical, or physical agent. See 18 V.S.A. §2(8) G.

Public nuisance:

1. A dangerous building.
2. A building, structure, or property that constitutes an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences and structures.
3. A vacant or unoccupied building, structure, or property that serves as the site of or attracts criminal activity.
4. A vacant or unoccupied building or structure that was used or is intended to be used for dwelling purposes and that because of decay; deterioration; damage; faulty construction; inoperable or unsanitary sewage or plumbing systems, inoperable or ineffective heating systems or other condition(s), is determined by an Inspection Official to be unsanitary, unfit for human habitation, or in such condition that it is likely to cause sickness or disease; or
5. A vacant or unoccupied building or structure that because of decay; deterioration; damage; faulty construction; inoperable or unsanitary sewage or plumbing systems, inoperable or ineffective heating systems or other condition(s), is determined by an Inspection Official to be unsanitary, unfit for human occupation, or to be in such condition that it is likely to cause sickness or disease;
6. A building, structure, or property upon which there exists garbage, rubbish, debris, solid waste, and/or hazardous waste such that the Town Health Officer determines the condition to constitute a public health hazard; or
7. A property that detracts from the value, use and enjoyment of neighboring or adjacent property(ies) due to the dilapidated, deteriorated, decayed, or damaged condition a vacant building or structure and/or the existence of garbage, rubbish, debris, solid waste, and/or hazardous waste,

Owner - The person holding record title to premises or property, as well as any person occupying, using, controlling or operating such premises or property as tenant, lessee or any other capacity recognized at law.

Property and premises - used interchangeably in this Ordinance and shall include buildings, structures, land, land conditions, land improvements, and personal property deposited, discarded, or stored thereon.

Solid waste - carries the meaning set forth in 10 V.S.A. §6602(2).

Vacant - containing no contents pertaining to operations customary to the occupancy of a building or structure for at least ninety (90) days. This definition does not include warehouse structures, garages, vacation or resort facilities or those buildings or structures only used on a seasonal basis.

Unoccupied building or structure - containing contents pertaining to the occupancy of a building while operations or other customary operations are suspended for at least ninety (90) days. A building or structure occupied by a person without permission or authority of the owner qualifies as unoccupied. This definition does not include warehouse or storage structures, garages, vacation or resort facilities or those buildings or structures only used on a seasonal basis.

III. PROHIBITIONS.

A. No owner of property located within the Town of Rutland person shall create, operate, maintain, or allow the existence of a public nuisance on their property.

B. No person shall fail to comply with the terms of an Order of Abatement issued under this Ordinance by the Select Board or its designee.

IV. PROPERTY INSPECTION and INSPECTION REPORT.

A. Upon the acquisition or receipt of information that a violation of this Ordinance has or may have occurred, an Inspection Official shall undertake a physical inspection of the premises and/or property. The Inspection Official may enter any building, structure or property within the Town for the purpose of making inspections or investigations at all reasonable hours.

B. Except in case of emergency, the owner of the property shall be provided with actual notice in advance of the inspection.

1. The notice of inspection shall identify the date and time that an inspection of the premises and/or property will be made and shall contain a statement of the purpose(s) of such inspection.

C. The Inspection Official shall prepare a written inspection report regarding the condition of the premises and/or property inspected.

1. If the Inspection Official determines that no public nuisance exists, the Inspection Report shall explain the reason(s) therefore.
2. The Inspection Official determines that a public nuisance exists the Inspection Report shall explain the reason(s) therefore and shall recommend any corrective action or abatement deemed to be necessary.

D. The Inspection Official shall deliver a copy of the Inspection Report to the Select Board and Town Administrator.

V. HEARING ON INSPECTION REPORT and ORDER OF ABATEMENT.

A. If the Inspection Report concludes that a public nuisance exists, the Town Administrator shall prepare written Notice of Hearing which shall identify the date, time, place, and purpose of the hearing to be conducted by the Select Board regarding the Inspection Report.

1. The owner of the subject property shall be provided with actual notice of the Inspection Report and the Notice of Hearing no less than ten (10) days prior to the date of the hearing,
2. The Notice of Public Nuisance Hearing shall be posted in three or more public places within the Town in conformance with the location requirements of 1 V.S.A. §312(c)(2).

B. At the Public Nuisance Hearing, the Select Board shall allow testimony and evidence from the property owner, owner, occupant(s) of the property, Town officials, agents, and employees, adjacent property owners, and members of the public regarding the condition of the property addressed in the Inspection Report.

C. Following such hearing, the Select Board shall deliberate and determine whether or not a public nuisance exists. The Select Board shall issue a written decision which sets forth its findings and conclusions.

D. If the Select Board determines that a public nuisance exists, then the Select Board shall issue as part of its written decision, an Order of Abatement to address the remediation, elimination, and/or abatement of the public nuisance.

E. In the Decision and Order of Abatement, the remedial responses that the Select Board may order include, but shall not be limited to:

1. Requiring building openings (doors, windows, areaways, and other openings) to be made weather-tight and secured against entry by birds, vermin and trespass.
2. Posting or affixing a notice of dangerousness in a conspicuous place upon the building or structure's exterior walls, or on the grounds of the property which shall not be removed or defaced without the Villages authority.
3. Requiring specified remedial or abatement actions to be taken and completed within a specified time frame.
4. Requiring the property owner to develop and submit within a specified time frame a remediation/abatement plan for the Select Board's consideration and approval; or

5. Authorizing the Town to take remedial action forthwith in appropriate circumstances where the risks and exigencies of the situation call for prompt action and/or the owner appears to be unable or unwilling to respond to the Select Board's directives. The Select Board may order that the owner reimburse the Town for its response costs and expenses within a specified period of time.
6. Imposing a fine of up to \$500 per day for a failure to comply with the terms of a Decision and Order of Abatement.

VI. APPEAL OF DECISION AND ORDER OF ABATEMENT

- A. Within thirty (30) days of the date of the Decision and Order of Abatement, an aggrieved person may undertake an appeal pursuant to V.R.C.P. 75 to the Rutland Civil Division, Vermont Superior Court.
- B. An appeal of the Select Board's Decision and Order of Abatement shall be on the record and in the nature of certiorari.

VII. ENFORCEMENT OF ORDER OF ABATEMENT.

A. If a person subject to an Order of Abatement fails to comply with the terms of the Order of Abatement the Town may bring a civil action in the Rutland Civil Division, Vermont Superior Court for enforcement of the Order of Abatement and/or the remediation, mitigation, and/or abatement of the public nuisance.

B. In an enforcement actions, the Town may seek such injunctive relief, enforcement remedies, collection remedies, fines, and penalties as permitted by law, including, without limitation, the demolition, cleanup, mitigation, and/or removal of buildings, structures, garbage, rubbish, debris, solid waste, and/or hazardous waste.

1. The Town may also seek as part of the court's injunctive relief an order that:
 - a. authorizes the Town to perform the work necessary to remediate, mitigate, and/or abate the public nuisance as set forth in Order of Abatement in the event that the person subject to the injunction does not comply with its terms within a specified period of time; and
 - b. imposes a lien on the property for the recovery of the Town's costs and expenses costs in the same manner and to the same extent as taxes assessed on the grand list on the property, which includes and applies all procedures and remedies for collection of taxes to the collection of the Town's costs and expenses incurred in performing the work necessary to remediate, mitigate, and/or abate the public nuisance.

VIII. SEVERABILITY.

If any portion of this ordinance is found to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected and shall remain in full force and effect. If any statute referred to in this ordinance is amended, this ordinance shall be deemed to refer to such amended statute.

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