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Chapter 8 BUILDINGS AND BUILDING CONSTRUCTION*
ARTICLE III, ABATEMENT AND REHABILITATION
OF VACANT BUILDINGS AND STRUCTURES AND
DANGEROUS STRUCTURES

Sec. 8-42. Statement of findings and purpose.

(a) Being that there exist in the City of Burlington structures or buildings that have become dangerous or unsafe and numerous other structures that are vacant, abandoned, and in disrepair, the Burlington City Council finds and declares that:

- (1) Structures that become dangerous and unsafe must promptly be made safe and secure to protect the public safety.
- (2) Structures that are vacant and not properly secured are dangerous and unsafe in that they are extremely vulnerable to being set on fire by unauthorized persons.
- (3) Many structures that 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.
- (4) Structures that were previously used as residential units and have since become vacant have a significant and detrimental impact on the local housing market.
- (5) Structures that are vacant and not properly secured attract vagrants and criminals and are prime locations to conduct illegal criminal activities, including arson and drug use.
- (6) Structures that are vacant and unsecured pose serious threats to the public's health and safety and therefore are declared to be public nuisances.
- (7) Immediate abatement and rehabilitation of these structures is necessary to abate such public nuisances, prevent unsightly blight and the deterioration of neighborhoods with the consequent adverse impact on the value of adjacent and nearby properties, secure the public safety and to ensure and enhance the vitality and livability of our neighborhoods.
- (8) Communication between owners of dangerous and vacant buildings and the city is essential for effective allocation of public resources and the maintenance of public health, welfare, and safety in regards to such structures.

(b) The purpose of this article is to establish the reasonably necessary measures to abate the public nuisances, blight, negative housing market impact, and other harmful effects connected with dangerous and vacant or abandoned buildings and structures, and bring back into productive use consistent with the authority vested in the city to protect the health, safety and welfare of the public through the regulation of the construction, maintenance, repair, and alteration of buildings and other structures within the city.

Sec. 8-43. Definitions.

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

- (1) *Director* means the director of the enforcement agency or his/her designee.
- (2) *Vacant structure* means any structure or building that is unoccupied by a person or occupied by unauthorized persons for 210 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.
- (3) *Dangerous building or structure* means a building or structure or part thereof declared structurally unsafe or hazardous by any duly constituted authority, whether it is occupied, unoccupied, or vacant.
- (4) *A showing that the building is being actively marketed for sale or lease* means (a) evidence that the building or structure is being continuously marketed for sale or lease and is publicly available and viewable for sale or lease to prospective buyers or lessees until it is under contract, and (b) the disclosure of a reasonable asking price.
- (5) *Substantial rehabilitation* means rehabilitation the value of which exceeds fifty (50) percent of the assessed valuation of the building or structure.
- (6) *Owner* shall mean any and all owners of record or trustees for such owners. The obligations of owners under this article extend to the agents of such owner(s) or other persons interested in the building or structure.

Sec. 8-44. Enforcement authority.

The director of the department of public works is authorized to administer and enforce the provisions of this article. The director may take such measures as are necessary for the proper administration of the article, including, but not limited to, maintaining lists on the status of vacant buildings or structures. The director may delegate his/her powers and duties under this chapter to an appropriate administrator or any inspector so designated.

Sec. 8-45. Obligations of owners of dangerous structures and buildings.

- (a) A building or structure or part thereof that is or becomes dangerous or unsafe shall be made safe and secure. If the building cannot be made safe or secure, the owner shall take down and remove the building. An owner of such a dangerous or unsafe building or structure who would make safe or would take down and remove a such building or structure pursuant to this section shall comply with all applicable building, fire prevention, zoning ordinances and codes, including Article 15 of the zoning ordinance, the Housing Replacement Ordinance, and any other applicable code or ordinance. No change of use or occupancy shall be compelled by reason of such reconstruction or restoration.
- (b) The director shall inspect a building or structure upon receiving information that the building or structure or anything attached or connected therewith is in violation of the specifications of all applicable building, fire prevention, and public safety ordinances and codes adopted herein or is otherwise in such

unsafe condition that the public safety is endangered. If the director 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, the director shall enter and inspect the premises. Absent an emergency situation, if the owner of the vacant building or structure fails or refuses to consent to an inspection, the director shall seek 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 time of exigent circumstances or emergency, that the building and its contents will not present a hazard to the public.

(c) If, in the director's judgment, the structure or building appears to endanger the public safety, the director shall in his/her discretion elect to commence action to abate as herein provided. To commence an abatement action, the director shall make a careful survey report based on his/her inspection of the premises, or if necessary based on an additional inspection and forthwith notify the owner to remove the condition or building or make the building or condition safe and secure in the time specified for in the notice. If it appears to the director that such structure would be especially dangerous, the director may affix a notice of dangerousness in a conspicuous space upon the structure's exterior walls which shall not be removed or defaced without the director's authority.

(d) Any person notified as provided in subsection (c) shall within the time specified commence to secure or remove such structure. If the public safety so requires, the director shall enter upon the premises and cause the structure to be made safe and secure and that passers-by are protected at the expense of the owner or person interested.

(e) If the owner continues such refusal or neglects to remove or make the building safe, the director shall cause it to be taken down or otherwise made safe, and the costs and charges 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. In addition, for every day's continuance of such refusal or neglect, the owner or person interested shall forfeit to the city fifty dollars (\$50.00), to be recovered in a civil action on this article.

Any violation of this section is declared to be a nuisance and subject to removal or abatement upon a finding of violation by the superior court. The court shall restrain the construction, alteration, maintenance or use of a building or structure in violation of this section and shall restrain the further construction, alteration or repair of a building or structure reported to be unsafe under a survey authorized by this section.

An abatement action under this section is a remedy cumulative to other remedies at law and equity, and in no way pre-empts, supersedes, or bars civil or criminal prosecution for violation of this article, the model building or Life Safety Code or any applicable building, fire prevention, or public safety ordinance, nor is the commencement of an abatement action a condition precedent to the initiation of criminal prosecution or any other remedy. Failure to adhere to the procedure prescribed in this section shall not bar relief or remedy if such failure does not prejudice a person interested and merely constitutes harmless error.

(f) An owner or person interested who is aggrieved by an order issued pursuant to this section may appeal to the board of appeals as constituted in section 8-8. An owner or person interested who is aggrieved by an order of the board of appeals may appeal by instituting relief in the Chittenden Superior Court under V.R.C.P. 74.

Sec. 8-46. Obligations of owners of vacant or abandoned buildings or structures.

(a) The owner of a vacant building or structure shall obtain a vacant building permit for the period during which it is vacant. When a building or structure becomes vacant, as defined by section 8-43, the owner of the building shall apply for and obtain a vacant building permit and pay the fee, as set forth in section 8-47. Upon the expiration of a vacant building permit, if the building or structure is still vacant, the owner shall arrange for an inspection of the building and premises with the director and appropriate police and fire officials, pursuant to section 8-47(b) and renew the permit within ten (10) days of expiration in the same manner as the expired permit.

All renewed permits shall be subject to all conditions and obligations imposed by this article or the initial permit unless expressly exempted therefrom.

(b) The owner of a vacant building or structure shall comply with all building, fire, life safety, zoning, and other applicable codes or ordinances and shall apply for all necessary building, fire prevention, and zoning permits upon application for a vacant building maintenance permit.

(c) The owner of a vacant building or structure shall immediately remove all combustible waste and refuse therefrom in compliance with the applicable fire prevention code and shall remove any waste, rubbish or debris from the interior of the structure. The owner of a vacant building or structure shall also immediately remove any waste, rubbish, debris or excessive vegetation from the yards surrounding the vacant building or structure in accordance with the vacant building maintenance standards of this article.

(d) The owner of a vacant building or structure shall immediately lock, barricade or secure all doors, windows and other openings in the building or structure to prohibit entry by unauthorized persons, in accordance with the vacant building maintenance standards of this article. The owner of a vacant building or structure shall provide the police department with a list of persons authorized to be present in the building and shall provide notices of trespass to the police authorizing the arrest for trespass of individuals not on the list. The owner shall update the authorized person list as needed.

(e) The obligations of owners of a vacant building or structure are continuing obligations which are effective throughout the time of vacancy, as that term is defined in this article. The director shall have continuing abatement authority throughout the time of vacancy.

Sec. 8-47. Vacant building permit; inspection; maintenance standards; fees.

(a) Application by the owner of a vacant building or structure for a vacant building permit shall be made on a form provided by the director. 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 in section 8-46 and 8-47 (e) 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, rehabilitation or removal or demolition of the structure.

(b) Vacant buildings shall be inspected at or around the beginning of the permit period to determine that they comply with this article. The owner shall cooperate with and attend the inspection. If the director 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 director shall enter and inspect the premises pursuant to section 8-45.

If the owner of the vacant building or structure does not cooperate with and or attend an inspection, the director may seek a search warrant from the Vermont District Court for the purpose of determining compliance with this article.

(c) The director, upon inspection, shall issue any order for work needed to:

(1) Comply with this article 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 article; and

(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.

When issuing such orders, the director 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 director's order. No interim permit shall be effective for a period of more than 3 months. All work done pursuant to this article shall be done in compliance with the applicable building, fire prevention, and zoning codes and ordinances.

(d) The director 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.

(e) 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:

(1) *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.

(2) *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.

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

(4) *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.

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

(6) *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.

(7) *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.

(8) *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.

(9) *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.

(10) *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.

(11) *Walkways:* Walkways shall be safe for pedestrian travel.

(12) *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.

(13) *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.

(f) (1) 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.

(2) 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.

(3) 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.

(4) 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.

Sec. 8-48. Appeals and variances.

(a) A party aggrieved by an action of the director shall appeal such action by requesting a hearing to the board of appeals pursuant to the provisions of section 8-8, excepting appeals of actions taken pursuant to section 8-45, which shall be taken in accordance with section 8-45 (f).

(b) Any person subject to the provisions of this article may seek a variance from the provisions of this article before the board of appeals in the same manner that an appeal is taken to the board, and subject to the same procedures as an appeal.

(c) Where a variance is requested by an applicant, the board of appeals may grant such a variance, and render a decision in favor of the appellant, if the following are found by the board:

(1) That there are circumstances or conditions that make strict compliance with the provisions of this article unusually difficult or unduly extensive, or would create an undue hardship:

(2) That such a hardship or condition has not been created by the applicant; and

(3) That the variance requested will represent the minimum relief necessary and will represent the least deviation possible from the requirements of this article.

(d) In rendering a decision in favor of an applicant, the board of appeals shall attach such conditions to such variance as it considers necessary and appropriate under the circumstances to implement the purposes of this article.

Sec. 8-49. Enforcement and penalties

(a) Penalty

(1) A person shall be subject to a civil penalty of \$200 with a waiver penalty of \$150 for the following offenses:

(A) Failure to apply for a vacant building permit or the filing of an incomplete application;

(B) Failure to pay the vacant building fee;

(C) Failure to schedule an inspection or to show up for an inspection for which notice has been given;

(D) Failure to comply with the obligations set forth in § 8-46 (c) and (d); and

(E) Failure to comply with an order of the enforcement officer in the time required, with each separate deficiency ordered to be corrected being deemed a separate order;

(2) A person who repeats the same offenses 3 times within a 12 month period shall be deemed to have committed a criminal offense for the third offense subject to a fine of \$500.

(3) Prosecution under this section is a remedy cumulative to any and all other remedies at law and equity, and in no way pre-empts, supersedes, or bars prosecution for violation of this article under subsection (b) of this section.

(b) Any violation of this article is also declared to be a public nuisance and subject to removal or abatement upon a finding of violation by the superior court. An abatement action as contemplated by section 8-45 is discretionary and is not a precondition to criminal prosecution under this section, nor is a survey report by the director pursuant to section 8-45 a prerequisite for prosecution under this section.

(c) Any order issued pursuant to this article shall be recorded in the office where the land records are kept, thereby becoming effective against any purchaser, mortgagee, attaching creditor, lienholder or other person whose claim or interest in the property arises subsequent to the recording of the order. Once the violation(s) is certified to be corrected, such orders shall be removed from the record. All fees, costs, or charges assessed pursuant to this article shall be a tax lien upon the real property pursuant to 32 V.S.A. § 5061, so long as the lien is recorded in the office where the land records are kept.

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