

TOWN of HAMILTON, MASSACHUSETTS -- TOWN BYLAWS

VACANT AND DILAPIDATED BUILDINGS BYLAW – DRAFT dated 12/8/2017

1. AUTHORITY AND PURPOSE

Pursuant to the general powers granted to towns by Article 89 of the Amendments to the Massachusetts Constitution, and the specific powers granted by Massachusetts General Laws, Chapter 139, Sections 1-3A, this Bylaw is adopted for the prevention of any unreasonable interference with the common interest of the general public in maintaining decent, safe, and sanitary structures and in not adversely affecting property values.

2. DEFINITIONS

A) **Building** - A structure, whether portable or fixed, with exterior walls or firewalls and a roof, built, erected or framed, of a combination of any materials, to form shelter for persons, animals, or property.

B) **Structure** - A combination of materials, whether wholly or partially level with, above or below the surface of the ground, whether permanent or temporary, assembled at a fixed location to give support, shelter, or enclosure such as a building (see above), framework, retaining wall, platform, bin, fence, parking area, sign, flagpole, or mast for antenna or the like.

C) **Dilapidated** - A condition of decay or partial ruin by reason of neglect, misuse, or deterioration that constitutes an unreasonable interference with the common interest of the general public in maintaining decent, safe, and sanitary structures and in not adversely affecting property values. The term dilapidated includes, but is not limited to:

- (a) property having deteriorated roofs, foundations, walls, or floors, including broken or inadequately secured windows or doors;
- (b) any condition that unreasonably impairs the value, condition, strength, or durability of real property, including real property owned or occupied by a Responsible Party as defined in Section 2I;
- (c) burned structures not otherwise lawfully habitable or usable;
- (d) dangerous or unsafe structures or personal property;
- (e) property that attracts vermin;
- (f) garbage and rubbish.

D) **Hazard** - A condition that exposes persons to unreasonable risk of injury or harm, or property to unreasonable risk of damage, loss or destruction.

E) **Enforcement Authority** – This Bylaw shall be enforced by the Building Inspector or his designee (e.g., Assistant Zoning Enforcement Officer, Alternate Building Inspector) or by the Town Manager.

F) Interested Parties - In connection with the enforcement and notification requirements of this Bylaw, Interested Parties are: the Enforcement Authority; owner(s) and occupants of property which is the subject of a hearing; owners and occupants of property abutting the subject property; owners and occupants of property directly opposite the subject property on any public or private street or way; and a person filing a complaint under this Bylaw.

G) Occupant - A person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee, or otherwise. The singular use of the term includes the plural when the context so indicates.

H) Owner - Every person who alone or jointly or severally with others (a) has legal title to any building, structure or property; or (b) has care, charge, or control of any such building structure or property in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (c) is a mortgagee in possession; or (d) is an agent, trustee or other person appointed by the courts.

I) Responsible Party - The owner or occupant (in the case of real property) of property that is the subject of proceedings under this Bylaw. The singular use of the term includes the plural when the context so indicates.

3. VACANT BUILDINGS

The owner of any real property in the Town of Hamilton which contains buildings or structures that are or will be unoccupied for a period of one hundred eighty (180) consecutive days or more shall take the following measures to prevent the creation of dilapidated conditions as defined in Section 2C:

- (a) comply with all applicable sanitary, building, and fire codes and orders issued pursuant thereto;
- (b) secure the premises to prevent unauthorized entry and exposure to the elements;
- (c) maintain the premises in a manner that ensures their external/visible maintenance, including but not limited to the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery, and other landscape features;
- (d) repair or replace broken windows or doors within thirty (30) days. Boarding up any doors or windows is prohibited except as a temporary measure for no longer than thirty (30) days;
- (e) for properties vacant for six months or more, the utilities for which have been shut off, remove or cut and cap such utilities to prevent accidents;

Compliance with this section shall not relieve the owner of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.

4. ADMINISTRATION AND ENFORCEMENT

If the Enforcement Authority is informed of or has reason to believe that dilapidated or hazardous conditions, as defined in Section 2, or vacant buildings, as defined in Section 3, exist on any real property in the Town, he may make or cause to be made an investigation of the facts, including an inspection of the property where the condition may exist. In making such inspection, the Enforcement Authority shall have such right of access to premises that may be lawfully exercised by him under the laws and constitution of the Commonwealth and/or of the United States.

If, after inspection, the Enforcement Authority confirms the existence of dilapidated or hazardous conditions or vacant buildings in violation of this Bylaw, he shall issue a Notice of Violation and may make and issue such Orders as he deems necessary to correct or eliminate the conditions or obtain compliance with Sections 2 and 3. Said Notice and Orders shall be in writing and shall be served upon all Responsible Parties as can be determined after reasonable inquiry.

Any Interested Party who has filed a written complaint of dilapidated or hazardous conditions or vacant buildings to the Enforcement Authority upon which complaint the Enforcement Authority has determined that the conditions do not exist, or has taken action that the Interested Party claims is inadequate, shall have a right to a review of the matter by the Town Manager. At the request of such an Interested Party, the Town Manager shall confer with the Enforcement Authority and shall make a decision and recommend appropriate action in writing to the Enforcement Authority and to the Board of Selectmen.

Any person aggrieved by the decision and recommendation of the Town Manager may request a hearing before the Board of Selectmen. Said request shall be in writing and received by the Board of Selectmen within five (5) business days of issuance of the Town Manager's decision. A copy of the hearing request shall also be delivered to the complainant, if any, and to all Interested Parties as defined in Section 2F. It shall be the responsibility of the person requesting the hearing to show that all Interested Parties have been notified of the request. If no such request is received within the time specified herein, the order of the Enforcement Authority shall be final.

A request for hearing shall not constitute a stay of the Enforcement Authority's Order unless the Enforcement Authority so orders.

Upon receipt of a timely request, the Board of Selectmen shall convene a public hearing, which shall include an examination of any complainant, if any, under oath, to determine whether conditions under this Bylaw exist. Based on the credible evidence and testimony presented at said public hearing, the Board of Selectmen may affirm the Enforcement Authority's Order, reverse and nullify the Order, or issue any such Order as it deems necessary to ensure the protection of public safety and/or eliminate dilapidated or hazardous conditions. The determination of the Board of Selectmen after a hearing shall be final.

Fines for non-compliance with the Enforcement Authority's Order may be assessed as a non-criminal disposition pursuant to M.G.L. Chapter 40, Section 21D and Article XIII of the Town's Bylaws in the following amounts:

- i. First offense, \$100.00
- ii. Second offense, \$200.00
- iii. Third and successive offenses, \$300.00 each

Each violation of this Bylaw shall constitute a separate offense. Each day that any such violation continues shall constitute a separate offense.

The Enforcement Authority may require that a complaint be made in writing subject to the penalties of perjury. If the Enforcement Authority determines that a reported condition may warrant immediate action, or constitutes a substantial violation of this Bylaw, the Enforcement Authority may seek authority to file for injunctive relief in court without first holding a hearing or providing prior notice to the Responsible Party and without requiring the disclosure of the identity of the complainant.

If the Enforcement Authority determines that the condition is subject to the jurisdiction of the Board of Health or is a violation of the State Sanitary Code or any health regulation, in addition to enforcing this Bylaw, he shall refer the matter to the Board of Health for action.

During his investigation of the matter, the Enforcement Authority may consult, but is not required to do so, with the Responsible Party in an attempt to obtain voluntary compliance with this Bylaw without the need to issue a notice of violation.

B. Notice to Complainant - In any matter in which a complaint has been made by a person other than the Enforcement Authority, the Enforcement Authority shall notify the complainant in advance of all conferences or proceedings concerning resolution of the nuisance complaint or of any enforcement action and the complainant shall be allowed to be present and to be heard.

C. Removal of Dilapidated Conditions by Selectmen - If the Responsible Party fails to remedy the conditions upon notice and order from the Enforcement Authority to do so, the Board of Selectmen may cause corrective action for the conditions as provided in General Laws c. 139.

E. Reports by Enforcement Authority - The Enforcement Authority shall file with the Town Manager each month a report that shall include all complaints of nuisance made to him during the prior month; all proceedings begun by him under this Bylaw; all pending complaints and all investigations and enforcement actions taken by him or referred to the Commissioner of Public Health. The report shall state the location of the premises, a summary of the nature of the complaint, the name of the Responsible Party(ies), and the disposition or the status of the matter.

Approved at Town Meeting (date)

Approved by Attorney General's Office (date)

Comment [ml1]: Is this the limit of what can be assessed...seems very low?

Comment [DB2]: These are the sums set in our current bylaw. G.L. c. 40, section 21D does not permit the fine to exceed \$300.