

## AN ORDINANCE RELATIVE TO VACANT AND ABANDONED BUILDINGS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

**SECTION 1. PURPOSE:** Unsecured, vacant, and abandoned buildings present danger to the safety and welfare of public safety officers and the public, and, as such, constitute a public nuisance. This Section is enacted to promote the health, safety and welfare of the public and to minimize hazards to public safety personnel inspecting or entering such buildings, and by preventing unauthorized persons from gaining entry to abandoned and vacant buildings.

**SECTION 2. DEFINITIONS.** The following words and phrases, when used in this section, shall have the following meanings:

*"Abandoned building"* - (1) a vacant building, the ownership responsibilities of which have been surrendered or relinquished, whether intentionally or by failure to occupy and maintain such property; or, (2) buildings, structures and premises for which the owner cannot be identified or located by delivery of certified mail at the last known or registered address, which persistently or repeatedly becomes unprotected or unsecured or, which is or has been occupied by unauthorized persons.

*"Building"* - any combination of materials having a roof and enclosed within exterior walls or firewalls, built to form a structure for the shelter of persons or property, excluding accessory structures that are incidental to the principal structure located on the same lot, such as but not limited to dog houses and storage sheds; structures used on a seasonal basis such as vacation premises or resort facilities; and structures that are temporarily vacant for owner or tenant change or for remodeling.

*"Certificate of Building Closure"* - certificate issued by the Commissioner to the owner of a vacant building or abandoned building upon compliance with the provisions of Section 3 herein.

*"Commissioner"* - the Building Commissioner or his or her designee

*"Director"* - the Director of the Health Department or his or her designee.

*"Dangerous building"* - any unoccupied building that has been neglected and deteriorated; or abandoned, vacated, unused or open to weather to such an extent that it is a danger or potential danger to life or property.

*"Fire Chief"* - the chief of the Gardner Fire Department or his or her designee.

*"Owner/person"* - (1) a person, trust, partnership, corporation or other entity capable of owning legal or equitable title to real property or capable of possessing legal or equitable interest in real estate or, (2) an authorized agent of the person or entity holding legal or equitable interest to real property, including but not limited to any person specified as a "contact person" pursuant to Section 3 Paragraph 6 herein. This term shall include a

mortgagee in possession.

*"Unsecured building"* - any vacant or abandoned building not continuously secured, maintained, locked or boarded to prevent unauthorized entry or which fails to provide protection from weather damage.

*"Vacant building"* - (1) any unoccupied real property which is empty or remains empty and is not continuously maintained, for twenty-one consecutive days or longer by occupants having custody or legal right of entry to said property or, (2) any building which exhibits dilapidated walls, roof or doors which will fail to prevent the entry of a trespasser.

**SECTION 3. NOTIFICATION REQUIREMENTS.** Any owner/person who knows or reasonably should know that a building owned by said owner/person is or will become vacant or abandoned as those terms are defined herein or, any owner/person who intends to abandon or vacate a building owned or controlled by said owner/person shall forthwith:

1. File a Vacant & Abandoned Building Certificate Application in a form proscribed and amended from time to time by Director, Commissioner and the Fire Chief setting forth the following: the status of such building, including in such notice, the name, address and telephone number of the owner; the location of the building; the length of time the building has been vacant; the estimated time the building will remain vacant; and, the nature of the contents of the building; and,
2. As may be required by the Fire Chief, file one set of space utilization floor plans for said building with the Fire Chief and one set of plans with the Commissioner; and,
3. Remove from the building, to the satisfaction of the Fire Chief, hazardous material, as that term is defined in M.G.L. Chapter 21K, as that statute may be amended from time to time; and,
4. Secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board-up Procedures or, provide twenty-four (24) hour on-site security personnel in the building. When a building is located within a complex of buildings owned by a single owner, twenty-four (24) hour onsite security shall be provided within the building or within the complex wherein the building is located; and,
5. As may be required by the Fire Chief, Director, or Commissioner, post "No Trespassing" signs on the building; and,
6. Provide the Fire Chief, Commissioner and Director with the name, local address, and telephone number of a responsible person who can be contacted in case of emergency. The owner shall cause the name and contact number to be marked on the front of the building as may be required by the Fire Chief or Director; and,

7. Maintain liability insurance on the building and furnish the Commissioner with a copy of said certificate of insurance; and,
8. As may be required by the Commissioner, provide a cash bond acceptable to the Commissioner, in the sum of not less than Five Thousand (\$5,000.00) Dollars, to secure the continued maintenance of the building throughout its vacancy and remunerate the City for any expenses incurred in inspecting, securing, marking or making such building safe.
9. Payment of the appropriate Certification Fee or Certification Renewal Fee as set forth in Ordinance No. 94 as from time to time amended.

Upon satisfactory compliance with the above-provisions, the Commissioner shall issue a Certificate of Building Closure. Said Certificate shall be valid for period not to exceed six (6) months from the date of issuance. Said Certificate may be renewed at the discretion of the Commissioner subject to continued compliance with this Ordinance and the payment of the appropriate renewal fee as set forth in Ordinance No. 94 as from time to time amended. Under no circumstances shall a Vacant & Abandoned Building Certificate or any extension thereof exceed six (6) months in duration from the date of issuance.

**SECTION 4. SIGNS/MARKINGS.** When required pursuant to this section, signs or markings shall be applied on the front of the building, and elsewhere as the Fire Chief may require, at or above the second floor level and shall not be placed over doors, windows, or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief, shall be placed on the sides and rear of the building. Signs/markings shall be a minimum of 24 inches by 24 inches, with lines of 2-inch width, and shall have a reflective background, or be painted with reflective paint, in contrasting colors. Signs/markings shall be applied directly on the surface of the building and shall state the date of posting and the most recent date of inspection by the Fire Chief and Director.

#### **SECTION 5. FINES / FAILURE TO COMPLY AND ENFORCEMENT**

1. Failure to comply with any provision of Section 3. above shall be punished by a fine of Three Hundred (\$300.00) Dollars with each day of violation constituting a separate offence. The Commissioner and/or the Fire Chief shall be enforcing persons for purposes of this section.
2. No owner of a vacant building or abandoned building shall allow said building to become or remain unsecured or dangerous. If it appears that any vacant or abandoned building is unsecured or dangerous, the Commissioner shall send written notification to the owner, requiring that the owner promptly secure or cause the building to be secured. If the owner fails to comply with any order issued pursuant to this Section, the Fire Chief or Commissioner may immediately seek to obtain the proceeds secured by the bond filed pursuant to Section 3 Paragraph 8 herein and shall enter upon the premises and cause the building to be inspected, secured and marked using said proceeds.

3. The Commissioner or Fire Chief, upon being informed of the existence of an abandoned building or a vacant building without a Certificate of Building Closure, shall cause notice to issue to the owner of the status of said building and shall order said person to immediately obtain a Certificate of Building Closure. If any person fails to comply with said order, the Fire Chief or Commissioner may enter the premises to inspect, secure and mark the building.

4. All unsecured vacant and unsecured abandoned buildings shall be immediately referred to the Director and Commissioner for a determination relative to whether the building is a nuisance or dangerous pursuant to M.G.L. Chapter 139 and M.G.L. Chapter 143 and procedures promulgated thereunder.

**SECTION 6. EXPENSES.** The owner of an abandoned building or an owner of a vacant building, who fails to obtain a Certificate of Building Closure as required herein, shall be liable to the City for expenses incurred by the City in securing such building. The Commissioner shall provide the owner with a written statement of all costs associated with inspecting, securing and marking the building. If the owner fails to pay or reimburse the City within sixty (60) days of notice of expenses, the City shall record the notice of claim in the Worcester District Registry of Deeds (or the Land Court Department) forthwith, establishing a lien on the property for the balance due.

**SECTION 7. NOTICES.** Notices required pursuant to this section shall be served in the following manner:

1. Personally on the owner, or the lessee, or the mortgagee in possession, or the contact person specified pursuant to Section 3 Paragraph 6; or
2. Left at the last and usual place of abode of the owner, or contact person as specified pursuant to Section 3 Paragraph 6 if such place of abode is known and is within or without the commonwealth; or,
3. By certified or registered mail, return receipt requested, to the owner, or the lessee, or the mortgagee or contact person specified pursuant to Section 3 Paragraph 6 if such address is known and is within the Commonwealth.
4. If the residence and whereabouts of the owner or, the owner's lessee or, the mortgagee or, the owner's agent are unknown or are outside the Commonwealth, then the notice shall be served by posting a copy thereof in a conspicuous place on the property and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the City.

If any Section, sub-Section, or phrase of this Ordinance were held for any reason, to be unconstitutional, such decision shall not affect the validity of the remaining portion or portions of this Ordinance.