

CITY OF NEW BUFFALO
BERRIEN COUNTY, MICHIGAN
ORDINANCE NO. 259

AN ORDINANCE TO REPEAL SECTION 12-22, "DANGEROUS AND UNINHABITABLE STRUCTURES," OF ARTICLE III, "NUISANCES," CHAPTER 12, "NOISE, NUISANCE, PROHIBITED ACTS AND OTHER MISCELLANEOUS PROVISIONS," OF THE CODE OF ORDINANCES, CITY OF NEW BUFFALO, MICHIGAN, AND TO ADD ARTICLE V, "DANGEROUS BUILDINGS," TO CHAPTER 12, "NOISE, NUISANCE, PROHIBITED ACTS AND OTHER MISCELLANEOUS PROVISIONS," IN ORDER TO PROVIDE FOR AND CLARIFY PROCEDURES FOR ABATING DANGEROUS BUILDINGS

THE CITY OF NEW BUFFALO ORDAINS:

Section 1. Repeal of Section 12-22 of the Code of Ordinances. Section 12-22, "Dangerous and uninhabitable structures," of Article III, "Nuisances," Chapter 12, "Noise, Nuisance, Prohibited Acts and Other Miscellaneous Provisions," of the Code of Ordinances of the City of New Buffalo is hereby repealed in its entirety and reserved for future use.

Section 2. Addition of Article 5 to Chapter 12 of Code of Ordinances. Article V, "Dangerous Buildings," is hereby added to Chapter 12, "Noise, Nuisance, Prohibited Acts and Other Miscellaneous Provisions," of the Code of Ordinances, City of New Buffalo, Michigan and shall read as follows:

Article V. Dangerous Buildings

Sec. 12-50. Dangerous building prohibited.

It is unlawful for any owner or agent to keep or maintain any building or structure or part of the building or structure which is a dangerous building as defined in section 12-51.

Sec. 12-51. Definition.

All buildings or structures which have any of the following defects shall be deemed dangerous buildings:

- (1) Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle one-third of its base;
- (2) Those which show damage or deterioration of the support members or damage or deterioration of the nonsupporting enclosing or outside walls or covering;

- (3) Those which have been damaged by fire, wind or other causes so as to become dangerous to the occupants thereof or to the people of the city;
- (4) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or diseases so as to work injury to the health, morals, safety or general welfare of those living therein or are vermin or rat infested;
- (5) Those not having adequate light, air, heating, water, and sanitation facilities adequate to protect the health, morals, safety or general welfare of human beings who live or may live therein;
- (6) Those having inadequate facilities for egress in case of fire or panic or having insufficient stairways, fire escapes or other means of access;
- (7) Those which have parts thereof which are so attached that they may fall and injure persons or property;
- (8) Those which because of inadequate electric wiring or heating facilities or because of storage of flammable materials or for any other reason constitute a fire hazard;
- (9) Those which because of any other causes similar to the above are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city;
- (10) Those which are vacant and are not kept securely locked, windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereof by unauthorized persons;
- (11) Those which are partially completed unless such structure is in the course of construction in accordance with a valid and subsisting building permit issued by the city, and unless such construction is completed within a reasonable time;
- (12) Those which have become an attractive nuisance to children who might play in the building or structure to their danger, or have become a harbor for vagrants or criminal persons, or which enable persons to resort to the building or structure for committing a nuisance or an unlawful act.

Sec. 12-52. Notice of dangerous conditions; hearing officer; service.

- (1) Notwithstanding any other provision of this article, if a building or structure is found to be a dangerous building, the building department shall issue a notice that the building or structure is a dangerous building.
- (2) The notice shall be served on each owner, occupant, lessee, mortgagee, land contract vendor or vendee and any persons having an interest in the building or structure as shown by the records in the office of the register of deeds.
- (3) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should

not order the building or structure to be demolished, otherwise made safe, or properly maintained.

- (4) The mayor shall, subject to confirmation by the city council, appoint a hearing officer to serve at the pleasure of the council. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector or member of a community housing organization. An employee of the city shall not be appointed as hearing officer. The building department shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer.
- (5) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least ten (10) days before the date of the hearing included in the notice.

Sec. 12-53. Hearing; determination to close proceedings or to order building demolished, made safe or properly maintained; Time period to comply with order, notice of order.

- (1) The building official or his or her designee shall examine every building or structure reported as dangerous, unsafe structurally or constituting a fire hazard; cause a report to be filed in a docket of unsafe structure and premises, stating the use of the building, the nature and estimated extent of damages, if any, or caused by collapse or failure and such other particulars as may be appropriate. If the building official finds the building to be dangerous, he or she shall file with the office of the register of deeds of the county a notice stating that proceedings pursuant to this article have been commenced by the city against the subject property and a sworn affidavit signed by the building official which shall indicate a legal description of the subject property.
- (2) At a hearing prescribed in section 12-52, the hearing officer shall take testimony of the building department, the owner of the property, and any interested party. Not more than five (5) days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe or properly maintained.
- (3) If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall so order, fixing a time in the order, not to exceed thirty (30) days, for the owner, agent or lessee to comply with the order. The following standards shall be used in substance by the hearing officer in ordering repair, vacation or demolition:
 - (a) If the dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this article, it shall be ordered repaired.

- (b) If the building is considered dangerous under section 12-51, and can reasonably be secured so that it will no longer exist in violation of the terms of this article, it shall be ordered secured and properly maintained in accordance with the Property Maintenance Code, Article II of Chapter 5.
 - (c) If the dangerous building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered vacated.
 - (d) If the dangerous building cannot be repaired so that it will no longer exist in violation of the terms of this article or if the cost to repair the dangerous building so that it will no longer exist in violation of the terms of this article would exceed the state equalized value of the building, it shall be demolished. In all cases where a dangerous building is a fire hazard existing or erected in violation of the terms of this article or statutes of the state, it shall be demolished.
- (4) Pursuant to section 12-58, the building department shall provide the owner, occupant, lessee, mortgagee, land contract vendor or vendee, agent and all other persons having an interest in the building as shown by the records in the office of the register of deeds a written copy of the order. The order shall indicate that the building or structure was found by the hearing officer to be a dangerous building within the standards set forth in section 12.51 and that:
- (a) The owner must vacate, repair, properly secure, as provided in section 12-57, or demolish the building in accordance with the terms of the order and this article;
 - (b) The occupant or lessee must vacate the building or may have it repaired in accordance with the provisions of this article and remain in possession;
 - (c) The mortgagee, land contract vendor or vendee, agent or other persons having an interest in the building as shown by the records of the register of deeds may at his or her own risk repair, vacate, properly secure or demolish the building or have such work or act done; provided further that any person notified under this subsection to repair, vacate, properly secure or demolish any building or structure shall be given such reasonable time, not exceeding thirty (30) days, as may be necessary, to do or have done the work or act required by the order provided for in this subsection.
 - (d) Set forth in the order a description of the building or structure deemed unsafe, a statement of the particulars which makes the building or structure a dangerous building.
- (5) If the building or structure is determined by the hearing officer to be dangerous, the building department shall place a notice on all dangerous buildings reading as follows:
- "This building has been found to be a dangerous building by the City of New Buffalo. This notice is to remain on this building until it is repaired, vacated, properly secured or demolished in accordance with the order which has been given the owner,

occupant, lessee, mortgagee, land contract vendor or vendee, agent and all other persons having an interest in said building as shown by the records in the office of the Register of Deeds for the County of Berrien, Michigan. It is unlawful to remove this notice until such order is complied with."

- (6) In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless immediate action is taken with respect to a dangerous building, the building department shall report such facts to the city manager or designee, and the city manager or designee shall cause the property to be boarded up, fenced or otherwise made safe pending final action of the hearing officers. The cost of such emergency work shall be collected in the same manner as provided in section 12-56.
- (7) It shall be unlawful for the owner of any building or structure who has received a compliance order or upon whom a notice of dangerous conditions has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the compliance order has been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice issued by the hearing officer or building department and shall furnish to the building department a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of dangerous conditions and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

Sec. 12-54. Abatement by city generally.

If, at the expiration of any time limit in the order provided for in subsection 12-53(3), the owner has not complied with the requirements thereof, the city manager or designee shall carry out the requirements of the order. The cost of such abatement shall be charged against the premises and the owner thereof in accordance with the provisions of Chapter 11 of the City Charter.

Sec. 12-55. Emergency abatement by city.

The city manager or designee may abate any dangerous structure if the public safety requires immediate action without preliminary order of the hearing officer. Thereafter the cost of abating such nuisance shall be charged against the premises and the owner thereof in accordance with the provisions of Chapter 11 of the City Charter.

Sec. 12-56. Noncompliance of order; cost of compliance as lien.

- (1) If the owner, occupant, mortgagee, lessee, land contract vendor or vendee fails to comply with the order provided for in subsection 12-53(3), the city manager or designee shall cause such building or structure to be repaired, vacated, properly secured or demolished as the facts may warrant, and shall cause the cost of such

repair, vacation, securing or demolition to be charged against the land on which the building exists as a lien or cause such cost to be added to the tax roll as an assessment against the land upon which the building stands or did stand, or to be recovered in a suit at law against the owner, provided, that in cases where such procedure is desirable and any delay thereby caused will not be dangerous to the health, morals, safety and general welfare of the people of this city, the council may order legal action to force the owner to make all necessary repairs or demolish the building.

- (2) Any such owner, agent or person in charge who is responsible for the neglect and lack of maintenance which results in an order being that such building must be restored to a safe condition, properly secured or that the building must be demolished, shall be charged with all administrative costs and expenses incurred in the enforcement of this article. Such costs shall include inspections, postal charges, legal expenses and others which are a result of the enforcement of this article, and as ascertained by the city manager or designee.
- (3) All costs assessed against the owner, agent or person in charge may also be assessed against the property on the tax rolls unless otherwise paid by the owner, agent or person in charge. All such costs are independent and cumulative of any penalties and powers of the city as set forth in other sections of this article or as stated under the laws of the state.

Sec. 12-57. Securing of vacant buildings.

- (1) All vacant buildings shall be secured as follows:
 - a. All doors, windows and other entrances shall be kept securely locked;
 - b. All window displays shall be removed;
 - c. All interior portable furnishings and fixtures shall be removed or arranged in such a manner as not to be exposed to public view;
 - d. Window areas must be covered with one (1) of the following:
 - i. Window treatments, such as curtains, shades and blinds; or
 - ii. A nontransparent paint so as to obscure view.
- (2) Vacant buildings which have become open, unsecured or otherwise unprotected from the entrance of unauthorized persons may be temporarily secured for a period of fourteen (14) days, by neatly boarding up the breached part of the building using the approved boarding materials. Upon the expiration of the 14-day period, the building shall be secured as provided in subsection 12-57(1) above. Approved boarding materials are as follows:
 - a. Half-inch C.D.X. plywood or its equivalent per American Plywood Association performance rated O.S.B. board.
 - b. Two (2) two-inch x four-inch strong backs, cut twelve (12) inches wider than the door or window opening width.

- c. Four (4) 3/8-inch carriage bolts, long enough to provide a full nut thread when assembled.

Sec. 12-58. Notice of order.

- (a) All notices required by this article shall be given by registered mail or certified mail, return receipt requested, unless notice was given personally.
- (b) In addition, a copy of all orders shall be posted upon a conspicuous part of the building or structure.
- (c) In addition to the above, if the owner cannot be found and the order includes the demolition of the structure, all notices shall be published once a week for three (3) successive weeks in a newspaper of general circulation.

Sec. 12-59. Appeal.

Any person affected by any order which has been issued in connection with the enforcement of any provision of this article, or of any rule or regulation adopted pursuant thereto, shall have the right to request and shall be granted a hearing on the matter before the city council; provided that such person shall file, in the office of the city clerk, a written petition requesting such hearing and containing a statement of the grounds therefore within twenty (20) days after the day the order was served. At the hearing, the person affected shall be given the opportunity to show cause why the order should not be enforced. The city council shall either approve, disapprove, or modify the order. If the city council approves or modifies the order, it shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or person in charge shall comply with the order within 60 days after the date of the hearing. For an order of demolition, if the city council determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or person in charge shall comply with the order of demolition within 21 days after the date of the hearing. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists.

Sec. 12-60. Violations; buildings in violation declared public nuisance.

- (a) The owner of any dangerous building who shall fail to comply with any order to repair, vacate or demolish the building and the occupant of any building who shall fail to comply with any order to vacate the building shall be responsible for a municipal civil infraction and upon a determination of responsibility thereto, shall be punished as provided in section 1-6 of this Code.
- (b) Any building or structure in violation of any of the provisions of this article is hereby declared to be a public nuisance, and may be abated by order of any court or competent jurisdiction.

Secs. 12-61 through 12-70. [Reserved.]

Section 3. Publication and Effective Date. This Ordinance shall be published in a newspaper of general circulation in the City and shall be effective 20 days after its enactment or upon publication, whichever is later.

YEAS: Lijewski, Robertson, Price, Flanagan, Humphrey

NAYS:

ABSTAIN:

ABSENT:

ORDINANCE DECLARED ADOPTED

CERTIFICATION

This is a true and complete copy of an ordinance adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a meeting held on February 21, 2023.

John Humphrey, Mayor

Ann M. Fidler, Clerk