

TOWN OF ALBURGH
ORDINANCE TO REGULATE NUISANCE PROPERTIES

The Selectboard of the Town of Alburgh hereby ordains:

Section 1. PURPOSE.

Any property within the Town which is in a state of disrepair and deterioration, including vacant buildings, unsafe or uninhabitable 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. 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. The purpose of this Ordinance is to abate public nuisances and to mitigate their impacts.

Section 2. AUTHORITY

This Ordinance to Regulate Nuisance Properties (the “Ordinance”) is adopted by the Selectboard of the Town of Alburgh pursuant to the authority of 24 V.S.A. §§ 2121, 2291(13), (14), (15) and (24), and 24 V.S.A. Chapter 59, and shall amend, supersede and replace in its entirety all other ordinances of the Town with respect to the herein contained subject matter, including the Town of Alburgh Ordinance to Regulate Nuisance Properties, adopted on July 11, 2017. This Ordinance is a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

Section 3. DEFINITIONS.

(A) As used in this Ordinance, the term “nuisance” and “public nuisance” shall mean:

(1) the physical condition or occupancy of any premises or property regarded as a public nuisance at common law;

(2) any physical condition or occupancy of any premises or property considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences and structures;

- (3) any premises that has unsanitary sewage or plumbing facilities;
- (4) any premises designated as uninhabitable or unsafe for human habitation. Habitability shall be defined in accordance with 9 V.S.A. Chapter 139;
- (5) any premises or property that is manifestly capable of being a fire hazard, or is manifestly unsafe or unsecure so as to endanger life, limb or property;
- (6) any premises from which plumbing, heating or other facilities have been permanently removed or disconnected, destroyed or rendered ineffective, or the adequate precautions against trespassers have not been provided;
- (7) any premises that is unsanitary, or that is littered with rubbish or garbage; or
- (8) any structure that is in a state of dilapidation, deterioration or decay, faulty construction, overcrowded, open, vacant or abandoned, or damaged by fire or other casualty to the extent so as to not be habitable, or in danger of collapse or failure; or dangerous to anyone on or near the premises, or detracts from the value, use and enjoyment of neighboring or adjacent property.

(B) As used in this Ordinance, the term “Inspection Official” shall mean the Town Health Officer, Assistant Health Officer, or such other person so designated and appointed by the Selectboard from time to time to enforce or execute the provisions of this Ordinance.

(C) As used in this Ordinance, the term “Owner” shall mean 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.

Section 4. PROHIBITION.

(A) No person shall create, operate or maintain a public nuisance within the Town.

(B) No person shall fail to comply with the terms of an order issued pursuant to Sections 6(D) or 6(E) of this Ordinance.

Section 5. INSPECTION.

(A) Upon receipt of information, either written or verbally at a Selectboard meeting, that a violation of this Ordinance has occurred, an Inspection Official shall undertake a physical inspection of the premises or property. The Inspection Official

may enter any building, structure or premises within the Town for the purpose of making inspections or investigations at all reasonable hours; provided that, except in case of emergency, the right and authority conferred by this section shall not apply to the entry of any premises or property unless advance written notice is served on the Owner thereof in accordance with 32 V.S.A. § 5252(3). Such written notice shall contain a statement of the date and time that an inspection will be made and shall also contain a statement of the purpose of such inspection.

(B) The Inspection Official shall prepare a written report of his or her inspection of the premises or property and any corrective or abatement recommendations, and shall deliver a copy thereof to the Owner of the premises and to the Town Clerk for transmittal to the Selectboard.

Section 6. HEARING AND ENFORCEMENT.

(A) Upon at least ten (10) days advance written notice to the Owner of the premises, the Selectboard shall convene a public hearing to consider and act upon the inspection report of the Inspection Official. At such hearing, the Selectboard shall allow testimony and evidence from the Owner and/or tenant of the premises or property, Town officials, agents and employees, and the public relating to the condition of the premises.

(B) Following such hearing, the Selectboard shall deliberate and may determine that the premises constitute a public nuisance based upon specific findings. In the event the Selectboard determines that the premises constitute a public nuisance, it shall direct that the Owner thereof produce and deliver to the Selectboard a plan and schedule of remediation and abatement, such submission to be made within a reasonable time frame established by the Selectboard, but in no event less than ten (10) days from the date of issuance of the Selectboard's findings.

(C) In the event the Owner's remediation and abatement plan is accepted and approved by the Selectboard, the Owner shall implement said plan immediately and shall complete the same within the time limits imposed by the Selectboard.

(D) In the event the Owner fails to submit a plan of remediation and abatement in accordance with Subsection (B), or if the Owner fails to draft a plan accepted by the Selectboard or if the Owner fails to comply with Subsection (C), the Town shall proceed to enforce this Ordinance as provided herein, and shall seek such injunctive relief, enforcement remedies, and penalties as permitted by law, including, without limitation, abatement of common law nuisances, abatement of public health hazards, repair or demolition of structures determined to be in violation of this Ordinance, enforcement and foreclosure of liens for unpaid fees imposed under Section 8 hereof, and recovery in a civil action for remediation, mitigation and abatement costs incurred by the Town.

(E) In addition to being subject to penalties imposed for violating this Ordinance, an Owner whose property is found to be in violation or noncompliance of Section 6(D) hereof shall be liable for all costs incurred by the Town under Section 6(D) and for fees imposed under Section 8, payment of which shall be secured by a lien on the property in favor of the Town in the same manner and to the same extent as taxes assessed on the grand list, and all procedures and remedies for the collection of taxes shall apply to the collection of those costs, fees and penalties; provided, however, that the Town provides notice to the Owner in accordance with 32 V.S.A. § 5252(3) prior to incurring costs and fees.

Section 7. APPEALS.

A person, including the Owner, aggrieved by any action taken hereunder by the Selectboard or a Town official, agent or employee may appeal any decision made by the Selectboard under Section 6. Such appeal shall be taken in the manner provided by law for appeals from governmental agencies and bodies.

Section 8. FEES.

Commencing thirty (30) days from the date of delivery of the Inspection Official's report pursuant to Section 5(B) hereof, the Inspection Official shall conduct periodic inspections of the premises until the remediation plan has been completed in the judgment of the Selectboard, and shall furnish a report of such inspection to the Owner and Selectboard. An inspection fee of \$50 for residential properties and \$100 for commercial properties for each such inspection is hereby established, such fee payable upon receipt by the Owner of an invoice from the Town Treasurer.

Section 9. SCOPE OF ORDINANCE.

The Ordinance shall apply to all property within all areas of the Town of Alburgh.

Section 10. PENALTIES.

(A) Violations of this Ordinance shall constitute a civil ordinance violation and may be punishable by the following penalties:

(1) First Offense: A first offense for violation of any provision of this Ordinance or any order issued pursuant to Sections 6(D) or 6(E) hereof shall be punishable by a fine of no less than two hundred dollars (\$200.00). The waiver fee, in lieu of a civil penalty for any person who declines to contest a municipal

complaint or any order issued pursuant to Sections 6(D) or 6(E) hereof, for a first offense shall be one hundred dollars (\$100.00).

(2) Second offense: A second offense for violation of any provision of this Ordinance or any order issued pursuant to Sections 6(D) or 6(E) hereof shall be punishable by a fine of no less than four hundred dollars (\$400.00). The waiver fee, in lieu of a civil penalty for any person who declines to contest a municipal complaint or any order issued hereunder, for a second offense shall be two hundred dollars (\$200.00).

(3) Third offense and subsequent offenses: A third or subsequent offense for violation of any provision of this Ordinance or any order issued pursuant to Sections 6(D) or 6(E) hereof shall be six hundred dollars (\$600.00). The waiver fee, in lieu of a civil penalty for any person who declines to contest a municipal complaint or any order issued hereunder, shall be four hundred dollars (\$400.00).

Offenses shall be counted on a calendar year basis. Each day a violation continues shall constitute a separate offense. In the event a waiver fee is not paid by the Owner, the Selectboard may, at its discretion, seek enforcement of this Ordinance by injunctive or other appropriate relief and collection of any penalties, assessments, charges or amounts due under this Ordinance by bringing a civil action in the Judicial Bureau or the Vermont Superior Court against the Owner of a nuisance property that is the subject of an order or monetary fine issued hereunder in accordance with 24 V.S.A. §§ 1974a and 1977, *et. seq.*

Section 11. OTHER LAWS; REMEDIES CUMULATIVE.

This Ordinance shall apply in addition to all other ordinances, bylaws or rules of the Town of Alburgh and all applicable laws of the State of Vermont. Nothing herein shall be construed to limit the remedies available to the Town of Alburgh under any applicable law, rule, ordinance or code, and any such remedies shall be cumulative.

Section 12. 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.

Section 13. EFFECTIVE DATE

This Ordinance shall become effective sixty (60) days after its adoption by the Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this Ordinance.

ADOPTED this _____ day of November, 2018.

Lee Kimball, Chair

Alton Brusio

Cheryl Moomey

Chuck Pease

Kenneth Millman

Adoption History

1. Agenda item at a special Selectboard meeting held on November 20, 2018.
2. Read and approved at regular Selectboard meeting on November 20, 2018, and entered in the minutes of that meeting which were approved on _____, 201__.
3. Posted in five public places on _____, 2018.
4. Notice of adoption published in the Islander newspaper on _____, 201__, with a notice of the right to petition.
5. Other actions, including petitions pursuant to 24 V.S.A. § 1973: _____.