

Sponsor: Mayor Frankie Dale Rife
First Reading: ___ 9/12/11 ___
Second Reading: ___ 10/3/11 ___

ORDINANCE 5-11

AN ORDINANCE GOVERNING DANGEROUS BUILDINGS AND STRUCTURES

WHEREAS, the Town Council of the Town of Wyoming is authorized under its Charter to enact ordinances relating to the health and safety of the town;

WHEREAS, the Town Council finds that dangerous buildings create health and safety issues that when left unresolved can potentially be detrimental to the public; and

WHEREAS, the Town Council of the Town of Wyoming has repealed Ordinance #6-07 "An Ordinance Providing for the Condemnation of Certain Structures and Providing a Penalty for Violation Therefor" in anticipation of enacting this ordinance;

BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that Ordinance #5-11, "An Ordinance Governing Dangerous Buildings and Structures" be, and hereby is, enacted as follows to wit:

AN ORDINANCE GOVERNING DANGEROUS BUILDINGS AND STRUCTURES

Section 1. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or chattels. As used in this ordinance, the term "building" shall, where appropriate, include the term "structure."

Dangerous building means all buildings or structures which have any or all of the following defects:

- (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 third of its base.
- (2) Those which, exclusive of the foundation, show 33 percent or more of damage or deterioration of the supporting member or members, or 50 percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.
- (3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe, for the purpose used.

(4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morale, or the general health and welfare of the occupants or the people of the town.

(5) Those which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morale, safety or general welfare of those living therein.

(6) Those having light, air and sanitation facilities which are inadequate to protect the health, morale, safety or general welfare of human beings who live or may live therein.

(7) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of communication.

(8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property.

(9) Those which because of their condition are unsafe, unsanitary or dangerous to the health, morale, safety or general welfare of the people of the town.

(10) Those under construction, if the authorized work is substantially suspended or abandoned for a period of three months or more and the abandoned site creates risk or danger to the health, safety, and welfare of the occupants, neighboring properties, or the residents of the town.

Final order means: (a) any order issued by the town code enforcement official that is either not appealed to the Town Council in accordance with section 8 of this ordinance, (b) any order issued by the Town Council following an appeal of a town code enforcement official's order pursuant to section 8 of this ordinance; (c) a consent decree, and/or (d) any emergency order issued by the code official.

"PHALI" - Acronym for all "persons holding a legal interest" in a building or structure as of record in the public land records of Kent County, including, but not limited to, the owners, mortgagees, lien holders, and lessees under a recorded lease.

Structure means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. "Structure" shall include, among other things, buildings, manufactured homes, walls, fences, and billboards.

Tenant in possession means a tenant having legal possession under a written lease which lease obligates the tenant (rather than the owner of record) to repair and/or maintain the building.

Section 2. Declared detrimental to health and safety.

All dangerous buildings are hereby declared to be detrimental to the health and safety of the public and shall be vacated, repaired, or demolished, as provided in this ordinance. The town may, in addition to or in lieu of all other remedies contained herein, seek equitable relief from the Court of Chancery to enjoin such violations.

Section 3. Violations; penalties.

(a) *Removal of posted legal notice.* Any person removing the legal notice posted on the building pursuant to section 4(7) of this ordinance shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than \$100.00 and not more than \$500.00.

(b) *Failure to vacate by occupant.* Any person occupying a dangerous building who fails to comply with any final order to vacate shall, upon conviction, be guilty of a misdemeanor and subject to a fine of not less than \$100.00 and not more than \$500.00.

(c) *Failure to repair by tenant in possession.* Any tenant in possession of any dangerous building who fails to repair the building in accordance with any final order to repair issued as provided in this ordinance shall, upon conviction, be guilty of a misdemeanor and subject to a fine of not less than \$300.00 and not more than \$1,000.00.

(d) *Failure to repair or demolish by owner of record.* Any owner of record of any dangerous building who shall fail to comply with any final order to repair or any final order to demolish the building as provided for in this ordinance shall, upon conviction, be guilty of a misdemeanor and subject a fine of not less than \$100.00 and not more than \$1,000.00.

Section 4. Code official's duties.

The code official shall:

- (1) Inspect or cause to be inspected periodically, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial, manufacturing, or loft buildings for the purpose of determining whether any conditions exist which render such places a dangerous building.
- (2) Inspect any building about which complaints are filed by any person to the effect that a building, wall or structure is or may be in violation of this ordinance.
- (3) Inspect any building reported by the fire or police department of the town as being in probable violation of this ordinance.
- (4) Inspect such other buildings as shall from time to time come to his attention as possibly dangerous buildings.
- (5) Notify all occupants and PHALI in any dangerous building in accordance with the provisions of section 7.
- (6) Appear at all hearings conducted before the Town Council and testify as to the condition of dangerous buildings.
- (7) At the time notice is provided pursuant to section 7 of this ordinance, place a notice on all dangerous buildings reading as follows:

"This building has been found to be a Dangerous Building by the Code Official and ordered [vacated/repaired/demolished]. It is unlawful to remove this notice without

prior written approval from the Town Code Official. Any person convicted of so removing this notice shall pay a fine of not less than \$100.00"

(8) Prosecute:

- a. All occupants for failure to comply with a final order to vacate.
- b. All persons removing the notice posted pursuant to section 4(7).
- c. All tenants in possession of any dangerous building who fail to repair the building in accordance with any final order issued pursuant to this ordinance.
- d. Any owner of record of any dangerous building who shall fail to comply with any final order to repair or demolish the building as provided for in this ordinance.

(9) When necessary or appropriate, retain a structural engineer, architect, or other qualified expert consultant to inspect and issue a report with regards to any building or structure determined to be "dangerous" by him, the cost of such expert to be: Paid by the owner of record; charged against the lands on which the building exists as a municipal lien; added to the tax duplicate as an assessment; or recovered in a suit at law against the owner; provided however, that such costs shall be paid by the town where the consultant determines that the building does not constitute a dangerous building hereunder.

Section 5. Standards for repair, vacation or demolition.

The following standards shall govern decisions by any town code official and/or the Town Council in ordering any vacation, repairs, or demolition of a building determined to be "dangerous" in violation of this ordinance:

(1) *Vacate building.* If the building is in such condition, or if authorized repair work is such, as to endanger the health, safety, or general welfare of the building's occupants, it shall be ordered vacated.

(2) *Repair if reasonable.* If, under all of the circumstances, it would be reasonable to repair the building so that it will no longer exist in violation of this ordinance, it shall be ordered repaired. Factors that may be taken into consideration in determining whether it is "reasonable" to make repairs may include, but shall not be limited to: the extent and estimated cost of the repairs necessary in comparison to the fair market value of the building if such repairs were to be made; the practicality of making such repairs due to construction, engineering, safety, or similar constraints; the uniqueness of the building from an architectural or historic vantage point; and the financial ability of the PHALI to initiate such repairs and complete them in a workmanlike and timely manner.

(3) *Fire hazard: Repair or demolish.* In all cases where it is determined that a dangerous building is a fire hazard existing or erected in violation of the terms of this ordinance or of any town ordinance or state statute or regulation, it shall be ordered repaired or demolished, as appropriate, pursuant to the terms of this ordinance.

(4) *Demolish.* A building shall be ordered demolished in all cases where: (1) it is

determined, in accordance with subsection (2) of this section 5, that it would not be reasonable to repair the building so that it will no longer exist in violation of the terms of this section; or (2) the building is determined to be damaged, decayed, or deteriorated to such an extent as to require replacement of 51 percent or more of:

- a. Its major structural components (e.g. foundation, supporting structural members, floors, exterior walls, roof, porches and steps);
- b. The total square footage of all enclosed floor area; or
- c. The reasonably estimated current cost (including all labor, materials, engineering, building permits, insurance, and the like) of reconstructing the entire building.

Section 6. Enforcement order by code official.

Whenever the code official determines that a building is a dangerous building under this ordinance, he/she shall issue one or more of the following orders as appropriate:

(a) *Order to vacate.* If the building is occupied and: (1) has been ordered demolished or (2) has been ordered repaired but the condition of such building, or the repairs thereto, are such as to endanger the health, safety, or general welfare of the occupants thereof, the code official shall issue an order to vacate commanding the occupants to vacate within seven calendar days, or such lesser time as reasonable in view of the dangers presented. Such order shall include notice of the occupant's right to appeal the code official's order pursuant to section 8.

(b) *Order to repair.* If it is determined that the building may reasonably be repaired pursuant to section 5(2), the code enforcement official shall issue an order to repair, commanding: (1) the tenants in possession and/or (2) the owner(s) of record, to repair the building so that it shall no longer be a dangerous building under this ordinance. Such order shall:

- (1) Specify the particulars which make the building a dangerous building under this ordinance,
- (2) Require that repair work be commenced within 30 days (or such lesser time as reasonable in view of the dangers presented) and completed within 90 days of the date work was commenced,
- (3) Require that any person(s) or entity undertaking repairs pursuant to the order to first: (a) safely secure the building and lot to protect the public and abutting owners for potential injury to persons or property and (b) obtain all required building permits.
- (4) Include notice of the occupant's right to appeal the code official's order pursuant to section 8.

(c) *Order to demolish.* If it is determined that it is not reasonable to repair the building under section 5(2) or that the building should otherwise be demolished under section 5(3) or (4), the code enforcement official shall issue an order to demolish, commanding the

owner(s) of record to demolish such building, including disposal of all demolition debris from the site and proper grading and seeding thereof following such demolition. Such order shall:

- (1) Specify the particulars which make the building a dangerous building under this ordinance,
- (2) Require that demolition work be commenced within 30 days (or such lesser time as reasonable in view of the dangers presented) and completed within 60 days of the date work was commenced,
- (3) Require that any person(s) or entity undertaking demolition pursuant to the order to first: (a) safely secure the building and lot to protect the public and abutting owners for potential injury to persons or property and (b) obtain all required demolition permits.
- (4) Include notice of the occupant's right to appeal the code official's order pursuant to section 8.

Section 7. Notice of code official's order; effective date of order.

(a) Any order to vacate, repair, or demolish shall be provided to the occupant(s) (if any), the owner(s) of record, and all other PHALI as follows:

- (1) *Order to vacate.* An order to vacate shall be given to the occupants of any dangerous building by: (a) posting a copy of such order on the front door of such building and (b) personal delivery to an adult person residing within the building or (c) certified and regular mail sent to the "occupant" at the mailing address of the dangerous building.
- (2) *Order to repair.* An order to repair shall be given to the tenants in possession (if the town is aware of such lease obligation), to the owner(s) of record, and to all other PHALI by: (a) personal delivery or (b) certified and regular mail sent to the last known mailing address of person(s) or entity(s) as shown on the town's tax assessment records. Additionally: (a) such order shall be posted in some conspicuous place on the front of the building, posted at the town hall, and (c) published in a newspaper of general circulation in the town.
- (3) *Order to demolish.* An order to demolish shall be given to the tenants in possession (if the town is aware of such lease obligation), to the owner(s) of record, and to all other PHALI by: (a) personal delivery or (b) certified and regular mail sent to the last known mailing address of person(s) or entity(s) as shown on the town's tax assessment records. Additionally: (a) such order shall be posted in some conspicuous place on the front of the building, (b) posted at the town hall, and (b) published in a newspaper of general circulation in the town.

(b) Any order issued under section 6 shall be effective upon the expiration of five days from the date that notice was given. Where such notices are provided on different dates, the last such date shall control. Notice by mail shall be effective upon depositing same in the U.S. mails,

postage pre-paid, to the proper address.

Section 8. Right to appeal order of code official.

Any occupant, owner of record, or other PHALI in a building determined to be a dangerous building under this ordinance may, within ten days, file a written appeal of the order of the code official to the Town Council. Filing of an appeal shall stay the effect of the notice of the order of the code official and shall prevent the code official from proceeding with the remedies provided in this ordinance pending the decision of the Town Council. Notice of such appeal hearing, setting out the date, time, place, and subject property shall be: (a) posted on the front door of the building and at the town hall; (b) provided to the owner of record, tenant in possession, and all other PHALI by regular and certified mail, and (c) to the occupant by personal delivery, or by regular and certified mail. At such hearing, the Town Council shall:

(1) Hear such testimony and evidence as the code official and any occupant, tenant in possession, or other PHALI shall offer relative to the condition of the building. The strict legal rules of evidence shall not apply, and hearsay evidence shall not be prohibited, but the Town Council shall be free to accept such evidence as a reasonable person would accept as reliable and trustworthy in making important decisions in his own life, affording all evidence such weight as the Town Council deems appropriate. All parties appearing before the Town Council shall have the right to be represented by legal counsel and to cross-examine witnesses. Such hearing shall be transcribed or tape-recorded and a record kept of all exhibits introduced for the Town Council's consideration.

(2) Make written findings of fact from the testimony and evidence presented at the hearing.

(3) Issue a final order based upon its written findings of fact. If the finding of the Town Council is that the building is a dangerous building, the Town Council shall issue an appropriate final order commanding that the building be vacated, repaired, or demolished as appropriate:

a. *Order to vacate.* If the building is occupied and: (1) has been ordered demolished or (2) has been ordered repaired but the condition of such building, or the repairs thereto, are such as to endanger the health, safety, or general welfare of the occupants thereof, the Town Council shall issue an order to vacate, specifying the particulars which make the building a dangerous building under this ordinance, and commanding the occupants to vacate within seven calendar days, or such lesser time as reasonable in view of the dangers presented.

b. *Order to repair.* If it is determined that the building may reasonably be repaired, the Town Council shall issue a final order to repair, commanding the tenants in possession and/or the owner(s) of record, to repair the building so that it shall no longer be a dangerous building under this ordinance. Such order shall:

(i) Specify the particulars which make the building a dangerous building under this ordinance,

(ii) Require that repair work be commenced within 30 days (or such lesser time as reasonable in view of the dangers presented) and completed within 90 days of the date work was commenced,

(iii) Require that any person(s) or entity undertaking repairs pursuant to the order to first: (a) safely secure the building and lot to protect the public and abutting owners for potential injury to persons or property and (b) obtain all required building permits.

(c) *Order to demolish.* If it is determined the building should be demolished, the Town Council shall issue a final order to demolish, commanding the owner(s) of record to demolish such building, including disposal of all demolition debris from the site and proper grading and seeding thereof following such demolition. Such order shall:

(1) Specify the particulars which make the building a dangerous building under this ordinance,

(2) Require that demolition work be commenced within 30 days (or such lesser time as reasonable in view of the dangers presented) and completed within 60 days of the date work was commenced,

(3) Require that any person(s) or entity undertaking demolition pursuant to the order to first: (a) safely secure the building and lot to protect the public and abutting owners for potential injury to persons or property and (b) obtain all required building permits.

Section 9. Consent decree.

Within ten days of the effective date of the code official's order that a building has been found by him to be a dangerous building pursuant to this ordinance, or at any time during the pendency of an appeal of such order to the Town Council, the owner of the property may enter into a consent decree with the town acknowledging that the owner is in concurrence with the findings of the code official and consenting to remedial action by the town, the cost of which, if not promptly paid by the owner of record, is to be: (a) charged against the land upon which the building stands or formerly stood as a municipal lien, and/or added to the tax duplicate as an assessment. In the event of such consent decree, the town code official shall notify all other PHALI according to the public land records, and also any occupants of the building, of such consent order.

Section 10. Right to post secured bond and repair, notwithstanding order to demolish.

Notwithstanding the issuance of any final order (other than a consent order or an emergency order), any owner of record or other PHALI may proceed to repair such building as follows:

(a) Prior to the expiration of the time limit established by the code official or Town Council (as appropriate) to commence demolition work, the owner of record or other PHALI shall provide the town with:

(1) A detailed written estimate from a Delaware-licensed architect, engineer, or established construction contractor specifying the work necessary to bring the building into compliance, a projected time frame to complete work (which shall not exceed nine months) and the estimated cost thereof. Such costs shall include all costs associated with the project including construction, demolition, permits, insurance, landfill charges, and landscaping/restoration. The cost of obtaining the estimate shall be paid by the person seeking to repair the building. Such estimate shall be subject to review for reasonableness by the town's consulting engineer and approval by the town.

(2) A completion performance bond in an amount equal to 125 percent of the estimated cost of bringing the building into compliance, in form acceptable to the town, together with approved surety in form acceptable to the town. Surety may consist of an irrevocable letter of credit from a bank located in the State of Delaware, a commercial surety bond from an insurance company licensed to do business in the State of Delaware, a first lien mortgage on real estate in the State of Delaware with an appraised value equal to or exceeding twice the amount of the bond, or cash deposited with the town.

(b) Work to repair the building shall commence within 15 days of the date that the town approves the cost estimate, completion of work time frame, completion performance bond, and approved surety. The owner of record, any PHALI, or their construction contractor, shall obtain all necessary construction permits prior to commencing work. Work shall continue on a regular and diligent basis except for weekends, holidays, bad weather days and the like. Except for the forgoing, if work ceases for five consecutive work days or for five workdays out of any ten consecutive work days, in the absence of a showing of just cause by the contractor, owner of record, or other PHALI, the town shall be entitled to declare the performance completion bond in default and proceed to draw upon the surety as hereinafter provided.

(c) All work shall be completed within such period of time as approved by the town under subsection (a)(1) above; provided however, that for just cause shown, the town may (in writing) extend the time to complete work beyond the original deadline not exceeding three months.

(d) In the event that work is not commenced, continued, or completed in accordance with the provisions of this section, the town may declare a default under the performance completion bond and make such draw or draws upon the approved surety as necessary to either: (i) finish the repair work necessary to bring the building into compliance or (ii) in the event that completion of the repair work does not, in the reasonable discretion of the town, appear to be practical, to have the building demolished, the demolition materials properly disposed of, and the lot graded and seeded.

Section 11. Right of PHALI, other than the owner of record, to perform repairs or demolition to avoid imposition of lien.

Any PHALI other than the owner of record shall have the right, at their own assumed risk, to undertake repairs or demolition of any building in accordance with any final order or consent

decree in the place and stead of the tenant in possession and/or owner of record in order to avoid the town performing the work and imposing a lien upon the property which lien, by law, would have preference and priority over all other liens, including those prior in time.

Section 12. Failure to comply with final order or consent decree.

- (a) *Town's authority to take remedial action, including vacating, repair, or demolition.* Where:
- (1) Any dangerous building has not been brought into compliance within the time specified in an order of the code official issued pursuant section 6 and no timely appeal is filed in accordance with section 8; or
 - (2) Any dangerous building has not been brought into compliance within the time specified in a final order of the Town Council pursuant to section 8(3), or
 - (c) Any dangerous building has not been brought into compliance within the time specified in any consent decree entered into pursuant to section 9.

The town code official may, in addition to the enforcement provisions of section 3, immediately undertake such remedial action as the code enforcement official, in his reasonable discretion, deems necessary or appropriate, to bring the building into compliance, including but not limited to: (a) taking possession of the building and, if necessary, having any remaining occupants evicted as trespassers with the assistance of the town police department to insure their health and safety; (b) securing the building and lot to protect the public and abutting owners from potential injury to persons or property, (c) undertaking, with town staff and/or through private contractors, such repairs as necessary to bring the building into compliance; or (d) undertaking, with town staff and/or through private contractors, demolition of the building, the proper removal of all demolition materials, and the grading and seeding of the lot.

(b) *Presumption that building not reasonable to repair where repairs not completed within time permitted.* Where any building has not been repaired within the time permitted under an order to repair issued by the code official pursuant to section 6(b) and no timely appeal has been filed under section 8, or where any building has not been repaired within the time permitted under a final order to repair issued by the Town Council pursuant to section 8(3)(b), the town code official may reasonably presume that it is not reasonable to repair the building and proceed to have such building demolished.

Section 13. Costs of appeal and/or remedial action to be a lien upon the property.

In the event that the code official takes remedial action due to the failure of the occupant, tenant in possession, or owner of record to comply with any final order or consent decree: (a) all of the town's administrative, legal, and expert witness costs incurred to inspect the building and/or in connection with any hearing held pursuant to this ordinance, and (b) all remedial costs incurred to repair or demolish the building:

- (1) Shall be a lien upon the property to the extent and as authorized by 25 Del. C. Chapter 29;

(2) Shall be added to the town's assessment list as authorized by Section 15(b) of the Town Charter;

(3) May be recovered from the owner of record in an action at law in any court of competent jurisdiction

Section 14. Duties of fire marshal, fire department, police force, other town employees.

The fire marshal, all members of the fire department, all officers of the police force, and all other employees of the town shall report in writing to the code official all buildings or structures within the town which shall come to their knowledge or attention as being dangerous buildings within the terms of this ordinance.

Section 15. Duties of town solicitor.

The town solicitor shall:

(1) Appear at all hearings before the Town Council in regard to dangerous buildings.

(2) Bring suit to collect all municipal liens, assessments or costs incurred in repairing or causing to be vacated or demolished dangerous buildings.

(3) Take such other legal action as is necessary to carry out the terms and provisions of this ordinance.

Section 16. Emergency cases.

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless a dangerous building is immediately vacated, repaired, or demolished, the code official may, without complying with any of the other legal procedures set forth herein, order the immediate vacation, repair, or demolition of such dangerous building or any portion thereof, and may proceed as expeditiously as possible to have all necessary work done (including: boarding up of openings in the building; fencing off or barricading access to the lot; closing abutting streets, sidewalks, alleys, and public ways; or such other appropriate action) as deemed necessary to render the building and premises temporarily safe. In such event, the code official shall make reasonable efforts, under the circumstances, to provide the occupants, tenants in possession, and owners, prompt notice of such actions (by fax, e-mail, telephone, personal delivery, or overnight courier, as reasonable under the circumstances), but prior notice shall not be required if the circumstances do not reasonably allow for same. The costs of such emergency actions, as well as the cost of providing notice thereof, shall be collected in the same manner as provided in section 13.

Section 17. Administrative liability.

No officer, agent or employee of the town shall render himself personally liable for any damage that may accrue to persons or property as result of any act required or permitted in the discharge of his duties under this ordinance, and all such persons against whom such claims are brought shall be defended by the town.

