

**BOROUGH OF SUSSEX
ORDINANCE NO. 2021-01**

AN ORDINANCE TO AMEND SUBSECTION 12-6, ENTITLED “UNFIT BUILDINGS”, OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF SUSSEX, COUNTY OF SUSSEX AND STATE OF NEW JERSEY

BE IT ORDAINED by the Governing Body of the Borough of Sussex, County of Sussex, State of New Jersey, as follows:

§ 12-6 BUILDINGS UNFIT FOR HUMAN HABITATION, OCCUPANCY OR USE

This section is passed pursuant to the Unfit Buildings Statute and may be known and cited as the “Unfit Buildings Ordinance” and may be referred to herein as "this section" or “this Unfit Buildings Ordinance”.

§ 12-6.1 Definitions.

The following terms whenever used or referred to in this Unfit Buildings Ordinance shall have the following respective meanings for the purposes hereof, unless a different meaning clearly appears from the context:

BUILDING

Means any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any outhouses, and appurtenances belonging thereto or usually enjoyed therewith.

OWNER

Means holder or holders of the title in fee simple.

PARTIES IN INTEREST

Means all individuals, associations and corporations who have interests of record in a Building and/or any who are in actual possession thereof.

PUBLIC AUTHORITY

Means any housing authority or any officer who is in charge of any department or branch of the government of the Borough of Sussex, County of Sussex or State of New Jersey relating to health, fire, building regulations, or to other activities concerning Buildings in the Borough.

PUBLIC OFFICER

Means the Construction Official, or any other person or persons designated as the Public Officer pursuant to the provisions of this Unfit Buildings Ordinance.

UNFIT BUILDINGS STATUTE

Means N.J.S.A. 40:48–2.3 *et seq.*, as amended, modified or supplemented from time to time, along with its successor(s) and all rules and regulations adopted thereunder.

§ 12-6.2 Declaration of Public Necessity. It is hereby found and declared that the existence or occupation of any Buildings in the Borough of Sussex which are so old, dilapidated or have become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation, or occupancy, or use, are inimical to the welfare and dangerous and injurious to the health and safety of the people of this Borough, and that a public necessity exists for the repair, closing or demolition of such Buildings. Whenever the Borough finds any Buildings in the Borough which are unfit for human habitation or occupancy, or use, due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitation facilities, or due to other conditions rendering such Buildings unsafe or insanitary, or dangerous or detrimental to the health or safety or otherwise inimical to the welfare of the residents of the Borough, the Borough will exercise its police powers to repair, close or demolish, or cause or require the repairing, closing or demolition of such Buildings in the manner herein provided.

§ 12-6.3 Designation of Construction Official.

The Construction Official is hereby designated and appointed as the Public Officer to exercise the powers prescribed by this Unfit Buildings Ordinance. The Borough Council may, by resolution at its discretion, transfer the duties and functions of the Public Officer to some other Borough officer, employee or agent who is qualified to carry out the responsibilities set forth in this Unfit Buildings Ordinance.

§ 12-6.4 Repair, Closing or Demolition; Summary Proceedings to Demolish Unsafe Building.

(a) Whenever a petition is filed with the Public Officer by a Public Authority or by at least five residents of the Borough charging that any Building is unfit for human habitation or occupancy or use or whenever it appears to the Public Officer (on his own motion) that any Building is unfit for human habitation or occupancy or use, the Public Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the Owner of and Parties in Interest in such Building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Public Officer (or his designated agent) at a place therein fixed not less than seven days nor more than 30 days after the serving of said complaint; that the Owner and Parties in Interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in the courts shall not be controlling in hearings before the Public Officer.

(b) If, after such notice and hearing, the Public Officer determines that the Building under consideration is unfit for human habitation or occupancy or use he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the Owner thereof and Parties in Interest an order:

(1) requiring the repair, alteration or improvement of the said Building to be made by the Owner, within a reasonable time, which time shall be set forth in the order or at the option of the Owner to vacate or have the said Building vacated and closed within the time set forth in the order; and

(2) if the Building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises, and the Owner fails to repair, alter or improve the said Building within the time specified in the order, then the Owner shall be required to remove or demolish the said Building within a reasonable time as specified in the said order of removal.

(c) If the Owner fails to comply with an order to repair, alter or improve or, at the option of the Owner, to vacate and close the Building, the Public Officer may cause such Building to be repaired, altered or improved, or to be vacated and closed; the Public Officer may cause to be posted on the main entrance of any Building so closed, a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use or occupation of this building is prohibited and unlawful."

(d) If the Owner fails to comply with an order to remove or demolish the Building, the Public Officer may cause such Building to be removed or demolished or may contract for the removal or demolition thereof after advertisement for, and receipt of, bids therefor.

(e) If an actual and immediate danger to life is posed by the threatened collapse of any fire-damaged or other structurally unsafe Building, the Public Officer may, after taking such measures as may be necessary to make such Building temporarily safe, seek a judgment in summary proceedings for the demolition thereof.

§ 12-6.5 Conditions for Determination.

The Public Officer may determine that a Building is unfit for human habitation or occupancy or use if he finds that conditions exist in such Building which are dangerous or injurious to the health or safety of the occupants of such Building, the occupants of neighboring Buildings or other residents or the Borough; such conditions shall be deemed to include the following (without limiting the generality of the foregoing):

- (a) defects therein increasing the hazards of fire, accident, or other calamities;
- (b) lack of adequate ventilation, light, or sanitary facilities;

(c) dilapidation; disrepair, structural defects;

(d) uncleanliness; failure to comply with the requirements of the building code or the certificate of occupancy.

§ 12-6.6 Recovery of costs.

The amount of (x) the cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges, incurred in the course of any proceeding taken under this Unfit Buildings Ordinance (including, for the avoidance of doubt, any proceeding taken under the Unfit Buildings Statute) determined in favor of the Borough, and (y) such cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition, if any, or the amount of the balance thereof remaining after deduction of the sum, if any, realized from the sale of materials derived from such Building or from any contract for removal or demolition thereof, shall be a municipal lien against the real property upon which such cost was incurred. If the Building is removed or demolished by the Public Officer, he shall sell the materials of such Building. There shall be credited against the cost of the removal or demolition thereof, including the clearance and, if necessary, leveling of the site, the proceeds of any sale of such materials or any sum derived from any contract for the removal or demolition of the Building. If there are no such credits or if the sum total of such costs exceeds the total of such credits, a detailed statement of the aforesaid costs and the amount so due shall be filed with the Borough tax assessor or other custodian of the records of tax liens and a copy thereof shall be forthwith forwarded to the Owner by registered mail. If the total of the credits exceed such costs, the balance remaining shall be deposited in the Superior Court by the Public Officer, shall be secured in such manner as may be directed by such court, and shall be disbursed according to the order or judgment of the court to the persons found to be entitled thereto by final order or judgment of such court. Any Owner or Party in Interest may, within 30 days from the date of the filing of the lien certificate, proceed in a summary manner in the Superior Court to contest the reasonableness of the amount or the accuracy of the costs set forth in the municipal lien certificate.

§ 12-6.7 Service of Complaint and Order.

Complaints and orders issued under this Unfit Buildings Ordinance shall be served upon persons either personally or by registered mail, but if the whereabouts of such persons is unknown, and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence, and the Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once in a newspaper printed and published in the Borough, or, in the absence of such newspaper, in one printed and published in the County and circulating in the Borough. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall be duly recorded or lodged for record with the County Clerk of Sussex County.

§ 12-6.8 Powers of Public Officer.

The Public Officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this Unfit Buildings Ordinance (including, for the avoidance of doubt, the purposes and provisions of the Unfit Buildings Statute), including the following powers in addition to others herein granted:

(a) to investigate the Building conditions in the Borough in order to determine which Buildings therein are unfit for human habitation or occupancy or use;

(b) to administer oaths, affirmations, examine witnesses and receive evidence;

(c) to enter upon premises for the purpose of making examinations; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(d) to appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this Unfit Buildings Ordinance and/or the Unfit Buildings Statute; and

(e) to delegate any of his functions and powers under this Unfit Buildings Ordinance and/or the Unfit Buildings Statute to such officers and agents as he may designate.

§ 12-6.9 Effect on Power of Other Authorities.

Nothing in this Unfit Buildings Ordinance shall be construed to impair or limit in any way the power of the Borough to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise, nor is anything in this Unfit Buildings Ordinance intended to limit the authority of the enforcing agency or Construction Official under the State Uniform Construction Code, N.J.S.A. 52:27D-119 et seq., or any rules or regulations adopted thereunder.

§ 12-6.10 Violations and Penalties.

(a) Any person convicted of a violation of any of the provisions of this Unfit Buildings Ordinance by unlawfully removing any notice affixed to any Building or by refusing to vacate any Building when lawfully ordered to vacate same shall, upon conviction, be punishable by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 90 days or a period of community service not exceeding 90 days, or any combination thereof.

(b) The imposition of the fine or imprisonment for a violation of this Unfit Buildings Ordinance shall not be construed as in any manner affecting the enforcement of the other provisions of this Unfit Buildings Ordinance.

§ 12-6.11 Severability.

If any provision of this Unfit Buildings Ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of this Unfit Buildings Ordinance and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

§ 12-6.12 When Effective.

This Unfit Buildings Ordinance shall take effect immediately upon its final passage and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance 2021-01 was introduced at a regular meeting of the Mayor and Council of the Borough of Sussex, Sussex County, New Jersey, held on the 16th day of February, 2021 and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Mayor and Council to be held on the 2nd day of March, 2021 via internet at 7:00 p.m., and that at such time and place all persons interested will be given an opportunity to be heard concerning said Ordinance.

Antoinette Smith, Borough Clerk

Edward Meyer, Mayor

Introduced: February 16, 2021

Adopted: March 2, 2021