

Chapter 500. Nuisances: Vacant, Blighted, and Abandoned Properties

[HISTORY: Adopted by the City Council of the City of Gardner 3-21-2022 by Ord. No. 1647.
Amendments noted where applicable.]

§ 500-1. Purpose.

It is the purpose and intent of this chapter to eliminate property nuisances in the City of Gardner. Nuisances, such as dilapidated buildings, overgrowth, debris, trash, stagnant pools of water, property having defective weather protection, and vacant, blighted, or abandoned buildings cause and contribute to blight within neighborhoods and commercial areas of the City. Such nuisances on property also impair the public health and safety, contribute to the decline of neighborhoods, and negatively impact the economic well-being of the City. This chapter 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 by preventing unauthorized persons from gaining entry to abandoned, blighted and vacant buildings. Moreover, this chapter is enacted in the hopes that many such vacant, blighted and/or abandoned buildings may be rehabilitated, redeveloped, demolished and/or reused to provide safe, decent and sanitary uses, thereby increasing the quality of life for the public, occupants, abutters and the City.

§ 500-2. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

ABANDONED BUILDING

- A. 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
- B. 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 become unprotected or unsecured or which are or have been occupied by unauthorized persons.

BLIGHTED PREMISES

Any commercial or industrial building, structure, parcel of land, or any part of a commercial or industrial building or structure that is a separate unit in which at least one of the following conditions exist:

- A. It is not being adequately maintained and secured as documented by the Commissioner or Director (as defined herein) based upon, but not limited to, the following factors:
 - (1) Missing, broken or boarded up windows or doors for more than 30 days;
 - (2) Collapsing or missing walls, roof or floor;
 - (3) Siding that is seriously damaged or missing;
 - Extensive fire or water damage;

- (4)
 - (5) A foundation that is structurally faulty;
 - (6) The failure to remedy graffiti or other vandalism within 30 days;
 - (7) The exterior storage or accumulation of junk, trash, litter, bottles, cans, and/or rubbish, which definition shall include machinery parts, storage of abandoned or unregistered vehicles, or any other items not customarily used in connection with a lawfully operating business or building.
 - (8) Overgrowth. All property shall be maintained free of vegetation over 12 inches high that is or may reasonably become infested with rodents, vermin, or other animals, conceal pools of stagnant water, or create a fire safety hazard. All property shall be kept free of overgrown, decayed, dead, or hazardous trees, shrubs, or any other vegetation that poses a hazard to the health and safety of any person in the vicinity of the property, including any persons traveling on any portion of any public way, or any surrounding property.
- B. It has been cited for violations of the building, health, or fire codes as documented by the Commissioner, Director, and/or Fire Chief (as defined herein), and such violations have not been remedied in a timely manner. Such violations include, but are not limited to:
- (1) Conditions causing a public nuisance, harboring vermin or pests, presenting a threat to public health and safety, or which is/are a fire hazard.
 - (2) Conditions which are or may attract illegal activity.

BUILDING

Any combination of materials having a roof and enclosed within exterior walls or fire walls, 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 doghouses 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 § 500-4 herein.

COMMISSIONER

The Building Commissioner 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.

DIRECTOR

The Director of Public Health or his or her designee.

FIRE CHIEF

The Chief of the Gardner Fire Department or his or her designee.

NUISANCE

A failure to satisfy any one or more of the property standards set forth in § 500-3 herein.

OWNER

A person, trust, partnership, corporation, mortgagee in possession or other entity who or which is capable of owning legal or equitable title to real property or an authorized agent of the person or entity holding legal or equitable interest to real property, including but not limited to any person sufficiently identified by the name and address appearing in the records of the City Assessor.

PERSON

The owner, occupant, or his or its authorized agent who owns, possesses, occupies, manages or controls any property.

PROPERTY

Any land, building, structure on real property, including any fixtures attached thereto, or any personal property located within the City of Gardner.

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

- A. Any unoccupied real property which is empty or remains empty and is not continuously maintained for 21 consecutive days or longer by occupants having custody or legal right of entry to said property; or
- B. Any building which exhibits dilapidated walls, roof or doors which will fail to prevent the entry of a trespasser.

§ 500-3. Property standards.

No owner of property located within the City shall allow, create, maintain or cause to be created or maintained any blighted premises as defined herein. All property in the City of Gardner shall be maintained in accordance with the following property standards:

- A. General. All property, whether occupied or vacant, shall be maintained in good repair and a safe and sanitary condition as provided herein, so as not to cause or contribute to the creation of a hazardous or blighted area or to affect adversely the public health and safety of adjacent or surrounding property.
- B. Overgrowth. All property shall be maintained free of vegetation over 12 inches high that is or may reasonably become infested with rodents, vermin, or other animals, conceal pools of stagnant water, or create a fire safety hazard. All property shall be kept free of overgrown, decayed, dead, or hazardous trees, shrubs, or any other vegetation that poses a hazard to the health and safety of any person in the vicinity of the property, including any persons traveling on any portion of any public way, or any surrounding property.
- C. Structures. All structures, including any buildings, fences, storage sheds, or any element thereof, shall be maintained in a structurally sound condition and in good repair, including proper weather protection and waterproofing, and shall be maintained in a condition so as to not cause or contribute to creation of a fire safety hazard. All property shall be maintained free of extensive peeling, flaking, or chipped paint. All property with siding shall be maintained in a weather-resistant and watertight condition.
- D. Accumulation of trash, rubbish or debris. All property shall be maintained in a clean and sanitary manner and free from the accumulation of litter, rubbish, trash or other debris, except in closed receptacles intended for such use.
- E. Pools of stagnant water. All property shall be maintained to prohibit the formation of stagnant pools of water, which may affect adversely the public health by attracting and harboring mosquitoes and other insects.
- F. Vacant, blighted, and abandoned property. All property shall be maintained in accordance with the relevant sanitary, building and fire codes, which shall include securing property in the owner's possession so as to prevent unauthorized entry and exposure to the elements, repairing or replacing broken windows or doors, and ensuring that all utilities are shut off, removed, cut, or

capped to prevent accidents, if directed by the Director, Commissioner, or their designees. No owner of a vacant, blighted, or abandoned building shall allow said building to become or remain unsecured or dangerous.

- G. The owner of a vacant building must promptly repair all broken windows, doors, other openings and any unsafe conditions at a vacant building. Boarding up of open or broken windows and doors is prohibited except as a temporary measure for no longer than 45 consecutive days, unless the Commissioner determines that, due to vandalism or security reasons and due to circumstances out of the owner's control, the proper boarding of windows and doors is necessary for a period of time longer than 45 consecutive days. Boards or coverings must be fitted to the opening size and colored to blend with the existing building color scheme.
[Added 6-6-2022 by Ord. No. 1652]
- H. The owner must maintain the building and property for the duration of the vacancy or abandonment. The owner shall maintain the condition of the building and property so as to appear not to be vacant. Upon notice by the Building Commissioner, any accumulated trash and/or graffiti shall be removed from the property by the owner within seven days. The Building Commissioner and/or his designee will document violations.
[Added 6-6-2022 by Ord. No. 1652]
- I. If deemed necessary by the Building Commissioner, the owner must erect and maintain, at his/her own expense, a six-foot privacy fence within 30 feet of the entire building. The Building Commissioner shall notify the owner in writing of the basis for requiring any such fencing. Such an order from the Commissioner must first be confirmed by obtaining written letters of support by the Fire Chief, Police Chief, City Engineer, and one disinterested party who is not an employee of the City, confirming the opinion of the Building Commissioner.
[Added 6-6-2022 by Ord. No. 1652]

§ 500-4. Certificate of building closure and other requirements.

- A. Any owner/person who knows or reasonably should know that a building owned by said owner/person is or will become vacant, abandoned, or a blighted premises, 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) Prior to or not more than seven days after a building becomes a vacant building, as defined herein, the owner(s) must file a certificate of building closure application in a form prescribed and amended from time to time by the 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;
[Amended 6-6-2022 by Ord. No. 1652]
 - (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;
 - (3) Remove from the building, to the satisfaction of the Fire Chief, hazardous material, as that term is defined in MGL c. 21K, as that statute may be amended from time to time;
 - (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 Prevention Initiative, Board Up Procedures, or provide twenty-four-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-hour on-site security shall be provided within the building or within the complex wherein the building is located;

- (5) Maintain all relevant sanitary, building and fire codes, including but not limited to the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery and other landscape and external/visible features;
 - (6) As may be required by the Fire Chief, Director, or Commissioner, post "No Trespassing" signs on the building;
 - (7) 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;
 - (8) Maintain liability insurance on the building and furnish the Commissioner with a copy of said certificate of insurance;
 - (9) As may be required by the Commissioner, provide a cash bond acceptable to the Commissioner, in the sum of not less than \$5,000, 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; and
 - (10) Pay the appropriate certification fee or certification renewal fee as set forth in Article II of Chapter 390, Fees, of this Code, as from time to time amended.
- B. The Commissioner shall undertake an investigation of any alleged violation of this section and shall coordinate inspections by and among the Board of Health, the Chief of Police and Fire Chief, or their designees, as the Commissioner deems appropriate to ensure that this chapter is properly enforced. In making such inspection(s), the Commissioner and/or Board of Health, Chief of Police and Fire Chief, or their designees, shall have such right of access to premises as may be lawfully required and exercised by him/her under the laws of the Commonwealth of Massachusetts.
 - C. If it appears that any vacant, blighted or abandoned building is unsecured or dangerous, the Commissioner shall send written notification to the owner as provided for in § 500-8, 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 § 500-4A, herein and shall enter upon the premises and cause the building to be inspected, secured and marked using said proceeds.
 - D. The Commissioner or Fire Chief, upon being informed of the existence of an abandoned, blighted 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.
 - E. All unsecured vacant, blighted, 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 MGL c. 139 and MGL c. 143 and procedures promulgated thereunder.
 - F. 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 months from the date of issuance. Said certificate may be renewed, at the discretion of the Commissioner, subject to continued compliance with this chapter and the payment of the appropriate renewal fee as set forth in Article II of Chapter 390, Fees, of this Code, as from time to time amended. Under no circumstances shall a certificate of building closure or any extension thereof exceed six months in duration from the date of issuance.

§ 500-5. Signs and markings.

When required pursuant to this chapter, 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 two-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.

§ 500-6. Utility shutoffs.

[Added 6-6-2022 by Ord. No. 1652^[1]]

- A. The Building Commissioner shall have the discretionary authority to disconnect utilities immediately if a potential hazard that may be dangerous to life and limb is present.
- B. The Building Commissioner shall have the authority to order that all utilities to a property be disconnected after the property has been vacant, as defined in this chapter of the City Code, for a period of six months.

[1] *Editor's Note: This ordinance also provided for the renumbering of former §§ 500-6 through 500-8 as §§ 500-8 through 500-10, respectively.*

§ 500-7. Inspections.

[Added 6-6-2022 by Ord. No. 1652]

The Building Commissioner, Police Chief, Fire Chief and the Health Agent, or their designees, shall have the authority to periodically inspect the exterior and interior of any building subject to this chapter of the City Code for compliance, as authorized under the terms of registration form filed with the Building Commissioner, required in § 500-4.

§ 500-8. Order to remove nuisance.

It shall be unlawful for the owner of any property in the City to violate any one or number of the property standards contained in § 500-3 and any such property in violation shall be deemed a public nuisance. Depending upon the violation, the Commissioner, Director, and/or their respective designated agent(s) shall declare the property a public health nuisance and order the owner to remove the nuisance within 30 days after service of notice of the violation.

- A. Notices required pursuant to this section shall contain the following information:

- (1) The street address and description of the property sufficient for identification of the property.
- (2) A statement that the property has been declared a public nuisance because of the presence of a nuisance on the property.
- (3) A concise description of the conditions on the property that have led to the determination that the property is a public nuisance.
- (4) A statement that the nuisance shall be removed from the property within 10 days from service of the notice and that if the owner fails to remove the nuisance within the time frame specified that the owner will be in violation of this chapter and subject to the penalties described therein.

- B. Notice.

- (1) Notices required pursuant to this chapter shall be served in the following manner:
 - (a) Personally on the owner, occupant or his authorized agent;

- (b) Left at the last and usual place of abode of the owner, occupant or his authorized agent if such place of abode is known and is within or without the commonwealth; or
 - (c) By certified or registered mail, return receipt requested, to the owner, occupant or his authorized agent if such address is known and is within the commonwealth.
- (2) If the residence and whereabouts of the owner, occupant or his authorized 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.
 - (3) All such notices shall require the owner to bring the building into compliance with the requirements of the notice within 30 days of receipt. In the event of demonstrated hardship, an extension of time may be granted at the discretion of the Commissioner, Director, or their designee. Should the Commissioner or his/her designee determine that the condition(s) of the building are subject to the jurisdiction of the Board of Health or is/are in violation of the State Sanitary Code or any health regulation, in addition to enforcing this chapter, the Commissioner shall refer the matter to the Board of Health or any other appropriate state or local officials, at which time the Director or his/her designee shall be tasked with providing the owner with notice as required under this section. Conversely, should the matter fall within the purview of the building code, the Commissioner or his/her designee shall be tasked with enforcement and providing notice to the owner.

§ 500-9. Abatement by City; violations and penalties.

- A. If the owner fails to remove such nuisance within the period provided in § 500-8, the City may enter the property and remove or cause the nuisance to be removed. The reasonable costs and expense of abating a nuisance in accordance with this section shall be assessed to the owner, who shall be liable to the City for expenses incurred by the City in making such repairs or other corrective actions. The Commissioner, Director, or their designee shall provide the owner with a written statement of all costs associated with abating the nuisance, and the owner shall reimburse the City within 60 days of notice of expenses incurred for such abatement. If the owner fails to pay or reimburse the City, the sum so expended may be recovered by the City as provided in MGL c. 111, § 125, and MGL c. 139, § 3A, relative to liens for such debt and collection of the claims for such debt, or in an action of contract by the City against the owner.
- B. In addition to the penalties set forth above, the owner of an abandoned or 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 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.
- C. This chapter may also be enforced by civil process, criminal process or by noncriminal disposition as provided in MGL c. 40, § 21D.
- D. Each day on which a violation exists shall be deemed to be a separate offense, and any person in violation of this chapter shall be subject to the following fines:
 - (1) First violation: \$100.
 - (2) Second violation: \$200.
 - (3) Third violation and each subsequent violation: \$300.
- E. In addition to the penalties set forth above, the Commissioner, Director or their respective designated agent may seek an injunction from a court of competent jurisdiction to restrain any violation of this chapter.

- F. This chapter shall not be enforced against the City or the Commonwealth of Massachusetts, its authorities, departments, or agencies.

§ 500-10. Appeals.

- A. Any owner who is aggrieved by a notice of violation made by the Commissioner, Director, or their designee(s) may, within five business days from the date of notice of violation, appeal his or her case in writing for further consideration. Thereafter the decision of the Commissioner, Director or his/her designee shall be final and binding on the parties.
- B. If an owner submits a written statement of action taken or to be taken within a designated time period to abate a nuisance violation, the Commissioner or Director, whichever is applicable to the nuisance violation, shall determine whether said action will eliminate the nuisance in a timely manner. If it is determined that the action taken or to be taken will result in the elimination of the nuisance in a timely manner, the Commissioner or Director shall notify the owner, in writing, that no assessment will be made at that time.

§ 500-11. Severability.

[Added 6-6-2022 by Ord. No. 1652]

If any provision of this bylaw is held to be invalid by a court of competent jurisdiction, such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.