

**TOWN OF BERKSHIRE**

**UNSAFE BUILDING ORDINANCE**

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**Table of Contents**

<b>Section 1</b>	<b>Purpose and Intent.</b>
<b>Section 2</b>	<b>Definitions.</b>
<b>Section 3</b>	<b>Unsafe buildings prohibited; repair, Rehabilitation or demolition required.</b>
<b>Section 4</b>	<b>Inspection and report.</b>
<b>Section 5</b>	<b>Service of Notice.</b>
<b>Section 6</b>	<b>Contents of Notice.</b>
<b>Section 7</b>	<b>Filing a copy of Notice.</b>
<b>Section 8</b>	<b>Emergency measures to vacate.</b>
<b>Section 9</b>	<b>Costs and Expenses.</b>
<b>Section 10</b>	<b>Penalties for offenses.</b>
<b>Section 11</b>	<b>Compliance with other regulations.</b>
<b>Section 12</b>	<b>Enforcement.</b>
<b>Section 13</b>	<b>When effective.</b>

## **Section 1**

The intent and purpose of this law is to promote the public health, safety and general welfare of the residents of the Town of Berkshire, hereinafter "Town" and the conservation of property and property values and to eliminate safety and health hazards.

## **SECTION 2**

As used in this section, the following terms shall have the meanings indicated:

### **DANGEROUS OR UNSAFE BUILDINGS**

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

A. Those that have improperly distributed loads upon the floors or roofs or in which the same are overloaded or that have insufficient strength to be reasonably safe for the purpose used.

B. Those that have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants of the Town.

C. Those that have become so dilapidated, decayed, unsafe, unsanitary or that so utterly fail to provide the basic 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 health, safety or general welfare of those living therein.

D. 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.

E. Those that, because of their condition, are unsafe, unsanitary or dangerous to the health, safety or general welfare of the people of the Town.

## **SECTION 3**

A. All buildings or structures that fit the definition of Section 2, herein, are hereby declared illegal and are prohibited and shall be abated by repair and rehabilitation or by demolition and removal in accordance with the procedure of this ordinance.

B. Any building damaged by fire, wind, water or other calamity shall be wholly repaired or removed within six months after the date on which such calamity occurs. Any Building or structure so damaged shall be immediately boarded up or sealed off from access by the public unless the damage is so confined solely to any chimney, smokestack, flue, gas vent, smoke pipe or connector, and the relevant and applicable provisions of the State Uniform Prevention Building Code are complied with and such damage is repaired.

#### **SECTION 4**

When, in the opinion of the Code Enforcement Officer or qualified designated agent, any building or structure located in the Town shall be deemed to be unsafe or dangerous to the public, he shall make a formal inspection thereof and thereafter prepare a written report thereof and file the same in his office.

#### **SECTION 5**

A. When it is determined by the Code Enforcement Officer or qualified designated agent, that any building or structure is dangerous or unsafe to the public, he shall promptly serve or cause to be served a notice on the owner or other persons having vested interest in such property or structure as hereinafter provided. In the event that there are tenants in said structure, said notice shall be served on both the owner and to the said tenants.

B. The aforementioned notice shall be served on the owner of the premises or some one of the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same, or shown by the last completed assessment roll of the Town, either personally or by certified mail return receipt requested, addressed to the person intended to be served at the last known address listed or place of business. When the notice is served, the Code Enforcement Officer or qualified designated agent shall cause a copy of such notice to be posted on the premises.

## **SECTION 6**

The notice referred to in Section 5 hereof shall contain the following:

A. A description of the premises.

B. a statement of the particulars in which the building or structure is unsafe or dangerous.

C. An Order requiring the building or structure to be made safe and secure or be removed.

D. A statement that the securing or removal of the structure or building shall commence within 10 days from the date of the service of the notice and shall be completed within 30 days therein. The Code Enforcement officer or qualified designated agent may extend the time of compliance specified in the notice, where there is evidence of intent to comply within the time specified and conditions exist which prevent immediate compliance. In granting any such extension of time the Code Enforcement Officer or the designated agent may impose such conditions as may be deemed appropriate.

E. A statement that, in the event of the neglect or refusal of the person served with the notice to comply with the same, a hearing will be held before the Town Board, notice of which time and place thereof to be specified in the notice to the owners referred to in Section 5 hereof.

F. A statement that, in the event the Town Board, after a hearing specified in subsection "E" hereof, shall determine that the building or structure is unsafe or dangerous to the public, the Town Board may order the building or structure to be repaired and secured or taken down and removed.

G. A statement that, in the event that the building or structure shall be determined by the Town Board to be unsafe or dangerous and in the event of the neglect or refusal of the owner to repair or remove the same within the time provided, the Town may remove such building or structure by whatever means it deems appropriate and may assess all costs and expenses incurred by the Town in connection with the proceeding to remove or secure, including the cost of actually removing said building or structure, against the land on which said buildings or structures are located. The statement shall also provide that the Town may proceed by the appropriate means to ensure compliance with this law through the Supreme Court of the State of New York.

## **SECTION 7**

A copy of the notice referred in Section 5 hereof may be filed with the County Clerk of the county within which said building or structure is located, which notice shall be filed by such Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil procedure law and Rules and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this section. A notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon the consent of the Town Attorney. The Clerk of the county where such notice is filed shall mark such notice in any record or docket thereof as cancelled of record, upon the presentation and filing of such consent or certified copy of such order.

## **SECTION 8**

If the Code Enforcement Officer or designated agent determines in his inspection of any building or structure that there is actual and immediate danger of failure or collapse so as to endanger life, he shall promptly require the building or structure, or portion thereof, to be vacated forthwith and not to be reoccupied until the specific repairs are completed, inspected and approved by the Code Enforcement Officer or designated agent. For this purpose, he may enter such building or structure or land on which it stands or adjoining land or structures with such assistance and at such cost as may be necessary. He may also order adjacent structures to be vacated and may protect the public by appropriate barricades or such other means as may be necessary and, for this purpose, may close a public or private right-of-way. He shall cause to be posted at such entrance to such building or structure a notice stating, **“This building is unsafe and its use or occupancy has been prohibited by the Code Enforcement Officer or designated agent of the Town of Berkshire.”** Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation or their agents or other persons to remove such notice without written permission of the Code Enforcement Officer or designated agent or for any person to enter the building except for the purpose of making the required repairs or demolition thereof.

## **SECTION 9**

All costs and expenses incurred by the Town of Berkshire in connection with any proceedings or any work done to remove the danger or in connection with the demolition and removal of any such building or structure shall be assessed against the land on which said building or structure is located, and a statement of such expense shall be presented to the owner of the property, or if the owner cannot be ascertained or located, then such statement shall be posted in a conspicuous place on the premises. Such assessment shall be and constitute a lien upon such land. If the owner shall fail to pay such expenses within 10 days after the statement is presented or posted, a legal action may be brought to collect such assessment or to foreclose such lien. As an alternative to the maintenance of any such action, the Code Enforcement Officer or designated agent may file a certificate of the actual expenses incurred as aforesaid, together with a statement identifying the property in connection with which the expenses were incurred and the owners thereof, with the Town Assessor, who shall, in the preparation of the next assessment roll, assess such amount upon such property. Such amount shall be included in the levy against such property, shall constitute a lien and shall be collected and enforced in the same manner, by the same proceedings, at the same time and under the same penalties as is provided by law for the collection and enforcement of real property taxes in the Town of Berkshire.

## **SECTION 10**

Any person who neglects, or fails to comply with any order or notice issued hereunder shall be guilty of an offense punishable by a fine not to exceed \$250.00 or by imprisonment for a term not to exceed 15 days, or by both such fine or imprisonment. Each week's continued violation shall constitute a separate offense or violation. Nothing in this ordinance shall be construed as depriving the Town of Berkshire of any other available remedy relevant to a violation of this ordinance.

## **SECTION 11**

No provision of this ordinance shall be construed so as to relieve any person from complying with the provisions of Chapter 195, Zoning, Chapter 109, Electrical Standards, of the New York State Uniform Fire Prevention and Building Code or any applicable law, rule or regulation established by the Town Board; provided, however, that the time limit set forth in this ordinance shall apply if in conflict with the provisions of any other law, rule or regulation.

## **SECTION 12**

The Town Code Enforcement Officer or designated agent shall enforce the provisions of this ordinance. The Town Board may, by resolution, designate an authorized representative to enforce the provisions of this ordinance in the absence of, or in the event of, the inability of the Code Enforcement Officer or designated agent to so enforce.

## **SECTION 13**

This ordinance shall take effect immediately upon its filing with the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.



STATE OF NEW YORK  
**DEPARTMENT OF STATE**  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

June 19, 2014

Constance M Liddington  
Town Clerk  
12421 Rte 38  
Berkshire NY 13736

**RE: Town of Berkshire, Local Law 1 2014, filed on June 16, 2014**

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, [www.dos.ny.gov](http://www.dos.ny.gov).

Sincerely,  
State Records and Law Bureau  
(518) 474-2755