

## CHAPTER 28

### REMOVAL OF SALVAGEABLE NON-STRUCTURAL MATERIALS FROM VACATED BUILDINGS

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## 28.01 PURPOSE.

The purpose of this ordinance is to regulate the removal of salvageable materials from vacated buildings, not otherwise occurring as part of an approved demolition plan or for the purposes of remodeling, for any purpose other than personal re-use by the owner or personal re-use or required removal by a tenant of the property from which it was removed, without immediate functional replacement thereof.

## 28.02 DEFINITIONS.

(A) **Owner**. The term “owner” shall mean the title holder(s) to real property on which stands any vacated building or structure from which any salvageable material is removed.

(B) **Tenant**. The term “tenant” shall mean a person or entity by written agreement, to occupy the building or structure, or portion of the building or structure, from which any salvageable materials is removed.

(C) **Operator**. The term “operator” shall mean any person, corporation or other business entity or holder of a security interest that undertakes the removal of salvageable materials from a vacated building within the jurisdictional limits of the Village which directs or allows such removal.

(D) **Salvageable Material**. Real or tangible personal property that:

- (1) is man-made;
- (2) is affixed to real property or any improvement to real property;
- (3) is detachable from real property or any improvement to real property; and
- (4) is removed for potential or intended re-use, repurposing or scrap.

Such materials shall include any such materials that were detached from real property or any improvement to real property without a permit after the effective date of this ordinance.

(E) **Vacated Building**. A building or structure, or portion of a building or structure, that had a principal non-residential use as its most recent use allowed by law, which principal use has ceased and in which there has been no legal occupancy for more than ninety (90) days as determined by the Building Inspector. The cessation of the primary activities constituting the principal use shall be determinative of whether the principal use has ceased. The presence of personnel in the building or structure is not determinative of whether the use has ceased.

(F) **Code Official(s)**. Village Building Inspector, Public Works Director or Village Administrator.

(G) **Issuing Body**. The term “issuing body” refers to the code official in the case of Tier 1 permits, and the Village Board in the case of Tier 2 permits.

## 28.03 EXCLUSIONS.

This ordinance does not apply to the following:

- (A) salvaging operations at structures where its most recent allowable use by law was residential;
- (B) salvage operations at non-residential structures under ten thousand (10,000) square feet;
- (C) items/materials removed where replacement will occur as part of a remodeling process over time pursuant to a valid and subsisting building, heating, plumbing or electrical permit;
- (D) salvaging operations that occur as part of an approved demolition plan, pursuant to a valid demolition permit or otherwise, in which the permit holder/owner/operator is obligated to complete said demolition within a specified time frame;
- (E) equipment, items or supplies removed by the owner for personal re-use; and
- (F) equipment, items or supplies owned and removed by the tenant during the term of a written lease.

#### **28.04 RECYCLING.**

(A) The permit holder shall cause to be salvaged, reused or recycled all of the following material/items removed and debris produced on-site as part of the salvaging permit activities:

- (1) Wood that has not been rendered non-recyclable or non-re-useable by the application or attachment of paint, stains, varnish or other liquids or solids;
- (2) Non-toxic metals;
- (3) Non-asbestos containing shingles;
- (4) Recyclable plastics;
- (5) Computerized equipment and electronics; and
- (6) Recyclable cardboard and paper products.

(B) The Village maintains the right to suspend requirements of this section if the market for above materials changes, making compliance unattainable, or if the condition of the material(s) and/or proximity to recycling/re-use facilities makes compliance impracticable, as determined by the code official.

#### **28.05 PARTIAL EXEMPTION.**

A partial exemption is allowed under this ordinance for items and materials removed for the sole purpose of historical or cultural preservation. A request for exemption shall be filed with the Village Clerk/Treasurer on forms created by the code official and provided by the Village. The request for

exemption shall include documentation of historical or cultural significance acceptable to the code official which may include written request for preservation by historic society or equivalent.

## **28.06 PERMIT.**

No person, corporation or other business entity or holder of a security interest may remove, direct the removal of, or allow to be removed any salvageable material from a vacated building unless such removal is performed pursuant to a permit granted by the issuing body and issued to the applicant pursuant to this ordinance. The owner and permit holder shall be jointly responsible for complying with any permit issued pursuant to this ordinance.

## **28.07 PERMIT APPLICATION.**

(A) The applicant may be the title holder of the real estate, or a contractor hired by the owner, tenant or the holder of a security interest in the property, vacated building or structure, or the salvageable material. Applicant, if not the title holder, is assumed to have authority from the title holder or the security interest holder to undertake salvage operations. The Village will be held harmless of any dispute arising from applicant's legal authority to undertake salvage operations. Under all circumstances, the applicant, if other than the owner, shall be jointly and severally responsible for compliance with the terms of this ordinance.

(B) Application for a permit, whether initial or renewal, shall be filed with the Village Clerk/Treasurer on forms provided by the Village. The application shall include, but the issuing body may require additional information of a specific applicant:

- (1) Location and square footage of occupiable space in building(s).
- (2) Name, address and contact information of the title holder of buildings or the name, address and contact information of the security interest holder, if applicable.
- (3) Names, addresses and contact information for contractors engaged to carry out the activity.
- (4) Plan for removal of salvageable material including the following details:
  - (a) Project schedule and budget.
  - (b) Inventory and projected quantities (by weight or volume) of materials to be removed from the building for salvage purposes.
  - (c) Proposed disposition of salvageable materials.
  - (d) Dust, noise and odor control.
  - (e) Hours of operation.

- (f) Fire suppression.
  - (g) Traffic safety and public infrastructure protection.
  - (h) Site security.
  - (i) Building and grounds management and restoration.
  - (j) Proposed post-salvage property ownership and use, if known.
- (5) Plan for removal of hazardous wastes/materials.
- (a) Hazardous materials inventory including raw materials, waste materials, asbestos containing materials, and (with respect to any portion of the building, structure or salvageable material to be altered in the course of the work) an inventory of lead painted surfaces and PCB-containing materials.
  - (b) Hazardous materials handling, management and disposal prior to salvaging.
  - (c) Proposed environmental monitoring or remediation.
- (6) Plan for disposal of waste, including proposed disposition.
- (7) Proof of required demolition/renovation notifications to the appropriate state regulatory agency(ies). Removal of any hazardous materials or debris that is not salvageable is to be disposed with a licensed landfill or agency approved to handle said materials.
- (C) A permit fee of Four Hundred (\$400.00) Dollars must accompany the application.

## **28.08 PERMIT GRANT.**

The granting of permits shall be conducted on a two-tiered system based on the occupied space of the vacated building including ancillary structures. Occupiable space shall be calculated as one total for all buildings covered under the permit or all buildings on a single property covered under multiple permits.

(A) **Tier 1.** Permit applications for a vacated building having occupiable space under ten thousand (10,000) square feet shall be reviewed and decided upon by the code official pursuant to this ordinance.

In granting the permit, the code official shall address the following matters: the amount of the irrevocable standby letter of credit to be required of the permit holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the irrevocable letter of credit; other state and local permits as required by law, rule or regulation that must be obtained as a condition of issuance of the permit or as a requirement of operation; reasonable special operating requirements to be required of the permit holder in

addition to those listed in §28.11 herein; and such other matters or limitations as the code official determines is necessary to protect the public interest.

(B) **Tier 2.** Permit applications for a vacated building having occupiable space over ten thousand (10,000) square feet shall be reviewed by the code official and decided upon by the Village Board. The code official shall make a recommendation to the Village Board who shall consider the following matters in granting the permit: the recommendation of the code official, the amount of the irrevocable standby letter of credit to be required of the permit holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the irrevocable standby letter of credit; reasonable special operating requirements to be required of the permit holder in addition to those listed in §28.11 herein; the expertise of the applicant; the effect of the proposed operation on the surrounding neighborhood; the effect on the community of having a stripped structure remain and such other matters germane to the decision.

The Village Board shall consider the permit applications only at regular Board meetings, and only after receiving the recommendations of the code official. Any additional cleanup by the Village from salvage operations shall be billed to the title holder of the building or the security holder as a special assessment to the real estate tax bill.

## **28.09 IRREVOCABLE STANDBY LETTER OF CREDIT.**

As a condition of issuance of the permit, the permit holder shall provide to the issuing body and maintain in effect an irrevocable standby letter of credit naming the Village as beneficiary, in an amount required by the issuing body and in a form approved by the Village Attorney. The Village Attorney shall also approve the form and content of the draw order and all necessary presentment required to compel payment by the issuer to the Village of all funds subject to the irrevocable standby letter of credit.

The irrevocable standby letter of credit shall be the guarantee of performance by the permit holder. The irrevocable standby letter of credit must be issued by a financial institution certified by the state to conduct such business within the State of Wisconsin, allowing for direct draw by the Village upon presentment to the issuing bank without court action and without approval by permit holder, to complete work or to repair damage that was the obligation of the permit holder. The irrevocable standby letter of credit must contain as part of its provisions that it will be maintained constantly in force as an obligation to the village for no less than one year after project completion as reasonably determined by the issuing body or one year after the expiration of a permit issued under this section to the permit holder, whichever is later.

In considering the required amount of the irrevocable standby letter of credit, the issuing body shall consider: the expertise of the applicant; the longevity of the applicant; the capitalization of the applicant; the scope of the proposed project; the cost of rectifying the possible environmental hazards that could be created; the effect of the proposed operation on the surrounding neighborhood; the cost of remediation of the Village should the Village have to address any matter due to the unwillingness or inability of the permit holder to fulfill its obligations. The issuing body may annually, upon documented request of the permit holder, review the pertinent facts and decide to reduce the amount of the required letter of credit in accordance with work completed or threats mitigated. In the extraordinary circumstances that the issuing body determines that the requirements to obtain an irrevocable standby letter of credit is unreasonable, the issuing body may, in the exercise of its discretion, authorize one or more alternate forms of security in lieu of an irrevocable standby letter of credit.

## 28.10 PERMIT TERM AND ASSIGNMENT.

A permit issued to the applicant is permit holder and limited to the term granted.

(A) **Initial Term.** The initial term of any permit issued under this section shall be six (6) months from the date of issue.

(B) **Renewal Term.** There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the issuing body upon application of a permit holder, filed with the Village Clerk/Treasurer prior to expiration of the initial term or any renewal terms. Each renewal may be granted for up to six (6) months in length.

(C) **Assignment.** No permit issued pursuant to this ordinance is assignable or transferable without the advance written permission of the issuing body, which shall not be granted unless the permit holder and prospective assignee demonstrate to the satisfaction of the issuing body that assignee is capable of completing the project and all required forms of insurance and financial assurance are made effective prior to the assignment.

## 28.11 GENERAL OPERATING REQUIREMENTS.

The following general operating requirements shall apply to the permit holder and those working for permit holder subject to terms of the permit in accordance with the provisions of the ordinance:

(A) The permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.

(B) The building and premises shall, at all times, be maintained in a clean, neat and sanitary of a condition as such premises will reasonably permit.

(C) No garbage, refuse or other waste likely or susceptible to give off a foul odor or attract vermin shall be kept on the premises, except for domestic garbage kept in rodent-proof covered containers which are removed from the premises as often as necessary to provide a sanitary, odor free and vermin free environment.

(D) Work done under this permit shall be performance in accordance with the permit and is subject to inspection by the code official and other inspectors as provided in this ordinance. Any violation of the permit shall be deemed a violation of this ordinance.

(E) As a condition of the permit, a permit holder shall maintain insurance policies during the lift of the permit in the following minimum amounts which policies shall name the Village as additional insured and provide coverage for work performed on the property or associated with the work under the permit, and shall provide certificates issued by the carriers as proof of all required coverages:

(1) **Automobile Liability (owned, non-owned, leased):**

(a) Bodily injury – One Million (\$1,000,000.00) Dollars for each occurrence;

(b) Property damage – One Million (\$1,000,000.00) Dollars for each

occurrence.

(2) **Pollution Legal Liability:** Five Million (\$5,000,000.00) Dollars for each loss where risk is presented for exacerbation of existing environmental pollution or discharge of any hazardous waste to the environment or asbestos removal, abatement, remediation or dumping/disposal in a federal or state regulated facility is required; the Village may require a greater or lesser minimum amount down to and including Zero (\$0.00) Dollars Pollution Legal Liability insurance policy, depending on the circumstances of the project that is the subject of the permit.

(3) **Worker's Compensation:** Statutory limits.

(4) **Umbrella Liability:** Two Million (\$2,000,000.00) Dollars over the primary insurance coverages listed above.

(F) The permit holder shall also ensure that subcontractors have appropriate insurance as determined by the issuing body. This may include coverage under the permit holder's policy, individual coverage, or a combination thereof. The issuing body may also require subcontractors to obtain separate permits pursuant to this ordinance based on the type of proposed activities or extent or complexity of the salvaging activities proposed.

(G) No scrap, salvage or debris which is temporarily stored on the premises shall be allowed to rest or protrude over any public rights-of-way or public property, or become scattered about or blown off the premise.

(H) No mechanized process whatsoever shall be utilized on premises to reduce the volume of salvageable material or debris after such salvageable material has been detached from the real property, unless a special exception is provided by the issuing body in conjunction with a specific permit. Such prohibited mechanized processes include, but are not limited to, crushing and shredding.

(I) No premises or building subject to a permit shall be allowed to become a public nuisance or be operated in such a manner as to adversely affect the public safety, health or welfare.

(J) There shall be full compliance with the Village building and fire codes and with all other Village, county, state and federal laws, rules and regulations which may be applicable.

(K) Any costs incurred to repair utilities, plumbing, and operational functions damaged during salvage operations are the direct responsibility of the permit holder.

## 28.12 INSPECTIONS.

Permit holders and property owners shall allow authorized inspection by representatives of any department of the Village and authorized representatives of the State of Wisconsin having enforcement powers to inspect the premises subject to the permit, with or without advanced notice, as often as may be required to allow said representative to perform their duties and assure compliance with this ordinance as well as state and federal laws, without first obtaining a special inspection warrant. Inspections shall be made during normal hours of business operation except when the presence of emergency circumstances which require prompt action to protect the public health, safety and welfare or to preserve evidence of noncompliance with this ordinance or state or federal laws.



Inspection may include inspection of the entire property subject to the permit, including buildings, structures, basement, sub-basements, vaults and other areas of the property.

The unreasonable failure to allow inspections shall be grounds for denial, suspension or revocation of the permit. A Fifty (\$50.00) Dollars per day fine will be assessed by the Building Inspector to permit holder for denial of inspection.

Inspections may include, but are not limited to: taking wipe samples; waste, structural or product sampling; sampling of pits; the logging, gauging and sampling of existing wells; videotaping, preparing site sketches; taking photographs; testing or sampling the groundwater, soil, surface water, sediments, air, soil vapor or other material.

### **28.13 IMMEDIATE CESSATION ORDERS.**

If in the opinion of the code official, the public is subject to imminent danger due to violation of any one or combination of more than one of the general operating requirements, the code official shall issue an order to the violator or the permit holder requiring immediate cessation of those operations giving rise to the imminent danger. The recipient of any such order shall cause such operations to cease as directed by the code official. Failure to maintain insurance or a letter of credit as required, or to permit inspection as required are each per se violations implicating imminent danger to the public necessitating an order to cease all operations.

In the event that an order to the permit holder requiring immediate cessation is issued by the code official, such order may be appealed to the Plan Commission. The Plan Commission, after hearing from the code official, the permit holder and the public, shall affirm the order, reverse the order, or modify the order. The decision made by the Plan Commission may be appealed to the Village Board by either the code official or the permit holder in accordance with the procedure of the Village.

### **28.14 NON-RENEWAL, SUSPENSION OR REVOCATION HEARINGS.**

There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the issuing body upon application of a permit holder as described in §28.10.

Non-renewal, suspension and revocation appeal hearings shall be held before the Plan Commission which shall submit a report to the Village Board, including Findings of Fact, Conclusions of Law and a recommendation as to what action, if any, the Village Board should take with respect to the permit. The Plan Commission shall provide the code official and the permit holder with a copy of the report. Either the code official or permit holder may make an objection, orally or in writing, to the report and shall have the opportunity to present arguments supporting the objection to the Village Board. The Village Board shall determine whether the arguments shall be presented orally or in writing, or both. If the Village Board, after considering the Plan Commission report and any arguments presented by the code official and permit holder, finds the complaint to be true, or if there is no objection to a report recommending a suspension, revocation or nonrenewal, the permit shall be suspended, revoked or not renewed as provided by law. If the Village Board finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. The Village Clerk/Treasurer shall give notice of each suspension, revocation or nonrenewal to the party whose permit is affected.

## **28.15 VIOLATIONS AND LIABILITY.**

(A) It shall be a violation of this ordinance to perform, conduct, direct or allow removal of salvageable material except in conformance with a valid permit issued pursuant to this ordinance.

(B) It shall be a violation of this ordinance to disobey or act contrary to any order issued pursuant to this ordinance.

(C) The owner and permit holder shall be jointly and severally liable for any violation of this ordinance and any violation of any condition of permit pursuant to this ordinance, whether accused by act or omission, including applicable fines and penalties together with the Village's costs of enforcement, including attorney's fees.

(D) Any operator involved in the violation of this ordinance shall be found to have committed a separate violation for which it shall be fully liable, including applicable fines and penalties together with the Village's costs of enforcement, including attorney's fees.

## **28.16 ENFORCEMENT, FINES AND PENALTIES.**

The Building Inspector shall have the primary responsibility to enforce this ordinance. Violations of this ordinance shall be subject to the general provisions of §25.04 of these ordinances. A fine of Fifty (\$50.00) Dollars per day for each violation shall be administered upon the responsible party as described within this ordinance. Any violation of this ordinance or additional cleanup by the Village from salvage operations shall constitute a public nuisance and, in addition to any other remedies provided or allowed, the Village may apply to a court of competent and local jurisdiction for injunctive relief and the assessment of damages including attorney's fees and costs.

## **28.17 REPORTING.**

Permit holders shall provide reports to the code official in accordance with the reporting requirements specified in the permit as approved by the issuing body. These reports shall include the following:

(A) Salvageable materials report that identifies the type, quantity and disposition of salvageable materials removed from the property during the reporting period and supporting documentation.

(B) Hazardous wastes/materials report that identifies the type, quantity and disposition of hazardous wastes/materials removed from the site during the reporting period. This report should be accompanied by supporting documentation of disposal, name and contact information on haulers, and copies of any applicable permits/exemptions.

(C) Waste report that identifies the type, quantity and disposition of waste materials removed from the site during the reporting period and supporting documentation.

(D) Any instances of environmental monitoring performed during the reporting period and the results of same.

These reports shall also include:

(E) Supporting documentation of removal and disposition of materials which shall include weigh tickets, bills of lading, sales receipts, chain of custody logs or equivalent documentation.

(F) A statement by the permit holder that documentation supporting compliance with this ordinance will be maintained for two (2) years from submission of the reports.

(G) A statement from the permit holder that the information in the reports is truthful and accurate.