

CHAPTER 33

UNSAFE BUILDINGS

§33.1 **Unsafe buildings defined**

All buildings or structures which have any or all of the following defects shall be deemed "unsafe buildings."

A. 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.

B. Those which, exclusive of the foundation, show thirty-three (33) percent or more of damage or deterioration of the supporting member or members or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.

C. 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.

D. Those which 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 or the people of the Village of Avon.

E. 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, morals, safety or general welfare of those living therein.

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

G. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of escape.

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

I. Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this Village.

§33.1 MUNICIPAL CODE

J. Those buildings existing in violation of any provision of Chapter 30 entitled "Zoning" and any other provisions of this Municipal Code.

K. Any building or structure which remains vacant and unattended continuously for a period of five (5) years.

§33.2 **Standards for repair, vacation or demolition**

The following standards shall be followed in substance by the Zoning Enforcement Officer and the Board of Trustees in ordering repair, vacation or demolition:

A. If the unsafe building can reasonably be repaired so that it will no longer exist in violation of the terms of this law, it shall be ordered repaired.

B. If the unsafe building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated.

C. In any case where an unsafe building is fifty (50) percent damaged or decayed or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of this law, it shall be demolished. In all cases where an unsafe building is a fire hazard existing or erected in violation of the terms of this chapter or any other provision of this Municipal Code or statute of the State of New York, it shall be demolished.

§33.3 **Unsafe buildings; nuisances**

All unsafe buildings within the terms of §33.1 of this chapter are hereby declared to be public nuisances and shall be repaired, vacated or demolished as hereinbefore and hereinafter provided.

§33.4 **Duties of Zoning Enforcement Officer**

The Zoning Enforcement Officer shall:

A. Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of this chapter.

B. Inspect any building, wall or structure reported (as hereinafter provided for) by the fire or police departments of this Village as probably existing in violation of the terms of this chapter.

UNSAFE BUILDINGS

§33.4

C. Notify personally or in writing the owner or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the property, by registered mail, addressed to the last known address, if any, of the owner or someone of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in the same, as shown by the records of the Assessor or in the office of the County Clerk, of any building found by him to be an unsafe building within the standards set forth in §33.1 of this chapter.

1. The owner must vacate, repair, or demolish said building in accordance with the terms of the notice and this chapter.

2. The occupant or lessee must vacate said building or may have it repaired in accordance with the notice and remain in possession.

3. Any mortgagee, agent or other persons having an interest in said building may at his own risk repair, vacate, or demolish said building or have such work or act done; provided, that any person notified under this subdivision to repair, vacate or demolish any building shall be given such reasonable time, not exceeding thirty (30) days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.

D. Set forth in the notice provided for in Subdivision C hereof, a description of the building or structure deemed unsafe, a statement of the particulars which make the building or structure an unsafe building and an order requiring the same to be put in such condition as to comply with the terms of this chapter within such length of time, not exceeding thirty (30) days, as is reasonable.

E. Report to the Board of Trustees any noncompliance with the "notice" provided for in Subdivisions C and D hereof.

F. Appear at all hearings conducted by the Board of Trustees and testify as to the condition of unsafe buildings.

G. Place a notice on all unsafe buildings reading as follows: "This building has been found to be an unsafe building by this Zoning Enforcement Officer. This notice is to remain on this building until it is repaired, vacated or demolished in accordance with the notice which has been given the owner, or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the property, by registered mail, addressed to the last known address, if any, of the owner or someone of the owner's executors, legal representatives, agents, lessees or other person having vested or contingent interest in the same, as shown by the records of the Assessor or in the office of the County Clerk, of any building found by me to be an unsafe building within the standards set forth in §33.1 of this chapter. It is unlawful to remove this notice until such notice is complied with."

§33.5

MUNICIPAL CODE

§33.5 Duties of Board of Trustees

The Board of Trustees shall:

A. Upon receipt of a report of the Zoning Enforcement Officer as provided for in Subdivision E of § 33.4 hereof, give written notice to the owner, or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the property, by registered mail, addressed to the last known address, if any, of the owner or someone of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in the same, as shown by the records of the Assessor or in the office of the County Clerk, of any building found by him to be an unsafe building within the standards set forth in §33.1 of this chapter, to appear before them on the date specified in the notice to show cause why the building or structure reported to be an unsafe building should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the Zoning Enforcement Officer's notice provided for herein in Subdivision D of §33.4.

B. Hold a hearing and hear such testimony as the Zoning Enforcement Officer or the owner, or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the property, as shown by the records of the Assessor or in the office of the County Clerk shall offer relative to the unsafe building.

C. Make written findings of fact from the testimony offered pursuant to Subdivision B as to whether or not the building in question is an unsafe building within the terms of §33.1 hereof.

D. Issue an order based upon findings of fact made pursuant to Subdivision C commanding the owner, or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the property as shown by the records of the Assessor or in the office of the County Clerk, to repair, vacate or demolish any building found to be an unsafe building within the terms of this chapter and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said unsafe building; or any person not the owner of said unsafe building but having an interest in said building may demolish said unsafe building at his own risk to prevent the acquiring of a lien against the land upon which the said unsafe building stands by the Village as provided in Subdivision E hereof.

E. If such person fails to comply with the order provided for in Subdivision D hereof within ten (10) days the Board of Trustees shall cause such building or structure to be repaired, vacated or demolished as the facts may warrant, under the standards hereinbefore provided for in §33.2 of this chapter and shall with the assistance of the Village Attorney cause the costs of

such repair, vacation or demolition to be charged against the land on which the building existed as a municipal lien, or cause such costs to be added to the tax rolls as an assessment, or to be levied as a special tax against the land upon which the building stands or did stand, or to be recovered in a suit at law against the owner; provided that in cases where such procedure is desirable and any delay thereby caused will not be dangerous to the health, morals, safety or general welfare of the people of this Village, the Zoning Enforcement Officer shall notify the Village Attorney to take legal action to force the owner to make all necessary repairs or demolish the building.

F. Report to the Village Attorney the names of all persons not complying with the order provided for in Subdivision D of §33.5 hereof.

§33.6 **Violation and penalties**

A. Violation of any of the provisions of this chapter is hereby declared to be a violation pursuant to the Penal Law.

B. For every violation of any provision of this chapter, the person violating the same shall be subject to a fine of not more than One Hundred Dollars (\$100.00) or imprisonment of not more than fifteen (15) days as provided in the Penal Law.

§33.7 **Emergency cases**

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless an unsafe building as defined herein is immediately repaired, vacated or demolished, the Zoning Enforcement Officer shall report such facts to the Board of Trustees and the Board of Trustees shall cause the immediate repair, vacation or demolition of such unsafe building. The cost of such emergency repair, vacation or demolition of such unsafe building shall be collected in the same manner as provided in Subdivision E of §33.5.

§33.8 **Where owner absent from the Village**

In cases, except emergency cases, where the owner, occupant or lessee is absent from the Village, all notices or orders provided for herein shall be sent by registered mail to the party in interest as described in Subdivision C of §33.4 to the last known address of such party in interest, and a copy of such notice shall be posted in a conspicuous place on the unsafe building to which it relates. Such mailing and posting shall be deemed adequate service.

§33.9 MUNICIPAL CODE

§33.9 **Administrative liability**

No officer, agent or employee of the Village of Avon shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this chapter. Any suit brought against any officer, agent or employee of the Village of Avon as a result of any act required or permitted in the discharge of his duties under this chapter shall be defended by the Village Attorney until the final determination of the proceeding therein.

§33.10 **Duties of firemen**

Any volunteer fireman of the Village Fire Department may make a report in writing to the Zoning Enforcement Officer of any building or structures which are, may be or are suspected to be unsafe buildings within the terms of this chapter.

§33.11 Duties of Police Department

All employees of the Police Department or any other law enforcement official shall make a report in writing to the Zoning Enforcement Officer of any building or structures which are or may be deemed to be unsafe buildings within the terms of this chapter. Such reports must be delivered to the Zoning Enforcement Officer within twenty-four (24) hours of the discovery of such building.

Cross-references:

Uniform Code Enforcement. Chapter 26

Fire Prevention. Chapter 55

Housing Code. Chapter 27

Subdivision Regulations. Chapter 31

Zoning. Chapter 30

References:

Constitutional due process

"The right to be heard . . . must include a clear and complete notice of the violations charged, and an opportunity to contest, defend against and rebut by affirmative showing the allegations made. (See matter of Ryan v. Hofstra Univ, 67 Misc 2d 651; matter of Janks v. City of Syracuse, 47 Misc 2d 718.)" Moses v. City Council of Long Beach, 71 Misc 2d 925

Constitutionality of this chapter cannot be raised in an Article 78 proceeding. Matter of Janks v. City of Syracuse, 47 Misc 2d 718

Inspections by Fire Department. Vil L §10-1020

Search warrant

A conviction of permitting unsafe building conditions will not be upheld where evidence was obtained by unlawful search. A nonresident owner has the right to restrict entrance to premises, unless a search warrant is obtained. People v. Rosenthal, 59 Misc 2d 565. See also annotations p. 26.9