



Ordinance 626

**An ordinance amending Chapter 145 (Nuisance)
of the Code of the Town of Elsmere.**

Sponsored By: 1st District Councilman John Jaremchuk

First and Second Reading: February 09, 2017 Council Meeting

Results: _____

Third and Final Reading: March 09, 2017 Council Meeting

Results: _____

Ordinance 626

An ordinance amending Chapter 145 (Nuisance) of the Code of the Town of Elsmere

WHEREAS, the Mayor and Council have determined that it is necessary to amend the Elsmere Code to provide for additional avenues of addressing nuisance properties on behalf of all Elsmere residents, and in particular for abating the threats to public health, safety, and welfare that arise from nuisance properties;

WHEREAS, the Mayor and Council have determined that several jurisdictions throughout the United States already have utilized a framework of housing receivership as an effective means of alleviating public nuisances associated with abandoned or blighted properties, and

WHEREAS, the Mayor and Council have the authority to act pursuant to the Elsmere Charter and 22 *Del. C.* § 308.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, AS FOLLOWS:

1. That Chapter 145 of the Code of the Town of Elsmere is hereby amended to include a new Article II to be entitled “Public Nuisance Abatement & Housing Receivership” that reads as follows.

§ 145-8 Findings.

The Mayor and Council finds and determines that a system of housing receivership is a necessary tool to address public nuisances as defined in § 145-2 of this code, particularly in those instances in which, notwithstanding reliance upon provisions of Article I of this chapter and other provisions of this code, the public nuisance persists.

§ 145-9 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

TOWN MANAGER

The Town Manager of Elsmere, or his or her designee as applicable.

ABANDONED PROPERTY

The definition of abandoned property in Elsmere Code Section 209-13 shall apply.

§ 145-10 Unsafe Structures.

A. Any structure or part of a structure found to be unsafe or unfit for human habitation or other authorized use must be rehabilitated or, as permitted or required by the Town Manager, demolished. A structure may be unsafe or unfit for human habitation or other authorized use because of:

(1) conditions constituting a fire hazard or conditions of damage, decay, dilapidation, obsolescence, abandonment, vacancy, insanitation, or vermin or rodent infestation that constitute a hazard to the health, welfare, or safety of occupants or the public,

(2) lack of sanitation, illumination, ventilation, heating, plumbing, exitways, fire protection, utilities, or other facilities adequate to protect the health, welfare, or safety of occupants or the public, or

(3) conditions that are so unsafe, insanitary, overcrowded, improper in use or occupancy, or otherwise dangerous to life, health, welfare, or safety as to create a hazard to occupants or the public.

B. Whenever the Town Manager determines all or any part of an occupied structure to be unsafe or unfit for human habitation or other authorized use:

(1) the Town Manager may post an order requiring the structure or affected part to be vacated, and take necessary steps to remove occupants who fail or refuse to vacate.

(2) once vacated, the structure or affected part may not be reoccupied until it is rehabilitated to comply with all applicable codes and ordinances, and the Town Manager has issued an occupancy permit.

(3) pending rehabilitation, the structure must be kept secure against casual entry and the premises kept free of occupants, litter, high grass, and weeds.

C. Any structure or part of a structure that has been left unoccupied without removing appliances or portable equipment or furniture and without disconnecting utility service must be safeguarded by closing and securely locking all windows, doors, and other openings.

D. Required safeguarding. Every abandoned property must be cleaned, closed, and safeguarded as follows:

(1) Before the structure is closed and secured, all litter, trash, and other debris must be removed from the premises.

(2) All windows, doors, and other openings must be closed, securely locked, and, if readily accessible, boarded up with substantial material, including masonry, approved by the Town Manager. The Town Manager may require windows facing streets to be boarded with lexan, vinyl, or similar material, protected by security grills, or both.

(3) As long as the structure remains unrehabilitated, it must be kept boarded, the premises must be conspicuously posted against trespass, and the premises must be kept free of occupants, litter, trash, debris, high grass, and weeds at all times.

(4) Boarding, posting, and cleaning, however, do not relieve the owner of responsibility to demolish or to repair and maintain the property in conformity with this code.

(5) The structure may not be reoccupied until the Town Manager has issued an occupancy permit.

E. Emergency condition. An abandoned property that is not kept boarded and free from accumulations of debris and high vegetation or that, in the opinion of the Town Manager, is so dangerously unsound or so deteriorated that rehabilitation is not feasible, constitutes an emergency condition that imminently threatens the public health and safety and requires immediate resolution.

F. Rehabilitation, demolition, and stabilization. Except as otherwise authorized or required under this Code, a structure found to be an abandoned property, or unsafe or unfit for human habitation or other authorized use must be rehabilitated and an occupancy permit obtained.

(1) Permitted demolition. On timely appeal of an order to rehabilitate, the Town Manager may permit an owner to demolish an unsafe structure instead of rehabilitating it if, in the Town Manager's opinion, demolition is not detrimental to the immediate neighborhood.

(2) Required demolition. The Town Manager may order the immediate demolition of any unsafe structure that, in the Town Manager's opinion, is either so dangerously unsound or so deteriorated that rehabilitation is not feasible.

(3) Rescission of demolition order. The Town Manager may rescind or modify a demolition order if the owner demonstrates the financial ability and requisite expertise to rehabilitate the structure within a reasonable time, as determined by the Town Manager, and agrees to comply with a specified timetable. Failure to comply with an agreed timetable reinstates the demolition order.

(4) Stabilization. The Town Manager may permit or order an interim stabilization of an unsafe structure pending its rehabilitation.

(5) Reoccupancy of rehabilitated structure. A structure declared unsafe or unfit for occupancy may not be reoccupied until the Town Manager has abated the violation notice or order, and issued an occupancy permit.

G. Vacant lot maintenance. When a structure has been demolished under this Section 145-10, the premises must be made to conform to the provisions of this Code and of the regulations adopted under this Code.

H. Remedial action by Town Manager. The Town Manager may take action whenever the owner, agent, or person in control cannot be found or fails to comply with a notice or order served under this Code:

(1) to repair, rehabilitate, stabilize, or demolish an unsafe structure,

(2) to clean, close, board, or otherwise safeguard a vacant structure, or

(3) to remove high grass and weeds or litter, trash, and debris from the premises of a vacant structure.

I. Actions authorized. The Town Manager may proceed to seek appointment of a receiver, or complete all or any part of the required work through officers, agents, employees, or contractors. Before taking any remedial action, the Town Manager may enter the premises, without additional notice, to determine the extent of deterioration and the feasibility of rehabilitation. Remedial action under this Article does not preclude any other enforcement action authorized by this Code.

§ 145-11 Emergency and Corrective Measures.

A. Power of Town Manager in emergencies. In an emergency where life, health, safety, or property is in immediate danger, the Town Manager may immediately take any action necessary to protect the endangered life, health, safety, or property, without complying with the notice provisions of this Code.

B. Photographs of dangerous conditions. In all emergencies, if it is practical and if enough time is available to do so, the Town Manager must cause the dangerous or unsafe condition that created the emergency to be photographed before any demolition or other work or operation is begun to eliminate the dangerous or unsafe condition.

C. When necessary for the public safety, the Town Manager may temporarily close adjacent structures and adjacent sidewalks, streets, and other public ways and prohibit them from being used.

D. Labor and material for emergency work. In an emergency where life, health, safety, or property is in immediate danger and it is necessary to perform any work or operation to protect that life, health, safety, or property, the Town Manager may employ the persons and buy the materials needed to perform the work or operation as expeditiously as possible.

E. Liability for costs of emergency work. Liability for expenses incurred in the course of performing emergency work and the procedure for collecting resultant debts and liens are as provided in Section 145-12 of this Code.

§ 145-12 Liability for Expenses and Collection of Debts and Liens.

A. Scope. This section applies to all cases where:

(1) the Town Manager enforces any provision of this Code, including but not limited to: the elimination of any safety, health, or fire hazard; the elimination of any nuisance, blight, or insanitary condition; the removal of any abandoned or illegally constructed structure or other object; or the taking of any corrective action in emergencies or otherwise, or

(2) in connection with those efforts, the Town Manager or any department, agency, unit, or body corporate and politic of this State, furnishes or causes to be furnished any labor, supervision, equipment, or materials; or performs or causes to be performed any inspection, work, or operation to eliminate the hazard or condition or to remove the structure or other object.

B. Liability and lien for expenses. In the cases described in § 145-12(A), the entire amount of the Town Manager's expenditures and of the expenditures incurred by any department, agency, unit, or body corporate and politic of this State, together with all incidental costs and all accrued penalties are a lien in favor of the Town on the land and improvements in respect to which the expenditures were made.

C. When debts and liens become effective. All debts become due and owing to the Town immediately when the work is completed or the expenditure made. All liens become effective when given or that a structure has been posted in accordance with this Code.

D. Collection of debts and liens. All debts due and liens incurred under this Section 145-12 may be collected and enforced in the same way that the Town collects and enforces other debts due to it or liens in its favor.

E. Priority over other liens and encumbrances. All debts and liens incurred under this Section 145-12 have priority over all other liens and encumbrances, except taxes or other government assessments.

§ 145-13 Condemnation Proceedings.

A. In general. If any land or structure becomes an abandoned property unsafe or dangerous to public health or safety, the Town Manager may condemn the land, structure, or equipment and issue a condemnation notice of this Code. The issuance of a violation notice is not a prerequisite for the condemnation of real property.

B. Posting notice. If the Town Manager condemns any land or structure, the Town Manager must cause a notice to be conspicuously displayed on the condemned land, structure, or equipment. The notice must:

- (1) be at least 24 inches wide 8 inches high,
- (2) be signed by the Town Manager, and
- (3) advise the public that the particular land, structure, or equipment has been condemned as being unsafe or dangerous for occupancy or use, and that the public is warned to keep away.

C. Emergencies. In case of an emergency where life or property may be in immediate danger, the Town Manager need not post the property and may proceed in accordance with Section 145-11 of this Code.

D. Vacating condemned property. A notice posted under Section 145-13(B) is deemed to be sufficient warning to all occupants of the condemned property to leave immediately. If any occupant fails to vacate the property immediately after the notice is posted, the Town Manager may take whatever action is proper and expedient to remove that occupant.

E. Receiver of condemned property. After a property is condemned, the Town Manager may:

- (1) take any action authorized under Section 145-13, or
- (2) in accordance with Section 145-14 of this Article, apply to court for the appointment of a receiver.

F. Status of condemned property. After property has been condemned and posted in accordance with this Section 145-13, that property remains condemned and may not be occupied or used again until the Town Manager declares the property safe for occupancy or use and has removed the condemnation.

G. Order to demolish. If, in the Town Manager's opinion, a structure is so dangerously unsound or so deteriorated that rehabilitation is not feasible, the condemnation notice may order the owner to demolish the structure immediately.

H. Removal of unsafe conditions. Any time after notice has been posted in accordance with this Section 145-13, the Town Manager may demolish, move, alter, repair, rehabilitate, rebuild, reconstruct, or take any other appropriate action to eliminate or make safe and secure any dangerous or unsafe condition.

§ 145-14 Abandoned Property Receiver.

A. Scope. This Section 145-14 applies to an abandoned property for which a notice or order to rehabilitate or to demolish is outstanding.

B. In general. The Town Manager may petition a Delaware court of competent jurisdiction for appointment of a receiver to rehabilitate an abandoned property, to demolish it, or to sell it to a qualified buyer. Except as otherwise provided in this Section 145-14, the receiver may be any person.

C. Contents of petition. In seeking the appointment of a receiver, the Town Managers must include in the petition:

- (1) a copy of the original violation notice or order, and
- (2) a verified pleading that avers that the required rehabilitation or demolition has not been completed, and identifies and states the qualifications of the proposed receiver, if other than the Town Manager.

D. Named respondents. The petition for appointment of receiver must name as respondents:

- (1) the owner of the property,
- (2) any lien holder of record.

E. Notice to judgment creditors and lien holders. After filing the petition but before seeking finalization of the appointment of a receiver, the Town Manager must give notice of the pendency and nature of the proceedings by regular and certified mail to the last-known addresses of all judgment creditors and lien holders with a recorded interest in the property, subject to the following exceptions:

- (1) This notice is not required for respondents named under Section 145-14.

(2) The Town Manager is not required to send notices to any creditor or lien holder whose interest in the property is unrecorded.

F. Appointment of receiver. If no qualified person with an ownership interest requests appointment to rehabilitate or demolish the property, or if an appointee is dismissed, the Town Manager must then request that the court appoint a receiver of the property for the purpose of rehabilitating and managing the property, demolishing the property, or selling it to a qualified buyer, subject to the following:

(1) Parties divested of authority. On appointment of a receiver to rehabilitate, demolish, or sell the property, all parties are divested of any authority to act in furtherance of those goals.

(2) Penalties. Any party who takes any step to rehabilitate, demolish, or sell the property is subject to the penalties for contempt.

(3) Receiver not responsible to maintain or protect the property. A receiver appointed to rehabilitate, demolish, or sell a vacant building has no duty to, and is not personally liable for failing to, maintain the property or protect the property from casualty or loss.

G. Powers of receiver appointed to rehabilitate or demolish. The Town Manager shall seek from the court such authority for the receiver that, in addition to all necessary and customary powers, includes the right of possession with authority to:

(1) contract for necessary labor and supplies for rehabilitation or demolition,

(2) borrow money for rehabilitation or demolition from an approved lending institution or through a government agency or program, using the receiver's lien against the property as security,

(3) manage the property after rehabilitation, with all the powers of a landlord, for a period of up to 2 years and apply the rent received to current operating expenses and to repayment of outstanding rehabilitation expenses, and

(4) foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

H. Powers of receiver appointed to sell. The Town Manager shall seek from the court such authority for the receiver that, in addition to all necessary and customary powers, includes the right for the receiver to sell the property to the high bidder at public auction, following all relevant laws and notice requirements in Delaware, or to sell the property in a private sale if the property fails to sell at public auction, subject to the following:

(1) Buyer qualifications. Before any sale, the applicants to bid in a public sale or the proposed buyer in a private sale must demonstrate the ability and experience needed to rehabilitate the property within a reasonable time.

(2) Application fee. The receiver may charge a reasonable fee to applicants in connection with the application to bid at a public sale or in connection with the solicitation of offers for a private sale.

(3) Application of sale proceeds. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver must apply any remaining proceeds of the sale, first to the petitioner's costs and expenses, including reasonable attorney's fees, and then to the liens against the property in order of priority.

I. Tenure of receiver appointed to rehabilitate. The Town Manager must seek court approval that the tenure of a receiver appointed to rehabilitate a vacant building may extend no longer than 2 years after rehabilitation, and that after rehabilitation, any party to the receivership may file a motion to dismiss the receiver on payment of the receiver's outstanding costs, fees, and expenses.

J. Final accounting. The Town Manager shall request the court require that at the end of the receiver's tenure the receiver file a final accounting with the court.

K. Receiver's lien for costs, etc. Any costs or fees incurred by the receiver are a lien against the property in accordance with Section 145-12 of this Code. The receiver's lien has priority over all other liens and encumbrances, except taxes or other government assessments as required by Delaware law. The receiver must allow the petitioner's costs and expenses, including reasonable attorney's fees, to be paid to the extent that the proceeds of the sale permit.

L. Foreclosure of lien. A receiver may foreclose on the lien by a sale of the property at public auction, following 1 public notice and notice to interested parties in the manner of a mortgage foreclosure. After deducting the expenses of the sale, the receiver must apply the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs, fees, including attorney's fees, and expenses or may transfer all ownership in the property to

either the receiver or an agreed-on third party for an amount agreed to by all parties to the receivership as being the property's fair market value.

M. Transfer on sale. The Town Manager shall request the court require, following court ratification of a sale, that the receiver sign a deed conveying title to the buyer, free and clear of all liens, judgments, and other encumbrances. The Town Manager shall also request the court require upon court ratification of the sale that any secured interest of a lien holder or judgment creditor automatically attaches to the proceeds from the sale, to the extent those proceeds are available under Section 145-14(M)(3).

N. Dismissal. The Town Manager shall request the court require that, on sale of the property, the receiver must file with the court a final accounting, and, at the same time, file a motion with the court to dismiss the action.

§ 145-15 Notices.

A. In general. All notices under this Article must be issued in accordance with this Section. However, nothing in this Article may be construed to excuse or relieve any person from complying with all provisions of this Code at all times, regardless of whether any notice or order has been issued by the Town Manager in any particular case.

B. Classification. Notices issued under this Article are classified as either condemnation notices, or violation notices.

C. Contents – Condemnation notices. Except as specified herein, every condemnation notice must set forth:

- (1) the location of the condemned structure or equipment,
- (2) the reason the structure or equipment is condemned,
- (3) a reference to applicable provisions of this Code,
- (4) a warning against entering or using the condemned structure or equipment, and
- (5) unless to be contained in a follow-up or subsequent notice: a statement of the requirements that must be complied with to rectify the unsafe condition; the time within which the unsafe condition must be rectified; and the Town Manager's authority under Section 145-15(H) to take action at the owner's expense.

A follow-up or other subsequent notice involving the same condemnation need not repeat the information contained in a prior notice as long as the subsequent notice identifies the prior notice.

D. Violation notices. Except as specified herein, every violation notice must set forth:

- (1) the location and character of the violation,
- (2) a reference to applicable provisions of this Code, and
- (3) unless to be contained in a follow-up or subsequent notice: a statement of the requirements that must be complied with to rectify the violation; the time within which the violation must be rectified; and the Town Manager's authority under Section 145-15(H) to take action at the owner's expense.

A follow-up or other subsequent notice involving the same violation need not repeat the information contained in a prior notice as long as the subsequent notice identifies the prior notice.

E. When notices to be issued. Except as otherwise specified in this Code, notices must be issued in all cases where legal proceedings might be necessary to enforce this Code.

- (1) Condemnation notices. For any land, structure, or equipment being condemned, the condemnation notice must be issued to the owner of the land, structure, or equipment.
- (2) Violation notices. For violations, the violation notice must be issued to the person who committed or otherwise is responsible for the violation.

F. Service of notice – General. Except as otherwise specified in Section 145-15(G), all notices issued by the Town Manager must be served on the person that the notice is intended for or on any authorized agent or representative of that person.

- (1) If more than 1 person is responsible for the violation or responsible for complying with this Code, as in a case of property owned by more than 1 person, notice may be served on any 1 of those persons or on any authorized agent or representative of any of them.
- (2) A notice is properly served if: served personally on the owner, agent, person in control, former owner, or other person responsible for the property; hand delivered to that person's home, business, or tax record

address; or sent by certified or registered mail to that person's home, business, or tax record address.

(3) Authorized server. Service under Section 145-15(F)(1) or (2) must be made by a member of the Elsmere Police Department, or an official or employee of the Town of Elsmere or the State of Delaware.

G. Service of notice – Posting. Adequate and sufficient notice may be made by posting a copy of the notice on the property in question if:

(1) the identity or whereabouts of the owner, agent, person in control, former owner, or other person responsible for the property is unknown, or

(2) notice mailed under Section 145-15(F) is returned unclaimed or refused or is designated undeliverable by the post office for any other reason, and other financial or property records of Elsmere do not provide a more accurate address.

H. Failure to comply with notice or citation. If any person fails to comply with a violation notice, condemnation notice, or citation, the Town Manager

(1) may take whatever action is necessary and proper, including the institution of legal proceedings, to compel compliance with the notice or citation or to enforce the penalty provisions of this Code and

(2) subject to the notice requirements of Section 145-15(I), may proceed to repair, rebuild, demolish, or take any other action necessary to eliminate, in whole or in part, or make safe any nuisance, blight, health hazard, or dangerous, insanitary, or unsafe condition that is the subject of the violation notice, condemnation notice, or citation.

I. Notice of intent to repair, etc. Except as provided in Section 145-15(J), before the Town Manager proceeds to repair, rebuild, demolish, or take any other action to eliminate or make safe any nuisance, blight, health hazard, or dangerous, insanitary, or unsafe condition, a notice must be posted on the front of the structure stating that the violation has not been rectified and that the Town Manager intends to undertake the necessary work and charge the expenses of that work to 1 or more of the owner, agent, person in control, or former owner of the premises, as the case may be. This notice must also be mailed or delivered to the home, business, or tax record address of the owner, agent, person in control, former owner, or other person responsible for the property, as the case may be, or their respective agents.

- J. Exception. The notice required by Section 145-15(I) need not be given:
- (1) in the case of an emergency,
 - (2) as provided in Section 145-10(M) of this Code for unsafe structures, or
 - (3) if the initial or any other prior notice or order issued by the Town Manager informed the recipient of the Town Manager's authority to take corrective action.
- K. Actions not an abatement, etc. Actions taken by the Town Manager under Section 145-15(I) or (J) do not constitute an abatement or cancellation of the underlying notice or citation.
- L. Extension of time limit on notices. The Town Manager may extend the time within which to comply with a condemnation notice or violation notice if, in the Town Manager's judgment, more time is needed to comply.
- M. Removal or defacement of posted notices. No person may remove, deface, damage, or change any notice, poster, or sign placed under this Code on any land, structure, or other object, until the Town Manager authorizes its removal.
- N. Opportunity to Contest Notice. Any notice provided for under this Ordinance shall state a date, time and place where any interested party may appear and be heard in opposition to any order or other action proposed to be taken with respect to any property or building. The notice may further provide for a date by which any interested party must submit such information that they intend to submit in support of their opposition.

First and Second Reading
February 09, 2017

Third and Final Reading
March 09, 2017

Steve Burg, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS

This Ordinance allows the Mayor and Council additional avenues of addressing nuisance properties on behalf of all Elsmere residents, and in particular for abating the threats to public health, safety, and welfare that arise from nuisance properties;

Fiscal Impact

The Fiscal impact of this Ordinance is unable to be determined at this time.