

LOCAL LAW NUMBER 1 OF 2011

UNSAFE BUILDINGS

The Town Board of The Town of Genoa, Cayuga County, New York, pursuant to a Resolution dated December 27, 2010, does hereby pass the following law; and accordingly

BE IT ENACTED as follows:

Section 1. Authority

This Local Law is adopted pursuant to the authority granted the Town of Genoa in Section 10 of the Municipal Home Rule Law and in Section 130(16) of Town Law, and in related provisions of Article 18 of the Executive Law, Article 5 of the General Municipal Law (including, but not limited to § 78-b therein), related laws of the State of New York, and in the regulations and rules adopted or promulgated pursuant to or under each of the foregoing statutes, including, but not limited to Title 9 of the NYCRR, part 1203, and related Parts of such Title and the NYCRR.

Section 2. Title

This Local Law shall be known as the "Town of Genoa Unsafe Buildings Law."

Section 3. Purpose of the Unsafe Buildings Law

By adoption of this Local Law, the Town of Genoa declares its intent to regulate and control unsafe, abandoned, hazardous, dilapidated or derelict buildings and structures (herein "Unsafe Buildings", as defined in Section 5, below). The Town of Genoa hereby declares that a clean, wholesome, and attractive environment is of vital importance to the continued general welfare of its citizens, and that Unsafe Buildings can constitute a hazard to property and Persons and can be a public nuisance. Unsafe Buildings may be highly flammable and sometimes explosive. Unsafe Buildings can constitute attractive nuisances to children and certain adults. The presence of Unsafe Buildings is injurious to the public welfare, unsightly, and tends to detract from the value of surrounding properties.

Section 4. Prior Existing Unsafe Buildings Ordinances or Local Laws

This Unsafe Buildings Local Law shall replace and supersede any and all prior existing Unsafe Buildings Ordinances or Local Laws of the Town of Genoa, if any.

Section 5. Definitions

For the purpose of this Local Law, the following words and phrases shall have the meaning ascribed to them in this section.

Emergency: A determination by the Enforcement Officer of a condition in a Hazardous Building that presents an imminent or immediate danger to the life, health, or safety of any Person.

Enforcement Officer: Any Person appointed by the Town Board of the Town of Genoa to represent the Town of Genoa in particular matters pertaining to this Local Law.

Hazardous Building: Any Unsafe Building that presents or poses an imminent or immediate danger of failure or collapse, or an imminent or immediate danger to the life, health, safety or welfare of any Person. A single building or Structure can be both a Hazardous Building and an Unsafe Building, and all Hazardous Buildings are and shall be deemed Unsafe Buildings.

Owner: Any person or entity that owns or holds any interest in fee to real property as shown by the records of the County Tax Assessor.

Owner's Address: An Owner's mailing or residence address as shown by the records of the County Tax Assessor.

Person: Any individual, firm, partnership, association, corporation, company, or entity or organization of any kind.

Town of Genoa: Unless otherwise specified, means the Town Board of the Town of Genoa, all elected officials, all employees, all committees and committee members, the Enforcement Officer, the Town Justice Courts, its Judges, clerks and employees, and all agents of the Town.

Unsafe Building: Any building or structure which (i) is abandoned, dilapidated, derelict, structurally unsafe, or unsanitary, or (ii) constitutes a fire hazard, or (iii) is not provided with sufficient means of egress or exits in the case of a fire, or (iv) is otherwise dangerous to human life, or (v) which constitutes a hazard to safety or health by reason of inadequate maintenance, infestation, dilapidation, obsolescence or abandonment.

Section 7. Unsafe Buildings are Illegal

All Unsafe Buildings are hereby declared to be illegal and shall be abated by repair or demolition in accordance with the provisions of this Local Law.

Section 8. Enforcement Officer's Authority to Order Vacation

The Enforcement Officer shall have the authority to order the immediate evacuation of any Unsafe Building. The Enforcement Officer shall order the immediate evacuation of any Hazardous Building.

Section 9. Notice and Hearing Procedure Concerning Unsafe Buildings

Whenever the Enforcement Officer shall determine that any building or structure, or

portion thereof, is an Unsafe Building, the Enforcement Officer shall cause service of notice upon the Owner either personally or by registered mail to the Owner's Address. If service is made by registered mail, the Enforcement Officer shall cause the posting of a copy of such notice on the premises. Such notice shall be called and labeled as a "Defective Conditions Notice" (herein abbreviated as "DCN"). Such DCN shall contain (a) a brief description of the premises, and for this purpose a street address is sufficient, and (b) a statement of the particulars concerning the Enforcement Officer's determination that the building or structure is an Unsafe Building, and (c) an order of the Enforcement Officer requiring the Unsafe Building to be repaired or removed, and (d) the time within which the Owner shall commence the repair or removal of such Unsafe Building, and (e) the time within which the Owner shall complete the repair or removal of such Unsafe Building, and (f) a date by which the Owner may object to the notice, which objection(s) shall be deemed to be a request for a hearing, and (g) a time and place for a hearing, if an objection is filed, to be held between 5 and 20 days after the objection is filed, before the Town of Genoa Justice Court, and (h) if a Hazardous Building, and order of the Enforcement Officer to all Persons requiring that they immediately vacate the Hazardous Building.

Section 10 Hearings.

In the event of an Emergency, the hearing date may be accelerated by order of the Town of Genoa Justice Court, which such order may be granted *ex parte* upon a showing of good cause by any party. At any civil hearing under this Local Law, except those arising pursuant to Section 28 hereunder, the initial burden of proof shall be upon the Town of Genoa, which shall be required to show by a fair preponderance of the evidence that the building or structure is an Unsafe Building, a Hazardous Building, or that an Emergency exists. If that burden is met, the Owner, or other aggrieved Person, may rebut the Town of Genoa's showing by the introduction of evidence that establishes by a fair preponderance of the evidence that the building or structure is not an Unsafe Building, Hazardous Building, or that an Emergency does not exist. At any criminal hearing or trial, the Town of Genoa shall have the burden of proof to show, beyond a reasonable doubt, that any Person charged with a violation of this Local Law violated any one or more terms or requirements of this Local Law. The rules of the court or agency which conducts the hearing shall apply to such hearing, except that no party has any right to depose or propound interrogatories to any other party or witness.

Section 11. Imminent or Immediate Dangers

If the Enforcement Officer finds that an Unsafe Building is a Hazardous Building, the Enforcement Officer shall post a copy of the DCN upon such Hazardous Building. No Hazardous Building may be occupied, nor may a Hazardous Building be re-occupied, until each and all unsafe and hazardous conditions are remediated. In addition to posting the DCN, the Enforcement Officer shall cause the following to be posted at each entrance to a Hazardous Building that is found to pose an imminent or immediate danger:

CONDEMNED: THIS BUILDING IS HAZARDOUS AND UNSAFE.

ENTRY, USE, AND OCCUPANCY OF THIS BUILDING HAVE BEEN PROHIBITED BY THE TOWN OF GENOA.

Such notice shall remain posted until all required repairs are made or demolition of the Hazardous Building is completed. It shall be unlawful for any Person to remove such notice without written permission of the Enforcement Officer, or for any Person to enter a Hazardous Building except for the purpose of evaluating the building condition, making the required repairs, or to demolish such Hazardous Building. Further, if the Enforcement Officer determines that an Emergency exists in relation to such Hazardous Building, the Enforcement Officer is also hereby empowered, but not required, to (a) enter any such premises for the purposes of inspection and investigation, (b) promptly cause any Hazardous Building or portion thereof to be made safe or removed, (c) order the vacation of adjacent structures, and (d) protect the public by appropriate barricades or such other means as may be necessary, including the closure of public or private ways.

Section 12. Filing of the Notice

The DCN may also be filed in the office of the County Clerk, which notice shall be filed by the Town of Genoa in the same manner as a Notice of Pendency pursuant to Article 65 of the Civil Practice Law and Rules (herein "CPLR"). The DCN shall have the same effect as a Notice of Pendency as therein provided, except as otherwise provided in this Local Law. A DCN so filed shall be effective for a period of 1 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 Board of the Town of Genoa. The County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order canceling the DCN.

Section 13. Removal or Repair by the Town; Costs of Same

Upon notification given by the Enforcement Officer to the Town Supervisor that an Owner has failed or refuses to repair or demolish any Unsafe Building, the Town Supervisor shall cause the repair or removal of the Unsafe Building. After the work has been completed, the Town Supervisor shall file in the office of the Town Clerk a verified statement (herein, the "Verified Statement") of all the direct costs of the same, together with a 30% surcharge as compensation to the Town of Genoa for administering, supervising, and handling said work in accord with the provisions of this Local Law. Any Person aggrieved by the filing of a Verified Statement may file an objection thereto and request a hearing to determine the actual or reasonable costs of such removal or repair by the Town of Genoa. Such objection must be filed within 10 days of the filing of the Verified Statement by the Town Supervisor.

Section 14. Assessment and Lien

Upon receipt of the Verified Statement prepared pursuant to Section 13, the Town Clerk (a) shall enter the same in the records of the Town Clerk as a lien against the premises,

and (b) shall add the same to the next assessment roll of general Town taxes, and (c) shall collect and enforce the assessment in the same manner, by the same proceedings, at the same time, and under the same penalties as the general Town tax, and as a part thereof.

Section 15. Other Remedies

Notwithstanding any provision herein to the contrary, the Town of Genoa may, at its election, institute suit against the Owner of said premises for the direct costs and the 30% surcharge, and enter judgment thereupon against any Owner. The imposition and collection of any fine or penalty hereinafter prescribed shall not bar the right of the Town of Genoa to otherwise collect the cost of the removal or repair of any Unsafe Building as herein prescribed.

Section 16. Transfer of Title by Owner

A transfer of title (or any interests therein) by the Owner shall not be a valid defense to any proceeding under this Local Law. No assignment of any obligations imposed by this Local Law shall be a defense to any proceeding under this Local Law.

Section 17. Appeals

Any Person ordered to repair, remove, or vacate any Unsafe Building who disagrees with the DCN (or other determination of the Enforcement Officer) may appeal to the Town Board of the Town of Genoa by filing a written statement setting forth the reasons for such appeal. Such appeal must be filed within 10 days of service of the DCN (or other order of the Enforcement Officer) upon such Person. Upon receipt of such appeal, the Town Board of the Town of Genoa shall hold a hearing within 30 days and, after a review of all evidence, shall affirm, modify or annul the action of the Enforcement Officer.

Section 18. Demolition or Removal

Before the demolition or removal of any Unsafe Building is commenced, a Demolition Permit Application (herein "DPA") shall be prepared by the Owner, or the Owner's architect, builder or contractor, on forms available from the Enforcement Officer. A processing fee of \$50.00 must accompany each DPA. All information requested in such form must be provided before the DPA is deemed completed. The DPA shall be filed with the Enforcement Officer at least 20 working days before the proposed demolition or removal, except in the case of Hazardous Buildings, which shall require that a DPA be filed as soon as possible. If a DPA is approved by the Enforcement Officer, the Enforcement Officer shall issue a Demolition and Removal Permit (herein "DRP"). All work must be completed within the time stated upon the DRP. All DRP's are valid only until the date stated on the face of the DRP. Upon expiration of a DRP prior to the completion of the demolition or removal of an Unsafe Building, a new DPA shall be filed, and a new DRP must be issued before the continuation of any work. No DPA or DRP shall be required for single-story non-occupied structures consisting of less than 100 square feet of total floor space, such as sheds. No DRP may be issued unless compliance with all requirements of law are met, including any remediation of asbestos

requirements and any environmental or related requirements pertaining to underground storage tanks, urea-formaldehyde, and other regulated, hazardous, or toxic substances.

Section 19. Bond, Security, or Other Undertaking

Before any DRP is issued and before making any repairs pursuant to a DCN, and when required by the Enforcement Officer, a performance bond, money, or another undertaking in a form approved by the Enforcement Officer, in an amount sufficient to complete all proposed or necessary operations, shall be required. The determination as to whether to require any undertaking, and in what amount or form, shall be at the sole discretion of the Enforcement Officer, without recourse. The Enforcement Officer may require additional sums to be posted, paid, or bonded as may be necessary from time to time to ensure adequate financial security for the completion of the work.

Section 20. Insurance

Before any DRP is issued and before making any repairs pursuant to a DCN, and prior to the commencement of any work thereunder, the Owner and all Person(s) engaged in the work of demolition or removal shall file proof of insurance for all operations with the Enforcement Officer, including proof of public liability, personal injury, and property damage insurance or coverages, which insurance shall also contain general all-risk coverage. Such insurance policy or policies shall provide (a) for a minimum coverage of not less than \$1,000,000.00 per person per incident, and (b) that the Town of Genoa be named an additional insured, and (c) that the Town of Genoa be required to be notified at least 30 days prior to any change of coverage, change in endorsements, or cancellation of coverage. All insurance coverages and policies shall be subject to the approval of the Enforcement Officer prior to the issuance of any DRP.

Section 21. Indemnity

The Owner and each Person working upon any demolition or removal work, including all Persons acting in furtherance of the performance of any work pursuant to or under any DRP, shall indemnify, keep and save harmless the Town of Genoa from and against any and all losses, costs, damages, expenses, judgments, claims, or liabilities of any kind whatsoever which may accrue against or be charged to or recovered from the Town of Genoa from or by reason of or on account of accidents to Persons or property during any operations and from or by reason of or on account of any thing done under or by virtue of any DRP granted for any such operations. This indemnity provision shall be construed and applied to the maximum extent permitted by law.

Section 22. Progress of Demolition Work

In demolishing any building or structure, or any part thereof, story after story shall be completely removed in a sequential manner commencing with the roof, and then the top floor, and moving to the next lower floor, etc., unless such building is demolished in a single phase through the lawful and properly permitted use of explosive or implosive devices. No material shall be placed upon a floor of any building in the course of demolition, and the bricks, timbers and other parts of each story shall be lowered to the

ground immediately upon displacement. All material to be removed shall be properly wet to lay the dust incident to its removal. All demolition and removal work shall be undertaken with a diligent regard to and a diligent application of all applicable safety standards, rules, laws and regulations, in accord with the highest, best, and safest practices and customs in such industry.

Section 23. Penalties

Any Person who shall violate any of the provisions of this Local Law shall be guilty of a criminal offense and subject to a fine not more than \$500, or by a civil penalty of \$500 to be recovered by the Town of Genoa in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

Section 24. Injunction/Equitable Relief & Other Remedies

In addition to the provided fines and/or penalties stated in Section 23 above, the Town of Genoa may also commence and maintain an action or proceeding in the name of the Town of Genoa in a court of competent jurisdiction to compel compliance with or restrain by injunction (or other equitable relief) the violation of any provision of this Local Law. No remedy or penalty specified in this Local Law shall be or be deemed as an exclusive remedy available to address any violation of this Local Law, and each action, remedy, or penalty specified or authorized in this Local Law shall be in addition to, and not in substitution for or in limitation of, any other actions, remedies, or penalties permitted by law, rule, order, or regulation. Any remedy or penalty specified in this Local Law may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other action, remedy, or penalty, including, but not limited to, actions and penalties authorized by Sections 381 and 382 of the Executive Law, or under any regulations or codes promulgated thereunder or in relation thereto.

Section 25. Waivers

Where the Town of Genoa finds that due to the special circumstances of a particular case a waiver of certain provisions of this Local Law is justified, then a waiver may be granted by the Enforcement Officer. No waiver shall be granted, however, unless the Town Board of the Town of Genoa finds, and records in its minutes, that:

- (A) Granting the waiver would be keeping with the intent and spirit of this Local Law, and is in the best interests of the community; and
- (B) There are special circumstances involved in the particular case, and such circumstances are recited in the minutes; and
- (C) Denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; and

(D) The waiver is to the minimum degree necessary and does not interfere with the purposes of this Local Law.

Additionally, the Town Board of the Town of Genoa and/or the Enforcement Officer may state terms and conditions applicable to the waiver, including conditions precedent to the effectiveness or validity of the waiver. The Enforcement Officer may revoke a waiver upon reasonable cause should the Owner fail to comply with any non-waived provision of this Local Law, or fail to comply with the terms and conditions stated in any granted waiver. If the Owner believes the revocation was improper, the Owner may file an objection thereto within 5 days of such revocation, whereupon, a hearing shall be held by the Town Board of the Town of Genoa whereat a determination will be made to affirm, modify, reverse, or annul the decision of the Enforcement Officer. Notice of the hearing shall be made in the Town of Genoa's designated official newspaper at least 5 days prior to the date thereof. The Person holding the waiver (the "Waiver Holder") shall be notified of the hearing by certified mail at least 5 days prior to the hearing. At the hearing the Town Board of the Town of Genoa shall hear the Waiver Holder and all other Persons wishing to be heard concerning the revocation of the waiver.

Section 26. Limitation on Liability

The Town of Genoa shall not be liable or responsible for any injury to persons or damage to property due to its actions, or failures to act, under or pursuant to this Local Law, unless it be proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town of Genoa.

Section 27. Severability

If any clause or provision of this Local Law shall be held invalid or unenforceable by a court or tribunal of competent jurisdiction, such holding shall not affect or invalidate the remainder of this Local Law and any such invalidity or unenforceability shall be confined in its operation to the clause or provision directly involved in the controversy in which such holding shall have been rendered.

Section 28. Fees

Any fees or fee schedules established by or under this Local Law may be amended, from time-to-time, by resolution of the Town Board.

Section 29. Article 78

The determinations of the Town Board referenced in Sections 9, 10, 17, and 25 of this Local Law shall be deemed "final determinations" for purposes of Article 78 of the CPLR.

Section 30. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with § 27 of the Municipal Home Rule Law.