

Program Area: Remediation and Redevelopment

Subject: Model Ordinance for Salvaging of Non-Structural Material from Vacant Buildings

Purpose: This draft model ordinance was developed by Department staff in conjunction with the Brownfields Study Group. The model ordinance addresses non-structural demolition and collection of salvageable materials and is intended for use by municipalities to assist in creation of local laws that best fits their needs.

Length of Public Input Period: 21 Days

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Background: The closing of major manufacturing plants has had a considerable impact on municipalities across Wisconsin over the last several years. Not only are these closings detrimental to local economies, the remnants of these facilities often leave the community with large pieces of property that have a myriad of issues. Having to address environmental, financial, and land use issues all at once can leave a municipality scrambling to keep track of the various parties' activities. The result often being that the municipality is left with a vacant shell of a building that is unusable.

To prevent this, many municipalities have begun enacting local ordinances that deal with non-structural demolition and salvageable materials. These local laws ensure that the municipality has approved the salvage activities and that the contractor's operation is safe and not a detriment to the community. Specifically, the purpose of such an ordinance is to:

1. Regulate the removal of salvageable materials from vacated buildings for which there are no immediate functional replacements (e.g. necessary electrical and plumbing items) in order to ensure that a usable site remains;
2. Prevent health and safety hazards and/or blight due to the removal of materials;
3. Ensure that the operation of the non-structural demolition is completed in a timely manner and in such a fashion that prevents health and safety hazards, nuisances, and environmental pollution; and
4. Provide clear and immediate access to the property for inspections.

Making certain these goals are met necessitates the implementation of a permit process. Permitting requires the contractor to submit plans for non-structural demolition or salvaging that lists the materials to be collected, outlines the timeline for demolition, and provides proof that all necessary insurances and applicable permits have been obtained (including pollution liability insurance, umbrella liability insurance, and stormwater/erosion control permits). The permitting process also provides the municipality with an opportunity to impose any special requirements that may be appropriate at individual sites.

Removal of Salvageable Non-Structural Materials from Vacated Buildings

A. PURPOSE. The purpose of this Ordinance is to regulate the removal of salvageable materials from vacated buildings for any purpose other than personal re-use by the owner of the property from which it was removed, without immediate functional replacement thereof. The phrase “immediate functional replacement thereof” does not include replacement that occurs as a part of a remodeling process over time pursuant to a valid and subsisting building, heating, plumbing or electrical permit.

B. AUTHORITIES. *Insert appropriate authorities here.*

C. DEFINITIONS.

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.

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 material from a Vacated Building within the jurisdictional limits of the *City, Village, etc.*, or which directs or allows such removal.

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. has resale value, either for re-use or scrap.

Such materials shall also 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.

Vacated Building. A building or structure, or portion of a building or structure, having occupiable space of over *Insert appropriate square footage (e.g. Ten Thousand)* square feet (*##,###* sq. ft.) that had a principal non-residential use as its most recent use allowed by law, which principal use has ceased. The cessation of the primary activities constituting the principal use shall be determinative of whether the principal use had ceased. The presence of personnel in the building or structure is not determinative of whether the use has ceased.

Code Official(s). *List designated code officials*

Recyclable Materials. Material resulting from the demolition or dismantling of a vacated building that has not been removed for the purposes of salvaging pursuant

to this ordinance. This term does not include materials that are contaminated by asbestos, lead or other hazardous materials in such a way as to render recycling or reuse illegal or impossible. The *Issuing Official* may identify other materials that are not able to be readily recycled or reused in an economically viable manner.

Recycle. Any process by which debris or material are diverted from final disposal as solid waste at a permitted landfill and instead are collected, separated and/or processed into raw materials for new, reused or reconstituted products, or for the recovery of materials for energy production purposes.

D. 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 *Governing 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.

E. PERMIT APPLICATION.

1. The applicant may be the owner of the real estate, or a Contractor hired by the owner or the holder of a security interest in the property, Vacated Building or structure, or the salvageable material. Under all circumstances, the applicant, if other than the owner, shall be jointly and severally responsible for compliance with the terms of this Ordinance.
2. Application for a permit, whether initial or renewal, shall be filed with the *City Clerk or equivalent* on forms created by the Code Official and provided by the *City, Village, etc.* The application shall include:
 - a. Name, address and contact information of owner of the building.
 - b. Names, addresses and contact information for contractors engaged to carry out the activity.
 - c. Plan for removal of salvageable material including the following details:
 - i. Project schedule and budget.
 - ii. Inventory and quantities (by weight or volume) of materials to be removed from the building for salvage purposes.
 - iii. Proposed disposition of salvageable materials.
 - iv. Dust, noise and odor control.
 - v. Hours of operation.
 - vi. Fire suppression.
 - vii. Traffic safety and public infrastructure protection.
 - viii. Site security.
 - ix. Building and grounds management and restoration.
 - x. Proposed post-salvage property ownership and use, if known.
 - d. Plan for removal of hazardous wastes/materials.
 - i. 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.
- ii. Hazardous materials handling, management and disposal prior to salvaging.
- iii. Proposed environmental monitoring or remediation.
- e. Plan for removal of recyclable materials.
 - i. Inventory and estimate (by weight or volume) of materials to be recycled.
 - ii. Proposed disposition, ownership and use of materials to be recycled, if known.
 - iii. Percentage of material to be recycled. This percentage should only include non-salvageable material not identified as hazardous material or waste.
- f. Proof of required demolition/renovation notifications to the appropriate State regulatory agency(ies).

The Code Official, *Public Safety/Building Commission, Building Official, or equivalent*, or *Governing body* may require additional information of a specific applicant.

- 3. A permit fee must accompany the application. Permit fees shall be established by resolution of the *Governing body*.

F. PERMIT GRANT. The *Governing body* shall consider the permit applications only at regular Council meetings, and only after receiving the recommendation of the *Public Safety/Building Commission or equivalent*.

Prior to making its recommendation to grant or deny the application, the *Public Safety/Building Commission or equivalent* shall consider: the application; the report, if any, of the Code Official; 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 if the structure is not proposed to be immediately razed or immediately renovated; the presentation, if any, of the applicant; the comment of the public; and such other matters germane to the decision.

In granting a permit, the *Governing body* 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 Standby Letter of Credit; other State or 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; reporting period for submittal of required reports pursuant to Subsection O; percentage of non-salvageable materials required to be recycled; reasonable special operating

requirements to be required of the Permit Holder in addition to those listed in Subsection I herein; and such other matters or limitations as the *Governing body* determines is necessary to protect the public interest.

Administrative Process Granting Option: Insert municipalities existing administrative permitting process language if governing body has approved such a process.

Two-Tier Granting Option: Insert language where governing body versus administrative permit granting is based on square footage.

G. IRREVOCABLE Standby LETTER OF CREDIT. As a condition of issuance by the *Issuing Official*, the Permit Holder shall provide and maintain in effect an Irrevocable Standby Letter of Credit naming the *City, Village, etc.* as beneficiary, in an amount required by the *Governing body* and in a form approved by the *City, Village, etc.* Attorney. The *City, Village, etc.* 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 *City, Village, etc.* 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 *City, Village, etc.* 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 *City, Village, etc.* for no less than one year after project completion as reasonably determined by the *Governing 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 *Governing body* shall consider: the recommendations, if any, of the Code Official; 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 *City, Village, etc.* should the *City, Village, etc.* have to address any matter due to the unwillingness or inability of the Permit Holder to fulfill its obligations. The *Governing body* may annually and at public hearing, 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 circumstance that the *Governing body* determines that the requirements to obtain an Irrevocable Standby Letter of Credit is unreasonable,

the *Governing 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.

H. PERMIT TERM AND ASSIGNMENT.

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

1. **Initial term.** The initial term of any permit issued under this section shall be *Initial term length* from the date of issue.
2. **Renewal term.** There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the *Governing body* upon application of a Permit Holder, filed with the *City Clerk or equivalent* prior to expiration of the initial term or any renewal terms. Each renewal may be granted for up to *Renewal term length*.
3. **Assignment.** No permit issued pursuant to this ordinance is assignable or transferable without the advance written permission of the *Governing body*, which shall not be granted unless the Permit Holder and prospective assignee demonstrate to the satisfaction of the *Governing 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.

I. 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:

1. The permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.
2. The building and premises shall, at all times, be maintained in as clean, neat and sanitary of a condition as such premises will reasonably permit.
3. 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.
4. Work done under this permit shall be performance in accordance with the Permit and any plans approved by the *Governing body* 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.
5. As a condition of the Permit, a Permit Holder shall maintain insurance policies during the life of the permit in the following minimum amounts,

which policies shall name the *City, Village, etc.* as additional insured and provide coverage 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:

a) Automobile Liability (Owned, non-owned, leased):

1. Bodily Injury:
One Million Dollars (\$1,000,000) each occurrence
2. Property Damage:
One Million Dollars (\$1,000,000) each occurrence

b) Pollution Legal Liability: Five Million Dollars (\$5,000,000) each loss where risk is presented of 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 *Governing body* may require a greater or lesser minimum amount down to and including zero (\$0) of Pollution Legal Liability insurance policy, depending on the circumstances of the project that is the subject of the permit.

c) Workers' Compensation: Statutory Limits

d) Umbrella Liability:

Two Million Dollars (\$2,000,000) over the primary insurance coverages listed above.

6. 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.
7. 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 *Governing body* in conjunction with a specific permit. Such prohibited mechanized processes include, but are not limited to, crushing and shredding.
8. There shall be strict compliance with *Noise control code reference* related to noise control.
9. There shall be strict compliance with *Dust/erosion control code reference* related to dust and erosion control.
10. 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.

11. There shall be full compliance with the *City/Village Building, Fire and Health Codes* and with all other *City, Village, etc.*, County, State and Federal laws, rules or regulations which may be applicable.
12. The Permit Holder shall, during the salvage process, maintain the work site in a safe and secure condition.
13. The Permit Holder shall keep a log of all shipments to and from the work site during the project, including the date, time, transport company, vehicle license number, and description of type and amount of material transported.
14. The Permit Holder shall promptly notify the Code Official of the identity, function and insurance coverage of any new contractor, sub-contractor or other person or entity not specifically identified in the Permit that is conducting operations at the property related to removal of salvageable material.
15. The Permit Holder shall identify, handle, manage, store, and dispose of all wastes, lead, asbestos, waste oils, hazardous materials and hazardous substances as provided in plan approved by the *Governing body* in the Permit and as otherwise directed by the *Governing body* should changed conditions require additional work or precautions to protect the public safety, health or welfare or comply with any other applicable ordinance, law or regulation.
16. The Permit Holder shall dispose of building debris in a licensed landfill, except for salvaged and recycled materials. At any time, the Permit Holder shall produce to the Code Official receipts and/or an itemized list of debris disposed of by dumping, recycling or salvage.
17. The Permit Holder shall meet all recycling requirements as provided in the approved Permit.
18. The Permit Holder shall be responsible for disconnections of utilities, including plumbing and electrical, necessary for safe conduct of the salvaging process, and shall provide evidence that the necessary disconnections have been accomplished.
19. The Permit Holder shall restore the site and/or vacated building to the conditions set forth in plans approved by the *Governing body* in the Permit.
20. The Permit Holder shall comply with all orders of the *Governing body* imposed upon granting of the Permit or at any other time.

21. The Irrevocable Standby Letter of Credit imposed as a condition of issuance of the permit shall be maintained in full force and effect at all times until one year following the *Governing body's* finding of project completion.
22. Permit Holder must provide to the *City, Village, etc.*, and must maintain current, a list of contractors doing work that is subject to a permit issued pursuant to this ordinance, which list of contractors shall include proof of valid and subsisting policies of insurance in satisfaction of the General Operating Requirements specified herein. As used herein, the phrase "maintain current" means that the list files with the *City, Village, etc.* is updated by the Permit Holder as necessary to comply with the ordinance prior to each contractor commencing work pursuant to the Permit.

J. INSPECTIONS. Permit Holders and property owners shall allow authorized inspection by representatives of any Department of the *City, Village, etc.* 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.

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.

K. 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 shall be considered by the *Public Safety/Building Commission or equivalent* no later than at its next regular meeting. The *Public Safety/Building Commission or equivalent*, 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 *Public Safety/Building Commission or equivalent* may be appealed to the *Governing body* by either the Code Official or the Permit Holder in accordance with the procedure of the *City, Village, etc.*.

L. NON-RENEWAL, SUSPENSION OR REVOCATION HEARINGS. Non-renewal, suspension, and revocation hearings shall be held before the *Public Safety/Building Commission or equivalent*, which shall submit a report to the *Governing body*, including Findings of Fact, Conclusions of Law, and a recommendation as to what action, if any, the *Governing body* should take with respect to the permit. The *Public Safety/Building Commission or equivalent* 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 *Governing body*. The *Governing body* shall determine whether the arguments shall be presented orally or in writing, or both. If the *Governing body*, after considering the *Public Safety/Building Commission or equivalent* 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 *Governing body* finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. The *City Clerk or equivalent* shall give notice of each suspension, revocation or nonrenewal to the party whose permit is affected.

Or add or reference an existing permit appeals process.

M. VIOLATIONS AND LIABILITY.

1. 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.
2. It shall be a violation of this ordinance to disobey or act contrary to any order issued pursuant to this ordinance.
3. 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 caused by act or omission, including

applicable fines and penalties together with the *City, Village, etc.*'s costs of enforcement, including attorneys' fees.

4. 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 *City, Village, etc.*'s costs of enforcement, including attorneys' fees.

N. ENFORCEMENT, FINES AND PENALTIES. The *Director of Development, Director of Buildings and Permits, Code Official or equivalent* shall have the primary responsibility to enforce this ordinance. Violations of this Ordinance shall be subject to the general provisions of [*Site general penalties section of municipal code if applicable or a proceeding for determining and levying an appropriate fine and penalty, which shall be conducted in substantially the same manner as would a proceeding for Permit revocation.* Fines and penalties for violations of this ordinance shall provide sufficient incentive to deter violators and continued violations. For the purpose of calculating fines and penalties, each day of continuing violation shall constitute a separate offense. Any violation of this ordinance constitutes a public nuisance and, in addition to any other remedies provided or allowed, the *City, Village, etc.* may apply to a court of competent and local jurisdiction for injunctive relief and the assessment of damages including attorney's fees and costs.

O. REPORTING. Permit holders shall provide reports to the *Issuing Official* in accordance with the reporting requirements specified in the Permit as approved by the *Governing body*. These reports shall include the following:

1. Salvageable materials report that identifies the type, quantity and disposition of salvageable materials removed from the property during the reporting period.
2. 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.
3. Recyclable materials report that identifies the type, quantity and disposition of non-salvageable materials removed for recycling during the reporting period. This report should include a certification by the Permit Holder of compliance with the required percentage of recycling percentage pursuant to the issued permit.
4. Any instances of environmental monitoring performed during the reporting period and the results of same.

These reports shall also include:

1. Supporting documentation of removal and disposition of materials which shall include weigh tickets, sales receipts, chain of custody logs or equivalent documentation.

2. A statement by the Permit Holder that documentation supporting compliance with this ordinance will be maintained for two years from submission of the reports.
3. A statement from the Permit Holder that the information in the reports is truthful and accurate.

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