

**DANGEROUS BUILDING & STRUCTURE ORDINANCE
TOWNSHIP OF BIRCH RUN, SAGINAW COUNTY, MICHIGAN**

ORDINANCE NO. 08-01

PURPOSE:

AN ORDINANCE TO SECURE THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE TOWNSHIP OF BIRCH RUN, COUNTY OF SAGINAW, STATE OF MICHIGAN, BY THE REGULATION OF DANGEROUS BUILDINGS INJURIOUS TO LIFE OR HEALTH; TO PROVIDE FOR THE MEANS BY WAY OF HEARINGS FOR THE MAKING SAFE OR DEMOLITION OF SUCH DANGEROUS BUILDINGS; TO PROVIDE FOR THE APPOINTMENT OF A HEARING OFFICER; TO PROVIDE PENALTIES FOR THE VIOLATION ORDINANCE; TO PROVIDE FOR ASSESSMENT OF THE COST OF MAKING SAFE OR DEMOLITION OF DANGEROUS BUILDINGS; AND TO REPEAL ALL CONFLICTING ORDINANCES AND PARTS OF ORDINANCES.

THE TOWNSHIP OF BIRCH RUN ORDAINS:

SECTION I. SHORT TITLE.

This Ordinance shall be known and may be cited as:

THE BIRCH RUN TOWNSHIP DANGEROUS BUILDING &
STRUCTURE ORDINANCE.

SECTION II. DANGEROUS BUILDINGS AND STRUCTURES AS PUBLIC NUISANCES.

Dangerous buildings and structures are declared to be a public nuisance which shall be abated by alteration, repair or rehabilitation, or by demolition and removal in accordance with the procedure specified in this ordinance. It shall be unlawful for any owner of real property located in Birch Run Township, or agent thereof, to keep, maintain or permit a dangerous building or structure to exist.

SECTION III.

DEFINITIONS.

As used in this ordinance:

1. "Township" shall mean the Township of Birch Run, Saginaw County, Michigan.
2. Building Code means the Michigan Construction Code series promulgated by Michigan Public Act 230 of 1972 as amended.
3. "Dangerous building" means any building or structure (including mobile home) which has any of the following defects or conditions:
 - a. Any door, aisle, passageway, stairway or other means of ingress or egress does not conform to the approved fire code of the Township of Birch Run.
 - b. The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
 - c. The stress, in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
 - d. Any portion has been damaged by fire, earthquake, wind, flood or by any other cause to the extent that the structural strength or stability is materially less than it was before such catastrophe and is less than the minimum requirements of the Township Building Code for a new building or similar structure, purpose or location.
 - e. Any portion, member or appurtenance of a building is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
 - f. Any portion of a building, or any member, appurtenance or ornamentation on its exterior is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting wind pressure of one half of that specified in the Township Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

- g. Any portion of a building has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds than is required in the case of similar new construction by the Township Building Code.
- h. The building or structure, or any portion thereof, because of (1) dilapidation, deterioration, or decay; (2) faulty construction; (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (4) the deterioration, decay or inadequacy of its foundation; or (5) any other cause, is likely to partially or completely collapse.
- i. For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is used.
- j. The exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third base.
- k. The building or structure, exclusive of the foundation shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- l. The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (1) an attractive nuisance to children; (2) a harbor for vagrants, criminals or immoral persons; or as to (3) enable persons to resort thereto for the purpose of committing a nuisance or unlawful or immoral acts.
- m. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of the Township Building Code, Housing Code, International Maintenance Code or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.
- n. Any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting

part, member or portion less than 66 percent, of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in case of a newly constructed building of like area, height and occupancy in the same location.

- o. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is unsanitary or unfit for human habitation, or is in a condition that is likely to cause sickness or disease.
- p. Any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of fire resistive construction, faulty electrical wiring, gas connections or heating apparatus, or other cause, is determined by the fire chief or building inspector to be a hazard.
- q. Any building becomes vacant, dilapidated and open at door or window or any other opening, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.
- r. Any building or structure becomes harborage for rats, mice or other vermin and pests and is likely to be a source of infestation of such vermin and pests to the surrounding properties.
- s. Any building or structure is in such a condition as to constitute a public nuisance under common law or in equity.
- t. Any portion of a building or structure remains on site after the demolition or destruction of the building or structure, or a building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
- u. In addition, the term "dangerous building" shall also include any swimming pool or wading pool, as defined in the township building code or zoning ordinance, if the swimming pool or wading pool is permitted:

- (1) to become stagnant;
- (2) to become a breeding ground for mosquitoes, or other insects;
- (3) to become algae ridden;
- (4) to become otherwise unsafe for the intended purposes; or
- (5) to have the required enclosure surrounding the swimming pool either not properly constructed or maintained in accordance with the requirements of the zoning ordinance or building code.

Each of the foregoing defects or conditions is hereinafter referred to as a "dangerous condition."

SECTION IV. INSPECTION.

- (1) The building inspector may inspect, or cause to be inspected, semi-annually all public buildings, halls, churches, schools, theaters, hotels, tenements, commercial buildings, manufacturing or loft buildings, or any other building or structure used for public assembly, for the purpose of determining whether any conditions exist which render such building or structure a dangerous building. Additionally, the building inspector may inspect any building, structure or portion thereof if: (1) the building, structure or portion thereof is reported by any member of the Township Fire or Police Department, building inspector or the general public to be a dangerous building, or (2) the general appearance and reputation of the building, structure or portion thereof causes the building inspector to suspect that it may be a dangerous building.
- (2) If the building inspector suspects that the condition or installation of the heating, cooling, plumbing, mechanical or electrical system of the building or structure violates the building code, fire code, electrical code, plumbing code, mechanical code, housing code, the building inspector may order a subsequent inspection of the specific system in question by an individual qualified to perform a detailed inspection of said heating, cooling, plumbing, mechanical or electrical systems.
- (3) If upon the subsequent inspection, the heating, cooling, plumbing, mechanical or electrical system is determined to be in violation of the codes listed in subsection (2) above, the building shall be declared to be a dangerous building.

SECTION V. NOTICE AND ORDER.

- (1) If the building inspector determines that any building, structure or portion thereof, is a dangerous building, the building inspector shall issue a written notice and order to the owner of the building and property whose name appears on the most recent tax assessment records of the township. The notice and order shall include:
 - a. the address or legal description of the property;
 - b. a statement of the dangerous condition or conditions that render the building a dangerous building, and
 - c. the period of time during which the owner shall commence and complete the required alteration, repair or rehabilitation, or the demolition and removal of the building, structure or portion thereof.
- (2) Service of the notice and order shall be made on the owner, or agent thereof, by personal service or in lieu of personal service, may be mailed by certified mail, return receipt requested, addressed to the owner at the address shown on the current tax assessment records for the township.

If the owner is not personally served, in addition to mailing the notice, a copy of the notice shall be posted upon a conspicuous part of the building or structure.

- (3) Alteration, repair or rehabilitation work or the demolition and removal of the building shall be completed within a reasonable period of time, in light of the threat or danger posed by the dangerous condition, as may be determined by the building inspector and specified in the written notice and order. However, in no event shall this period exceed ninety (90) days from the date of the delivery, mailing or posting of the notice. If necessary to protect the health and safety of the occupants of the dangerous building or persons in the vicinity, the notice may also require that the building, structure or portion thereof be vacated and secured in such a way to prevent unauthorized entry. If the building inspector orders the dangerous building vacated, it shall not be reoccupied until the required alteration, repair or rehabilitation work is completed and inspected by the building inspector, the owner has paid the reinspection fee, and a certificate of occupancy is issued.

- (4) The building inspector may also order the building, structure or portion thereof to be boarded. In such event, the owner or agent thereof shall cause the building, structure or portion thereof to be boarded as directed. Such orders are deemed to be a temporary measure for use during the period of time specified in the notice and order for the alteration, repair or rehabilitation, or demolition and removal of the dangerous building. In no event shall the boarding of a building or structure, whether pursuant to an order of the building inspector or as a result of the unilateral action of the owner or occupant, be deemed to be a permanent abatement of the dangerous condition.
- (5) If the building inspector determines that it is necessary to vacate the building, structure, or portion thereof to protect the health and safety of the occupants of the building, the building inspector may cause to be posted at each entrance of the building or structure the following notice: "Do not enter, unsafe to occupy." The notice shall remain posted until the required alterations, repairs or rehabilitation, or demolition and removal is completed. The notice shall not be removed without the written permission of the building inspector, and no person shall enter the building or structure except for the purpose of making the required alterations, repairs or rehabilitation, or demolishing and removing the building, or inspecting the alteration, repairs and rehabilitation work being performed.

SECTION VI.

REINSPECTION; NOTICE OF HEARING; HEARING OFFICER.

- (1) Upon the completion of the required alteration, repair or rehabilitation work, and the payment of the reinspection fee, the building inspector shall reinspect the building, structure or portion thereof formerly determined to be a dangerous building. If the building inspector concludes that the dangerous conditions have been corrected and that the building is no longer a dangerous building, the building inspector shall issue a certificate of occupancy. The reinspection fee shall be an amount equal to five percent (5%) of the cost of the alteration, repair, or rehabilitation work performed to correct the condition or conditions that rendered the building a dangerous building.
- (2) (a) If the owner fails to commence and complete the required alterations, repairs or rehabilitation, or demolition and removal of the building, structure or portion thereof within the period of time specified in the notice and order, the

building inspector shall issue a notice and order to show cause to the owner of the building.

- (b) The notice and order to show cause shall be directed to each owner of the building and property whose name appears on the current tax assessment records of the township.
- (c) The notice and order to show cause shall specify the following:
 - (1) the name of the owner of the property as it appears on the current tax assessment records of the township;
 - (2) the address or legal description of the building and property, as it appears in the current tax assessment records of the township;
 - (3) the date, time and place of the hearing;
 - (4) a summary of the condition or conditions of the building, structure or portion thereof which renders the building, structure or portion thereof a dangerous building; and
 - (5) notice that failure to appear may result in an order to have the dangerous building repaired or demolished and removed, and that the costs of the repair, demolition and removal, as well as the township administrative costs, including, but not limited to, the cost of publication, the cost of holding the hearing and actual attorney fees, may become a lien upon the real property of the owner.
- (3) The notice and order to show cause shall be in writing and shall be served upon the person to whom they are directed personally, or in lieu of personal service may be mailed by certified mail, return receipt requested, addressed to such owner or agent thereof at the address shown on the current tax record of the township, at least ten (10) days before the date of the hearing described in the notice and order to show cause. If any person to whom a notice and order to show cause is directed is not personally served, in addition to mailing the notice, a copy thereof shall be posted upon a conspicuous part of the building or structure. When service cannot be made by either of the above methods and after diligent efforts to locate the whereabouts of the owner, service shall be made by publishing in a newspaper with general circulation at least once a week for two consecutive weeks prior to the date of the hearing, and by mailing by first class mail,

postage prepaid, at least ten (10) days prior to the date of hearing, a copy of the notice and order to show cause to the owner or agent thereof at the address which appears on the current tax assessment records of the township, and posting a copy of the notice and order to show cause on a conspicuous part of the building or structure.

- (4) The hearing officer shall be appointed by the Birch Run Township Supervisor to serve at his pleasure. The building inspector shall file a copy of the notice and order to show cause with the hearing officer.
- (5) Notice shall be effective upon the earliest occurrence of any of the following:
 - (1) personal service upon the owner or the owner's agent thereof;
 - (2) the date, the owner or the owner's agent or resident manager signed the return receipt for the certified mail; or
 - (3) the date of the last newspaper publication.

SECTION VII.

HEARING; TESTIMONY; ORDER; NON-APPEARANCE OR NON-COMPLIANCE; TOWNSHIP BOARD PROCEEDINGS.

- (1) The hearing officer shall take testimony of the building inspector, the owner of the property and any interested party. The hearing officer shall have the power to administer oaths and affirmations and to certify official acts. The hearing need not be conducted in accordance with the technical rules of evidence adopted for the courts of records in the State of Michigan. A record of the entire hearing shall be made by tape recording or by other means of permanent recording determined appropriate by the hearing officer. A transcript of the proceedings shall be made available to all parties upon request and payment of a fee prescribed therefore. The fee shall be the actual cost incurred by the township in making the transcript. Any relevant evidence may be admitted. As used herein, "relevant evidence" shall be the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Such "relevant evidence" shall be admitted regardless of whether or not it would be admissible in civil actions in courts of competent jurisdiction of this state. Irrelevant and unduly repetitious evidence shall be excluded. Each party shall have the following rights:
 - (a) to call and examine witnesses on any matter relevant to the issues before the hearing officer;
 - (b) to introduce documentary and physical evidence;

- (c) to cross examine opposing witnesses on any matter relevant to the issues before the hearing officer;
 - (d) to impeach any witness regardless of which party first called the witness to testify;
 - (e) to refute the evidence;
 - (f) to represent himself or herself or to be represented by anyone of his choice including, but not limited to, an individual licensed to practice law in the State of Michigan; and
 - (g) to make a closing statement at the conclusion of the evidentiary portion of the hearing.
- (2) The hearing officer shall render his/her decision at the close of the proceedings. In rendering his/her decision, the hearing officer may consider any one or all of the following:
- (a) the evidence presented;
 - (b) the condition of the building or structure as a whole;
 - (c) the extent of the deterioration of the building or structure;
 - (d) the cost of demolishing the building or structure;
 - (e) the cost of making the building or structure safe;
 - (f) whether a reasonable person exercising prudent business judgment would determine the cost of making the building or structure safe would exceed 50% of the market value of the structure after the repairs were completed;
 - (g) whether the structure has significant historical, cultural or architectural value;
 - (h) the effect the completion of the demolition and removal or of making the building or structure safe would have upon the health, safety and welfare of the area immediately surrounding the building or structure in question; and
 - (i) whether actual substantial progress has been made by the owner to make the building safe. In determining whether substantial progress has been made, the hearing officer shall consider such factors as whether a building permit has been obtained relative to the repairs, whether the owner has contracted for necessary materials or services, and the extent to which the repairs or demolition has progressed.

At the conclusion of the hearing, the hearing officer shall make written findings of fact based upon the evidence and testimony presented at the hearing, and if the hearing officer shall deem it necessary or helpful in his consideration of the matter, an on-site inspection of the building, structure or part thereof alleged to be dangerous.

- (3) If it is determined by the hearing officer that the building or structure should be demolished or otherwise made safe, he/she shall so order, fixing a time by which the owner of the building shall complete the required alterations, repairs or rehabilitation, or the demolition and removal of the building, structure or a part thereof. In no event shall the period established by the hearing officer for the completion of the alterations, repairs or rehabilitation, or the demolition and removal of the building, structure or part thereof exceed ninety (90) days from the effective date of the hearing officer's decision. A copy of the hearing officer's decision shall be given to the owner in the manner set forth for notice in this section, except only one publication shall be required.
- (4) If the owner fails to appear or neglects or refuses to comply with the Order, the Hearing Officer shall file a report of his/her findings and a copy of his Order with the township board and request that the necessary action be taken to demolish or otherwise make safe the building or structure.
- (5) The township board shall fix a date for a hearing to review the Findings of Fact and Order of the Hearing Officer and shall give notice to the owner, in the manner prescribed in Section VI of the time and place of the hearing. At the hearing the owner shall be given the opportunity to show cause why the building should not be demolished or otherwise made safe.

At the conclusion of the hearing, the township board shall pass a resolution either approving, disapproving or modifying the Order of the Hearing Officer, and fixing a time by which the owner shall complete the required alterations, repairs or rehabilitation, or demolition and removal of the building, structure or part thereof. A copy of the resolution of the Birch Run Township Board shall be given to the owner in the manner set forth for Notice in this ordinance, except only one publication shall be required. The effective date of the township board's resolution shall be the date on which said resolution was adopted by the township board.

SECTION VIII. JUDICIAL REVIEW.

An owner aggrieved by any final decision of the township board under Section VII may appeal the decision of the township board to the circuit court by filing a petition within 30 days from the date of the resolution of the township board.

SECTION IX. ASSESSMENT AND COLLECTION OF COSTS.

- (1) If the owner fails to comply with the resolution of the township board by failing to complete the required alteration, repair or rehabilitation, or demolition and removal of the building, structure or portion thereof within the time specified in the resolution of the township board, the township board may instruct the building inspector to cause such dangerous building, structure or part thereof, to be demolished and removed, or otherwise made safe upon the expiration of the time ordered by the township board.
- (2) The cost of demolition and removal, or making the building safe, plus the costs of mailing, recording, publication, and all the township's administrative costs associated with the demolition and removal, or making the building safe, shall be a lien against the real property and shall be reported to the township assessor who shall assess the costs against the property on which the building, structure or portion thereof is located. The owner shall be notified of the amount of such costs by first class mail at the address shown on the current township tax assessment records. If the owner fails to pay the same within 30 days after mailing by the assessor of the notice of the amount thereof, the assessor shall add same amount to the next tax roll of the township and the same shall be collected in the manner as provided by law for the collection of taxes by the township.
- (3) Notwithstanding the above, the Township of Birch Run may collect the cost of the demolition or repairs from the owner or other party in interest, including a land contract purchaser. The township may bring a civil action for the recovery of such cost and shall be entitled to a judgment as in any other civil action, including costs and actual attorney fees.

SECTION X. EMERGENCY CASES.

In cases where the building inspector determines that there is an immediate and serious danger to the public safety or health unless a dangerous building is immediately vacated and demolished or otherwise made safe, the building inspector shall report such facts to the township board. The township board may then order the building vacated or may obtain an order from a court of competent jurisdiction ordering the building vacated, and may cause the immediate repair or demolition of such dangerous building or structure. The costs of such emergency repair or demolition as well as the costs incurred by the township in obtaining the court orders, including actual attorney fees, shall be collected in the manner as provided for in Section IX.

SECTION XI. VIOLATION & PENALTY.

- (1) A person who violates any provision of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine as set forth in Section__ of the Township of Birch Run Municipal Civil Infraction Ordinance, plus costs and other sanctions for each infraction. Repeat offenses shall be subject to increased fines as provided by Section__ of the Birch Run Township Municipal Civil infraction Ordinance.

- (2) Legal proceedings to enjoin the violation of any of the provisions of this ordinance, or to order a dangerous building vacated, may be brought in any court of competent jurisdiction in the name of the Township of Birch Run.

SECTION XII. SEVERABILITY.

If any section, paragraph, sentence, clause, phrase or part of this ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and to this end the provisions of this ordinance are hereby declared to be severable.

SECTION XIII.

WAIVER PROVISION.

The owner of any building or structure, or the owner's agent, may, at any time, admit in writing that such building or structure is a dangerous building within the meaning of this section, and waive any rights he/she/it may have hereunder, or under state or federal law to notice, a hearing before the Hearing Officer or the township board, written findings of fact, or judicial review of the resolution of the township board. The owner or the owner's agent may consent that such building or structure be demolished and the cost charged against the property. In such event, the building inspector may have said building or structure demolished and the cost charged against said property shall be collected in the same manner as provided for in Section IX.

SECTION XIV.

RELEASE OF LIABILITY.

Any employee or official of the township charged with the enforcement of this section, any Hearing Officer, or the township supervisor and board, acting in good faith and without malice in the discharge of their duties, shall not thereby render himself or herself personally liable for any damage that may occur to persons or property as a result of any act or omission of such individual in the discharge of their duties. A suit brought against an official or employee of the township, or any Hearing Officer acting under the provisions of this section, because of such act or omission performed by him in the enforcement of this section or the enforcement of any codes or other pertinent law or ordinances implemented through the enforcement of this section, or acting pursuant to his duties under this section, shall be defended by the township until final determination of such proceedings, and any judgment resulting there from shall be assumed by the township.

This section shall not be construed to relieve or lessen the responsibility of any person owning, operating or controlling any building or structure located within the township for any damages to persons or property caused by any building defects.

This section shall not be construed to create or impose any liability on the township for injury or damage to persons or property by reason of the inspections authorized by this section or any permits or certificates issued under this section.

SECTION XV. **EFFECTIVE DATE.**

This Ordinance shall be effective 30 days from and after publication thereof.

This Ordinance is hereby declared to have been adopted by the Birch Run Township Board, County of Saginaw, State of Michigan, at a regular meeting held on the 8th day of April, 2008, and ordered to be given publication in the manner prescribed by law.

PUBLICATION: April 16, 2008

EFFECTIVE: May 16, 2008

CERTIFICATION

Adopted: April 8, 2008

YEAS: Putnam, Trevino, Magnus, Marr, Strahm, Schlegel, and Cook

NAYS: None

State of Michigan, County of Saginaw, I the undersigned Township Clerk for the Township of Birch Run, Saginaw County, Michigan, certify that the above Ordinance No. 08-01, adopted by the Township Board of Trustees of the Township on the 8th day of April, 2008, was recorded in full in the Minutes of the Meeting of the Township Board of Trustees on said date.

Dated: April 9, 2008

Amy Cook
Township Clerk