

Article II. Minimum Housing Standards

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ARTICLE II. MINIMUM HOUSING STANDARDS

Sec. 6-2. Abatement.

(A) *Dwellings.* The existence and occupation of dwellings that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health and safety of the people of the town. A public necessity exists for the repair, closing, or demolition of such dwellings. The town finds that there exists in its planning and development regulation jurisdiction dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light, or sanitary facilities; or other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the town.

(B) *Abandoned structures.* The town finds certain abandoned structures are a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities.

(C) Therefore, the town adopts this chapter to exercise the authority given in G.S. Ch. 160D-1201 to provide for the repair, closing or demolition.

Sec. 6-3. Definitions.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this chapter shall have the meanings set forth in this section when used in this chapter. If a word or phrase used in this chapter is not defined herein or elsewhere in

this chapter, to the extent such word or phrase is defined in G.S. Ch. 160D, that definition shall control.

DWELLING. Any building or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

OWNER. The holder of the title in fee simple and every mortgagee of record.

PARTIES IN INTEREST. All individuals, associations, and corporations that have interests of record in a dwelling, and any who are in possession thereof.

PUBLIC AUTHORITY. Any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the local government.

PUBLIC OFFICER. The code enforcement officer is designated as the public officer authorized by this chapter to exercise the powers prescribed by this chapter.

Sec. 6-4. Procedures.

(A) *Designation of enforcement officer.* The code enforcement officer is hereby designated as the public officer to enforce the provisions of this article. Such officer shall be appointed by the board of commissioners. It shall be the duty of the code enforcement officer to:

(1) Locate dwellings and abandoned structures within the town and determine which structures are in violation of this chapter;

(2) Take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of such structures;

(3) Keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this chapter; and

(4) Perform other such duties as may be prescribed in this chapter or assigned to him by the board of commissioners.

(B) *Investigation, complaint, hearing.* Whenever a petition is filed with the code enforcement officer or designees by the board of commissioners or designees charging that any dwelling is unfit for human habitation or when it appears to the code enforcement officer or designees that any dwelling is unfit for human habitation, the code enforcement officer or designees shall, if a preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that an administrative hearing will be held before the code enforcement officer or designees, or his or her designated agent, at a place within the town. The hearing shall be not less than ten days nor more than 30 days after the serving of the complaint. The owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint.

The rules of evidence prevailing in courts of law shall not be controlling in administrative hearings before the code enforcement officer or designees.

(C) *Orders.* If, after notice and an administrative hearing, the code enforcement officer or designees determines that the dwelling under consideration is unfit for human habitation, he or she shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner one of the following orders, as appropriate:

(1) If the repair, alteration, or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified, to repair, alter, or improve the dwelling in order to render it fit for human habitation. The ordinance may fix a certain percentage of this value as being reasonable. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under division (D) of this section.

(2) If the repair, alteration, or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish the dwelling. The ordinance may fix a certain percentage of this value as being reasonable.

(D) *Repair, closing, and posting.* If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the code enforcement officer or designees may cause the dwelling to be repaired, altered, or improved or to be vacated and closed, and the code enforcement officer or designees may cause to be posted on the main entrance of any dwelling so closed a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the code enforcement officer or designees set forth in this subdivision shall not be exercised until the town's Board shall have by ordinance ordered the code enforcement officer or designees to proceed to effectuate the purpose of this chapter with respect to the particular property or properties that the code enforcement officer or designees shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This chapter shall be recorded in the office of the Register of Deeds of Bladen County where the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(E) *Demolition.* If the owner fails to comply with an order to remove or demolish the dwelling, the code enforcement officer or designees may cause such dwelling to be removed or demolished. The duties of the code enforcement officer or designees set forth in this subdivision shall not be exercised until the town's Board shall have by ordinance ordered the code enforcement officer or designees to proceed to effectuate the purpose of this chapter with respect to the particular property or properties that the code enforcement officer or designees shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the

owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This chapter shall be recorded in the office of the Register of Deeds of Bladen County where the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(F) *Abandonment of intent to repair.*

(1) If the dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to division (D) of this section or after a code enforcement officer or designee issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this division, then the board of commissioners may find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, and welfare of the town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling that might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this state, then in such circumstances, the board of commissioners may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(a) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50% of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days.

(b) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50% of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

(2) This chapter shall be recorded in the office of the Register of Deeds of Bladen County and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this chapter, the code enforcement officer or designees shall effectuate the purpose of the chapter.

(G) *Liens.*

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the code enforcement officer or designees shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. Ch. 160A, Art. 10.

(2) The amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this division (G) is inferior to all prior liens and shall be collected as a money judgment.

(3) If the dwelling is removed or demolished by the code enforcement officer or designees, the town shall sell the materials of the dwelling, and any personal property, fixtures, or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale

against the cost of the removal or demolition, and any balance remaining shall be deposited in the Superior Court by the code enforcement officer or designees, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order or decree of the Court. Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(H) *Civil action.* If any occupant fails to comply with an order to vacate a dwelling, the code enforcement officer or designees may file a civil action in the name of the town to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as defendant any person occupying such dwelling. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. If the summons appears to have been duly served and if at the hearing the code enforcement officer or designees produces a certified copy of an ordinance adopted by the town pursuant to division (E) of this section authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. § 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgment may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this division unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the town has ordered the code enforcement officer or designees to proceed to exercise his duties under divisions (D) and (E) of this section to vacate and close or remove and demolish the dwelling.

(I) *Additional notices to affordable housing organizations.* Whenever a determination is made pursuant to division (C) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the code enforcement officer or designees, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The code enforcement officer or designees or Clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the code enforcement officer or designees to wait 45 days before causing removal or demolition.

(Code 1991, § 9.2.05) (Code 2001, Sec. 6-35) Penalty, see Sec. 1-6.

Sec. 6-5. Standards.

The code enforcement officer or designees may determine that a dwelling is unfit for human habitation if the officer finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the jurisdiction. Defective conditions may include the following, without limiting the generality of the foregoing: defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanness.

Sec 6-6. Service Of Complaints Or Orders.

(A) Complaints or orders issued by the code enforcement officer or designees pursuant to this chapter shall be served upon persons either personally or by certified mail. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer or designees in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the code enforcement officer or designees makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the jurisdiction at least once no later than the time at which personal service would be required under the provisions of this chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Code 1991, § 9.2.06) (Code 2001, Sec. 6-36)

Sec. 6-7. Appeals.

(A) An appeal from any decision or order of the code enforcement officer or designees is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board, or commission of the local government. Any appeal from the code enforcement officer or designees shall be taken within ten days from the rendering of the decision or service of the order by filing with the code enforcement officer or designees and with the board of commissioners a notice of appeal that shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer or designees shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the code enforcement officer or designees refusing to allow the person aggrieved thereby to do any act, the decision remains in force until modified or reversed. When any appeal is from a decision of the code enforcement officer or designees requiring the person aggrieved to do any act, the appeal has the effect of suspending the requirement until the hearing by the Board, unless the code enforcement officer or designees certifies to the Board, after the notice of appeal is filed with the officer, that because of facts

stated in the certificate, a copy of which shall be furnished to the appellant, a suspension of the requirement would cause imminent peril to life or property. In that case the requirement is not suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the code enforcement officer or designees, by the Board, or by a Court of record upon petition made pursuant to this section.

(B) The board of commissioners shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and, to that end, it has all the powers of the code enforcement officer or designees, but the concurring vote of four members of the Board is necessary to reverse or modify any decision or order of the code enforcement officer or designees. The Board also has power in passing upon appeals, when unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

(C) Every decision of the board of commissioners is subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(D) Any person aggrieved by an order issued by the code enforcement officer or designees or a decision rendered by the board of commissioners may petition the Superior Court for an injunction restraining the code enforcement officer or designees from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the code enforcement officer or designees pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It is not necessary to file bond in any amount before obtaining a temporary injunction under this division.

(E) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of G. S. Ch. 160, this chapter, or of any ordinance or code adopted under authority of G.S. Ch. 160D or any valid order or decision of the code enforcement officer or designees or Board made pursuant to any ordinance or code adopted under authority of this G.S. Ch. 160D, the To code enforcement officer or designees or Board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, or use; to restrain, correct, or abate the violation; to prevent the occupancy of the dwelling; or to prevent any illegal act, conduct, or use in or about the premises of the dwelling.

Sec. 6-8. Use Of Eminent Domain Or Police Power.

Nothing in this subchapter shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this state, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the state.

Sec. 6-9. Powers Of Public Officer.

An ordinance adopted by the Board may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this subchapter, including the following powers in addition to others granted:

- (A) To investigate the dwelling conditions in the town in order to determine which dwellings therein are unfit for human habitations;
- (B) To administer oaths, affirmations, examine witnesses, and receive evidence;
- (C) To enter upon the premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession;
- (D) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances; and
- (E) To delegate any of his or her functions and powers under the ordinance to other officers and other agents.

Sec. 6-10. Intent.

Nothing in this subchapter shall be construed to abrogate or impair the powers of the courts or of any department of the town to enforce any provisions of its Charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this subchapter shall be in addition and supplemental to the powers conferred by any other law.