

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

NONRESIDENTIAL BUILDING MAINTENANCE CODE

WHEREAS, Section 160A-439 of the North Carolina General Statutes enables the City Council to adopt ordinances that establish minimum standards of maintenance, safety, and sanitation for nonresidential buildings or structures; and

WHEREAS, the above-referenced minimum standards are to be limited to addressing conditions that are dangerous and injurious to public health, safety, and welfare, and these standards are to identify circumstances under which a public necessity exists for the repair, closing, or demolition of dilapidated nonresidential buildings; and

WHEREAS, staff members in the city's community development division have recommended consideration of the adoption of a maintenance code for nonresidential buildings or structures located within the corporate limits of the City of Asheboro, and the Asheboro City Council previously responded to this recommendation by adopting Resolution Number 39 RES 11-14 on November 6, 2014; and

WHEREAS, pursuant to Resolution Number 39 RES 11-14, a public hearing on the question of whether to adopt such a maintenance code for nonresidential buildings or structures was advertised and then conducted by the Asheboro City Council during a regular meeting held on the 4th day of December, 2014; and

WHEREAS, based on a review of the information presented during the public hearing held on December 4, 2014, the Asheboro City Council has concluded that a nonresidential building or structure maintenance code should be adopted for the City of Asheboro;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina as follows:

SECTION 1. A new Chapter 152 of the Code of Asheboro is hereby enacted to provide as follows:

CHAPTER 152: (RESERVED)

CHAPTER 152: NONRESIDENTIAL BUILDING MAINTENANCE CODE

§ 152.01 TITLE.

This Chapter shall be known and may be cited and referred to as the "Nonresidential Building Maintenance Code."

§ 152.02 PURPOSE.

Pursuant to and in accordance with the enabling legislation found in G.S. § 160A-439, this Chapter is enacted for the purpose of protecting the health, safety, and welfare of the city and its citizens by establishing minimum standards of maintenance, sanitation, and safety for nonresidential buildings or structures. Furthermore, this Chapter identifies the circumstances under which a public necessity exists for the repair, closing, or demolition of nonresidential buildings or structures that are dangerous to the public health, safety, and welfare.

§ 152.03 DEFINITIONS.

When used in this Chapter, the following words and terms shall, unless the context clearly indicates or requires a different meaning, be defined as follows:

(A) *Basic structural elements.* The parts of a building which provide the principal strength, stability, integrity, shape, and safety of the building, including but not limited to plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry, and all other essential components.

(B) *Building.* Any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels, or property of any kind or any part of such structure, shelter, or property.

(C) *City Enforcement Officer.* The City of Asheboro Chief Building Inspector or the City of Asheboro Code Enforcement Officer.

(D) *Nonresidential.* Any building or portion of a building occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space, or sleeping space for one or more human beings, either permanently or transiently.

(E) *Occupant.* Any person who is a tenant or has actual possession of a nonresidential building or part thereof.

(F) *Operator.* Any person who has charge, care, or control of a nonresidential building or part thereof.

(G) *Owner.* Any person who alone or jointly and severally with others shall have:

- (1) Title in fee simple to any nonresidential building, with or without accompanying actual possession thereof; or
- (2) Charge, care, or control of any nonresidential building as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner. Any person thus representing the actual owner shall be bound to comply with the provisions of this Chapter, and with any rules,

regulations, and orders adopted pursuant thereto, to the same extent as if he or she were the owner.

(H) *Parties in interest.* All individuals, associations, and corporations who have interests of record in a nonresidential building and any who are in possession thereof.

(I) *Premises.* Any lot or parcel of land inclusive of any building or improvements located thereon.

(J) *Safe.* A condition that is not likely to do harm to humans or to real or personal property.

(K) *Structurally sound.* Substantially free from flaw, defect, decay, or deterioration to the extent that the building or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

(L) *Structure.* Anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.

(M) *Unsafe.* A condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.

(N) *Vacant industrial warehouse.* Any building designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

(O) *Vacant manufacturing facility.* Any building previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one (1) year and has not been converted to another use.

§ 152.04 *APPLICABILITY AND COMPLIANCE.*

(A) The provisions of this Chapter shall apply to all nonresidential buildings which are now in existence or which may be built within the corporate limits of the city.

(B) Every nonresidential building and the premises on which such a building is situated shall comply with the provisions of this Chapter, whether or not the building shall have been constructed, altered, or repaired before or after the enactment of this Chapter, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or for the installment or repair of equipment or facilities. This Chapter establishes minimum standards for all nonresidential buildings and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or the equipment/facilities contained therein.

§ 152.05 *MAINTENANCE STANDARDS FOR NONRESIDENTIAL BUILDINGS.*

(A) All nonresidential buildings shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public.

(B) Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety, and welfare:

- (1) Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe; that are rotted, deteriorated, or damaged; and that have holes or cracks which might admit rodents;
- (2) Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of the demolition of an adjacent building, the exposed wall must be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall;
- (3) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. Floors or roofs must have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs must be kept structurally sound and must be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building;
- (4) Such damage by fire, wind, or other causes as to render the building unsafe;
- (5) Dilapidation, decay, unsanitary conditions, or disrepair that is dangerous to the health and safety of the occupants or members of the general public;
- (6) Lack of adequate ventilation, light, heating, or sanitary facilities to such an extent as to endanger the health, safety, or general welfare of the occupants or members of the general public;
- (7) Buildings, including their environs, with an accumulation of garbage, trash, or rubbish that creates health and sanitation problems. All garbage and solid waste must be in approved containers or stored in a safe and sanitary manner;
- (8) Buildings with loose and insufficiently anchored overhanging objects that pose a danger of falling on persons or property;
- (9) Buildings, including their environs, that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas that are accessible to and generally used by persons on or around the premises;
- (10) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other objects/materials existing in such quantities and/or configurations as to create dangerous or hazardous conditions;
- (11) Buildings with objects and elements protruding from walls or roofs that are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects;
- (12) Chimneys, flues, and vent attachments thereto that are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment that are in use must provide sufficient draft to develop the rated output of the connected equipment and must be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases;

- (13) Exterior porches, landings, balconies, stairs, or fire escapes that are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes must be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same must be kept sound, in good repair, and free of defects;
- (14) Cornices that are not structurally sound. Rotten or weakened portions must be repaired and/or replaced. Exposed wood must be treated or painted;
- (15) Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property;
- (16) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public;
- (17) Exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces must be painted or sealed in order to protect the underlying surface from deterioration. All exterior surfaces that have been painted must be maintained generally free of peeling and flaking. Where 50% or more of the aggregate of any painted surface has peeling or flaking or previous paint worn away, the entire surface must be properly prepped, repainted, or otherwise clad in order to prevent further deterioration;
- (18) Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions;
- (19) Openings originally designed as windows, doors, loading docks, or other means of egress or ingress that have been temporarily closed by boarding or in some other manner that is non-secure and allows unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding must be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform to the other exterior portions of the building. The building must be maintained in a state that secures the building from any unauthorized admittance from humans, animals, or birds; and
- (20) Any combination of conditions that in the judgment of the City Enforcement Officer renders a building dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

(C) When any of the conditions listed in Division (B) of this Section are found by the City Enforcement Officer to exist in connection with a nonresidential building located within the City of Asheboro, a public necessity exists for the repair, closing, or demolition of the building, and such conditions must be corrected in accordance with the provisions of this Chapter.

§ 152.06 DUTIES OF THE CITY ENFORCEMENT OFFICER.

(A) The City Enforcement Officer is hereby designated as the public officer to enforce the provisions of this Chapter and to exercise the duties and powers herein prescribed.

(B) It shall be the duty of the City Enforcement Officer:

- (1) To carry out the objectives of this Chapter by inspecting and investigating the conditions of nonresidential buildings located in the city in order to determine which nonresidential buildings reflect a lack of adequate maintenance that, in turn, jeopardizes the health and safety of the building's occupants or members of the general public;
- (2) To take such action, together with other appropriate departments, agencies, and public or private entities, as may be necessary to effect the repair or demolition of nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this Chapter;
- (3) To keep a record of the results of inspections made under this Chapter and an inventory of those nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this Chapter; and
- (4) To perform such other duties as may be herein prescribed.

§ 152.07 POWERS OF CITY ENFORCEMENT OFFICER.

The City Enforcement Officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Chapter, including the following powers in addition to others herein granted:

- (A) To investigate nonresidential buildings located within the city to determine whether they have been properly maintained in compliance with the minimum standards established by this Chapter so that the safety and health of the occupants and members of the general public are not jeopardized;
- (B) To administer oaths and affirmations, examine witnesses, and receive evidence;
- (C) To enter upon premises for the purpose of making examinations and inspections, provided that the entries shall be made in accordance with all applicable Constitutional protections, statutes, ordinances, and regulations and in such a manner as to cause the least possible inconvenience to the persons in possession; and
- (D) To appoint and designate the duties of such officers, agents, and employees as the City Enforcement Officer deems necessary to carry out the purposes of this Chapter.

§ 152.08 INSPECTIONS.

- (A) For the purpose of making inspections, the City Enforcement Officer is hereby authorized to enter, examine, and survey, at all reasonable times, nonresidential buildings.
- (B) If entry upon the premises for purposes of investigation is necessary, the entry shall be made pursuant to a duly issued administrative search warrant that is obtained and served in accordance with G.S. § 15-27.2 or with the permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

§ 152.09 **PROCEDURE FOR ENFORCEMENT.**

(A) Preliminary investigation. Whenever it appears to the City Enforcement Officer that a nonresidential building has not been properly maintained and that the safety or health of the building's occupants or members of the general public is jeopardized due to the failure of the property to meet the minimum standards established by this Chapter, the City Enforcement Officer shall undertake a preliminary investigation.

(B) Complaint and hearing. If the preliminary investigation of a nonresidential building discloses evidence of a violation of the minimum standards established by this Chapter, the City Enforcement Officer shall issue and cause a complaint to be served upon the owner and the parties in interest identified during the investigation of the nonresidential building. The complaint shall state the charges and contain a notice that a hearing will be held before the City Enforcement Officer at a place and time on a date specified within the notice, the said hearing date shall not be less than ten (10) days nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and to give testimony at the place and time specified in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the City Enforcement Officer.

(C) Procedure after hearing.

- (1) If, after notice and hearing, the City Enforcement Officer determines that the nonresidential building has been maintained so as to meet the minimum standards established by this Chapter, the City Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of the determination.
- (2) If, after notice and hearing, the City Enforcement Officer determines that the nonresidential building has not been properly maintained and, consequently, the safety or health of the building's occupants or members of the general public is jeopardized by the failure of the property to meet the minimum standards established by this Chapter, the City Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of divisions (C)(3) and (C)(4) of this Section and subject to the limitations set forth in § 152.10 and § 152.11.
- (3) If the City Enforcement Officer determines that the cost of repair, alteration, or improvement of the building would not exceed 50% of the building's then current value, then the City Enforcement Officer shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than sixty (60) days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter; or vacate and close the nonresidential building for any use.

- (4) If the City Enforcement Officer determines that the cost of repair, alteration, or improvement of the building would exceed 50% of the building's then current value, then the City Enforcement Officer shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than sixty (60) days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter; or to remove or demolish the nonresidential building.

(D) Failure to comply with order and subsequent action to be taken.

- (1) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, vacate and close the nonresidential building, the City Enforcement Officer shall submit to the City Council an ordinance ordering the City Enforcement Officer to either cause the nonresidential building to be repaired, altered, or improved in order to bring the building into compliance with the minimum standards established by this Chapter or to cause the building to be vacated and closed for any use. The property shall be described in the ordinance. If the City Council adopts the ordinance, the City Enforcement Officer shall cause the building to be repaired, altered, or improved or to be vacated and closed for any use.
- (2) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, to remove or demolish the building, the City Enforcement Officer shall submit to the City Council an ordinance ordering the City Enforcement Officer to cause the nonresidential building to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building until the owner has first been given a reasonable opportunity to bring the building into conformity with the minimum standards established by this Chapter. The property shall be described in the ordinance. If the City Council adopts the ordinance, the City Enforcement Officer shall cause the building to be removed or demolished.

§ 152.10 **LIMITATIONS ON ORDERS AND ORDINANCES; HISTORIC LANDMARK OR HISTORIC DISTRICT.**

Notwithstanding any other provision of this Chapter, if the nonresidential building is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the City Council determines, after a public hearing, that the nonresidential building is of individual significance or contributes to maintaining the character of the district, and the nonresidential building has not been condemned as unsafe, an order issued by the City Enforcement Officer pursuant to § 152.09(C) and an ordinance approved by the City Council pursuant to § 152.09(D) may only require that the nonresidential building be vacated and closed until it is brought into compliance with the minimum standards established by this Chapter.

§ 152.11 **LIMITATIONS ON ORDERS AND ORDINANCES; VACANT MANUFACTURING FACILITY OR VACANT INDUSTRIAL WAREHOUSE.**

Notwithstanding any other provision of this Chapter, an order issued by the City Enforcement Officer pursuant to § 152.09(C) and an ordinance approved by the City Council pursuant to § 152.09(D) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require the building to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building closed for any use.

§ 152.12 **VACATED AND CLOSED NONRESIDENTIAL BUILDINGS.**

(A) If the City Enforcement Officer has issued an order and the City Council has adopted an ordinance requiring a nonresidential building to be repaired, altered, or improved or, alternatively, to be vacated and closed, and the building has been vacated and closed for a period of two (2) years pursuant to the order and/or ordinance, then if the City Council finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building and that the continuation of the building in its vacated and closed status would be inimical to the health, safety, and welfare of the city in that the building would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then the City Council may, after the expiration of the two-year period, adopt an ordinance and serve the ordinance on the owner setting forth the following:

- (1) The ordinance shall require that the owner repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter within ninety (90) days or, alternatively, demolish and remove the nonresidential building within ninety (90) days.
- (2) The ordinance shall require that if the owner fails to repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this Chapter within ninety (90) days or, alternatively, fails to demolish and remove the nonresidential building within ninety (90) days, then the City Enforcement Officer shall demolish and remove the nonresidential building.

(B) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building must have been vacated and closed pursuant to an order and/or ordinance for a period of five (5) years before the City Council may take action under this Section.

(C) If the owner fails to comply with the requirements of the ordinance within ninety (90) days, the City Enforcement Officer shall demolish and remove the nonresidential building.

§ 152.13 **METHODS OF SERVICE OF COMPLAINTS AND ORDERS.**

(A) Complaints or orders issued by the City Enforcement Officer under this Chapter shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner of service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and the certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(B) If the identities of any owner or the whereabouts of persons are unknown and cannot be ascertained by the City Enforcement Officer in the exercise of reasonable diligence, and the City Enforcement Officer files an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons who have not been identified and/or located may be made by publication in a newspaper having general circulation in the city 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.

§ 152.14 **IN REM ACTION BY THE CITY ENFORCEMENT OFFICER.**

After failure of an owner of a nonresidential building to comply with an order of the City Enforcement Officer issued pursuant to the provisions of this Chapter and upon adoption by the City Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A-439(f) and § 152.09(D) of this Chapter, the City Enforcement Officer shall proceed to cause the nonresidential building to be repaired, altered, or improved to comply with the minimum standards established by this Chapter, to be vacated and closed, or to be removed or demolished, as directed by the ordinance of the City Council. The City Enforcement Officer may cause to be posted on the main entrance of any nonresidential building that is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building so posted shall be guilty of a Class 3 misdemeanor.

§ 152.15 **COSTS ARE A LIEN ON PREMISES.**

(A) As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, vacating and closing, or removal or demolition caused to be made or done by the City Enforcement Officer pursuant to § 152.09(D) or § 152.12 shall be a lien against the real property upon which the costs were incurred. The lien shall be filed, have the same priority, be enforced, and the costs collected as provided by G.S. Chapter 160A, Article 10. The amount of the costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(B) If the nonresidential building is removed or demolished by the City Enforcement Officer, such officer shall offer for sale the recoverable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited in the Superior Court by the City Enforcement Officer, 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 governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

§ 152.16 EJECTMENT.

If any occupant fails to comply with an order to vacate a nonresidential building, the City Enforcement Officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building. 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 (10) 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. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the City Enforcement Officer produces a certified copy of an ordinance adopted by the City Council pursuant to G.S. 160A-439(f) and § 152.09(D) to vacate the occupied nonresidential building, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building 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 under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least thirty (30) days before the filing of the summary ejectment proceeding, that the City Council has ordered the City Enforcement Officer to proceed to exercise his or her duties under G.S. 160A-439(f) and § 152.09(D) to vacate and close or remove and demolish the nonresidential building.

§ 152.17 FILING OF ORDINANCES.

An ordinance adopted by City Council pursuant to § 152.09(D) or § 152.12 of this Chapter shall be recorded in the office of the Register of Deeds of Randolph County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-439(f) and (g).

§ 152.18 ALTERNATIVE REMEDIES.

Neither this Chapter nor any of its provisions shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their abatement by summary action or otherwise, to enforce this Chapter by criminal process as authorized by G.S. 14-4 and § 152.22 of this Chapter, and to utilize any remedy provided herein or in other ordinances or laws.

§ 152.19 **BOARD OF ADJUSTMENT TO HEAR APPEALS.**

(A) All appeals that may be taken from decisions or orders of the City Enforcement Officer pursuant to this Chapter shall be heard and determined by the Board of Adjustment. As the appeals body, the Board of Adjustment shall have the power to set the times and places of its meetings, to adopt necessary rules of procedure, and to adopt any other rules and regulations that may be necessary for the proper discharge of its duties.

(B) Appeals shall be subject to the following:

- (1) An appeal from any decision or order of the City Enforcement Officer may be taken by any person aggrieved thereby. Any appeal from the City Enforcement Officer shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the City Enforcement Officer and the Secretary to the Board of Adjustment a notice of appeal that shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the City Enforcement Officer shall forthwith transmit to the Board of Adjustment all of the papers constituting the record upon which the decision under appeal was made. When the appeal is from a decision of the City Enforcement Officer refusing to allow the person aggrieved thereby to do any act, the City Enforcement Officer's decision shall remain in force until modified or reversed. When any appeal is from a decision of the City Enforcement Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board of Adjustment, unless the City Enforcement Officer certifies to the Board, after the notice of appeal is filed, that by reason of the 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 which case the requirement shall not be suspended except by a restraining order that may be granted for due cause shown, upon not less than one day's written notice to the City Enforcement Officer, by the Board or by a court of record upon petition made pursuant to G.S. 160A-446(f) and § 152.20.
- (2) The Board of Adjustment shall set a reasonable time for the hearing of all appeals, shall give notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the decision or order appealed from and may make such decision and order as in its opinion ought to be made in the matter. To that end, the Board of Adjustment shall have all the powers of the City Enforcement Officer when ruling upon a duly filed appeal. A simple majority of the members of the Board of Adjustment shall be necessary to reverse or modify any decision or order of the City Enforcement Officer. When considering an appeal, the Board of Adjustment shall have the power, when practical difficulties or 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 by granting a variance to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done; provided, however, that the concurring vote of four-fifths

of the members of the Board of Adjustment shall be necessary to grant a variance rather than the simple majority that is sufficient, when the variance power is not utilized, to reverse or modify a decision or order of the City Enforcement Officer.

(C) Every decision of the Board of Adjustment shall be subject to review by the Superior Court by proceedings in the nature of certiorari instituted within thirty (30) days of the decision of the Board, but not otherwise.

§ 152.20 **TEMPORARY INJUNCTION REMEDY FOR AGGRIEVED PERSON.**

Any person aggrieved by an order issued by the City Enforcement Officer or a decision rendered by the Board of Adjustment shall have the right within thirty (30) days after issuance of the order or rendering of the decision to petition the Superior Court for a temporary injunction restraining the City Enforcement Officer pending a final disposition of the cause, as provided by G.S. 160A-446(f).

§ 152.21 **CONFLICT WITH OTHER PROVISIONS.**

In the event any provision, standard, or requirement of this Chapter is found to be in conflict with any other ordinance or code of the city, the provisions that establish the higher standard or more stringent requirement for the promotion and protection of the health and safety of the citizens of the city shall prevail.

§ 152.22 **VIOLATIONS; PENALTIES.**

(A) It shall be unlawful for the owner of any nonresidential building to fail, neglect, or refuse to repair, alter, or improve the same, to vacate and close, or to remove or demolish the same upon order of the City Enforcement Officer duly made and served in accordance with the provisions of this Chapter within the time specified in the order, and each day that any such failure, neglect, or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building, with respect to which an order has been issued pursuant to section § 152.09(C) of this Chapter, to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration, improvement, or its vacation and closing, and each day that the occupancy continues after the prescribed time shall constitute a separate and distinct offense.

(B) The violation of any provision of this Chapter shall constitute a misdemeanor, as provided by G.S. 14-4.

(C) In addition to or in lieu of the other remedies provided by this Chapter, any owner of a nonresidential building that fails to comply with an order of the City Enforcement Officer within the time specified therein, shall be subject to a civil penalty in the amount of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense in the calendar year, and two hundred fifty dollars (\$250) for the third and subsequent offenses in the calendar year. Each subsequent offense after the third will be subject to a civil penalty of two hundred fifty dollars

(\$250). Each 30-day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense.

SECTION 2. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 3. Any part or provision of this Ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States of America or the State of North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the Ordinance.

SECTION 4. This Ordinance shall be in full force and effect on and after January 1, 2015.

This Ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4th day of December, 2014.



ATTEST:

A handwritten signature in cursive script, appearing to read "David H. Smith", written over a horizontal line.

David H. Smith, Mayor
City of Asheboro, North Carolina

A handwritten signature in cursive script, appearing to read "Holly H. Doerr", written over a horizontal line.
Holly H. Doerr, CMC, NCCMC, City Clerk
City of Asheboro, North Carolina