

Ordinance #2021-19
2021 Ordinance Book, Page 79

**ORDINANCE AMENDING CHAPTER 10, ARTICLE V, DIVISION 2 ENTITLED
“VACANT NONRESIDENTIAL BUILDING AND STRUCTURE CODE” OF THE
CODE OF THE CITY OF WINSTON-SALEM**

BE IT ORDAINED, by the Mayor and City Council of the City of Winston-Salem, North Carolina that the Code of the City of Winston-Salem is hereby amended to read as follows

Section 1. Chapter 10, Article V, Division 2 Entitled “Vacant Nonresidential Building and Structure Code” is hereby amended to read as follows:

“Sec. 10-213. Title.

The rules and regulations prescribed by this division shall be known and may be cited as the "Vacant Nonresidential Building and Structure Code of the City of Winston-Salem."

Sec. 10-214. Findings of fact; statutory authority.

The city council hereby finds and declares that there now exists in the city and that there may reasonably be expected to exist in the future vacant nonresidential buildings and structures that fail to meet the minimum standards of maintenance, sanitation, and safety. These standards only address conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing or demolition of such buildings or structures. The city council further finds that a public necessity exists to exercise the police powers of the city pursuant to G.S. ~~160A-439~~ 160D-1129 et seq., and other applicable laws, as now or hereafter amended, to cause the repair and rehabilitation, closing or demolition of such buildings or structures in the manner provided in this division. Pursuant to the exercise of such police power, the city council finds as facts and so declares that the ensuing sections of this division are necessary to the implementation of its purposes declared in this section and that, specifically but without limitation, the minimum standards for maintenance, sanitation and safety as enacted in section 10-219, are reasonable and necessary for this community and are, all and the sundry of them, reasonable and necessary criteria for determining whether vacant nonresidential buildings or structures are dangerous or injurious to public health, safety and welfare.

Sec. 10-215. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned building means any vacant building where safety hazards, health hazards, or deterioration as a result of a lack of preventive maintenance and any one or a combination of the following exist: the building is unsecured, the building is a breeding ground for rodents or insects, the building or structure is not properly secured to prevent unauthorized access, and/or violations of other City Code provisions including, but not limited to, high grass/weeds, trash/junk/garbage, junked/abandoned vehicles, or graffiti.

Accessory building and *out building* means a building or structure the use of which is incidental to that of the main building or structure, and which is located on the same lot or on a contiguous lot.

Anchor means to secure a structural member in position.

Basement means that portion of a building that is partly or completely below grade plane.

Breaks mean lapse in continuity; any projection from the general surface of a wall.

Conservation administrator means the conservation administrator of the city community development department, or any agent or employee of such department. The conservation administrator may also be referred to as the administrator.

Crack means a narrow opening between two parts which has been split or broken.

Dead load means the weight of materials of construction incorporated into the building or structure.

Decay means disintegration of wood fiber.

Defect means irregularity in a material that reduces its strength and/or durability.

Deterioration means decomposition and failure of a material resulting in diminished quality or strength. Includes pitting, flaking, scaling, and cracking.

Egress means exit or means of exiting an area.

Elements means weather.

Exit means that portion of egress system which is separated from other interior spaces of a building or structure by fire-resistance-rated construction and opening protective as required to provide a protected path of egress travel between the exit access and the exit discharge. Exits include exterior exit doors at ground level, exit enclosures, exit passageways, exterior exit stairs, exterior exit ramps and horizontal exits.

Extermination means the control and elimination of insects, rodents and other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as

their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and lawful pest elimination methods approved by the conservation administrator.

Flashing means pieces of metal or plastic installed in conjunction with exterior materials to prevent water from penetrating a structure.

Garbage means, except for human excreta, the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable space, as defined by the state building code, means a space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

Infestation means the presence within or around structures of any insects, rodents or other pests in such numbers as to constitute a threat or deterioration to the structure or a hazard to the health or physical well-being of the community or anyone entering the structure.

Inspector means the conservation administrator and any other employee of the city community development department whose assigned duties include the enforcement of provisions of this division.

Litter means any solid waste material such as garbage, household trash, yard trash, business trash, building materials, etc., or any other discarded used or unconsumed substance, which is not stored for collection.

Live load means those loads produced by use and occupancy of the building or other structure and do not include construction or environmental loads.

Load means forces or other actions that result from weight of building materials, occupants and their possessions, environmental effects, differential movement, and restrained dimensional changes.

Nonresidential building or structure (that which is "built" or "constructed"). Such words are used interchangeably within this division with the words building or structure.

Occupant or *tenant* means any person in or having actual possession of the building or structure or any portion thereof.

Owner means a holder of the legal title and every mortgagee of record, or every cestui que trust under a deed of trust; or any person, agent, operator, firm or corporation recorded at the Forsyth County Register of Deeds as holding title to the property or otherwise having control of the property.

Parties in interest means all individuals, associations and corporations who have interest of record in a nonresidential building or structure, and any who are in possession thereof.

Plumb means true to a vertical plane: perpendicular to horizontal.

Plumbing means and include all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, catch basins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Premises means a lot, plot or parcel of land, including the building or structure thereon or any part thereof, except land occupied by streets, alleys or public thoroughfares.

Removal means the demolition and removal of the entire building (including foundation walls, footings, paved driveways, parking areas and sidewalks), leaving the premises free and clear of any debris, with any excavation properly filled in and with no holes or pockets which may retain water.

Repair (noun) means the condition of an object.

Rot means decay of a material resulting from prolonged exposure to moisture.

Rust means reddish-brown material formed by oxidation of iron.

Rubbish means combustible or noncombustible waste materials, with the exception of garbage. The term shall include the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust, and discarded appliances.

Safe means not leading to harm or injury.

Sanitary means characterized by or readily kept in cleanliness; of, or relating to, or used in disposal of waste.

Shall, may and should. The term "shall" is to be construed and meaning mandatory, and the term "may" or "should" is to be construed as meaning permissible.

Sound means free from defects.

Story means that part of a building comprised between a floor and the floor or roof next above.

Substandard means any condition existing in any building or structure which does not meet the standards of this division.

Supplied means paid for, furnished or provided by, or under the control of the owner or operator.

Unfit for use or occupation means a nonresidential building or structure which contains any of the following conditions, which conditions the city council hereby finds render any nonresidential building or structure dangerous or injurious to the health, safety or welfare of the occupants of neighboring buildings or structures, or other citizens of the city:

- (1) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the building unsafe.
- (2) Supporting members which show 33 percent or more damage or deterioration, or a nonsupporting, enclosing or outside wall or covering which shows 50 percent or more of damage or deterioration.
- (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.
- (4) Such damage by fire, wind or other causes as to render the building unsafe.
- (5) Dilapidation, decay, insanitary conditions or disrepair which is dangerous to the health, safety or welfare of people in the city.
- (6) Inadequate facilities for egress in case of fire, accident or other calamities.
- (7) Defects significantly increasing hazards of fire, accident or other calamities.
- (8) Lack of adequate ventilation, light, heating or sanitary facilities to such an extent as to endanger the health, safety, welfare of residents of the city.
- (9) Lack of proper electrical, heating or plumbing facilities required by this division which constitute a health or definite safety hazard.

Unit means space or spaces in any structure intended for occupancy. Areas incidental to the intended or primary use shall be considered the same as the intended or primary use.

Useable space means any area able, by design and approval, to be used as was intended (not habitable space as defined by the State Building Code).

Vacant means not occupied to include occupancy by anyone without the permission of the property owner or his/her agent.

Vacant industrial warehouse means any building or structure designed for the storage of goods or equipment in connection with manufacturing ~~process~~ processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Vacant manufacturing facility means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Ventilation means the insufflation and the exsufflation of air by natural or mechanical means to and from the building or structure.

Ventilation, mechanical means ventilation by power-driven devices.

Ventilation, natural means ventilation by opening to outer air through windows, skylights, doors, louvers or stacks, with or without wind-driven devices.

Weathertight means to prevent precipitation or draft (outside air movement) from entering a structure.

~~Zoning~~ *Board of adjustment* means the city zoning board of adjustment authorized by G.S. 160A-439(m) D-1127 and G.S. 160A-446 D-302 to receive and decide appeals taken from any decision or order of the conservation administrator submitted by any person aggrieved by such a decision or order.

Sec. 10-216. Applicability of division.

The provisions of this division shall apply to all existing, vacant nonresidential buildings or structures and to all nonresidential buildings and structures hereafter constructed within the city. Portable, mobile or demountable buildings or structures, including modular units, shall be subject to the applicable provisions of this division.

Sec. 10-217. Responsibility for enforcement; inspection.

- (a) The conservation administrator shall be responsible for the enforcement of this division.
- (b) Whenever it appears to the conservation administrator that any vacant nonresidential building or structure has not been properly maintained so that the safety or health of members of the general public are jeopardized for failure of the property to meet the minimum standards established by the city council, the conservation administrator shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or made with the permission of the owner, the owner's agent, a tenant or other person legally in possession of the premises.

Sec. 10-218. Substandard conditions; generally.

- (a) Every vacant nonresidential building or structure which does not comply with all the requirements herein shall be deemed substandard.

- (b) Unless otherwise provided in this division, all requirements relating to vacant nonresidential building structures shall be the responsibility of the owner.
- (c) No person shall occupy as owner-occupant, or lease to another or others for occupancy any nonresidential building or structure which exhibits any of the conditions described in section 10-215 under the definition of the term "unfit for use."
- (d) The inspector shall determine that a vacant nonresidential building is not appropriate for occupation if he finds that any of the conditions contained in section 10-215 under the definition of the term "unfit for use" exist in such building or structure.
- (e) A vacant nonresidential building or structure that has been inspected and found to be unfit for use or occupation may not be occupied until its owner receives a certificate of fitness for use from the city.

Sec. 10-219. Standards.

- (a) Exterior standards.
 - (1) All accessory structures, including detached garages, fences, and walls, shall be maintained for the purpose in which it was intended.
 - (2) Exterior structure.
 - a. The structure's exterior shall be maintained for the purpose in which it was intended and sanitary so as not to pose a threat to public health, safety, or welfare.
 - b. All structural members shall be maintained free from deterioration. All structural members shall be capable of safely supporting the imposed live and dead loads.
 - c. All exterior walls shall be free of holes, breaks, and loose or rotting materials that permit elements or pests to penetrate the structure's exterior.
 - d. Roof.
 - 1. Roof flashing shall be sound, tight, and not have defects that admit rain.
 - 2. Roof coverings and assemblies shall be free of holes or leaks.
 - e. All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained for the purpose in which it was intended with proper anchorage and in a safe condition.
 - f. All overhang extensions including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained for the purpose in which it was intended and be properly anchored.

- g. All exterior stairway, deck, porch and balcony, and all appurtenances attached thereto shall be maintained structurally sound, for the purpose in which it was intended, with proper anchorage, and capable of supporting the imposed loads.
 - h. Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained for the purpose in which it was intended.
 - i. Every window, skylight, door, and frame shall be kept in sound condition, maintained for the purpose in which it was intended, and weathertight or covered from the exterior.
- (b) All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by properly licensed pest control applicators.
- (c) Existing stacks, vents, waste lines, and sewer lines shall be maintained in a safe and sanitary condition.
- (d) Energized electrical systems shall be free of the following hazards.
- (1) Improper wiring.
 - (2) Improper wiring installation.
 - (3) Deteriorated wiring or electrical system.
 - (4) Damaged wiring or electrical system.
- (e) All vacant structures shall be maintained secure at all times.

Sec. 10-219.1. Right of entry of inspectors; access by owner for purpose of making repairs.

The owner or occupant of every vacant nonresidential building or structure or the person in charge thereof, upon being presented with proper credentials, shall give the conservation administrator or inspector free access to such building or structure or part thereof and its premises at all reasonable times for the purpose of such inspection, examination and survey. If the owner or occupant refuses admission for this purpose, admission may be obtained through the provisions of G.S. 15-27.2.

Sec. 10-220. Designation of agent by property owner.

Any owner of real property within the city who is not a resident of the county shall be required to provide, on a form supplied by the community development department, the name, address and telephone number of an agent located in Forsyth County and authorized by the owner to accept service in an action involving a violation of this division. The owner shall notify the community

and business development department of any changes in the information provided not more than ten days after such change occurs.

Sec. 10-221. Nonliability of city personnel.

No officer, agent or employee of the city shall render himself or herself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his or her duties under this division. Any suit brought against any officer, employee or agent of the city as a result of any act required or permitted in the discharge of the duties under this division shall be defended by the city attorney until the final determination of the proceedings therein.

Sec. 10-222. Refusal to permit entry by inspectors.

It shall be unlawful for any owner or person in possession of any vacant nonresidential building or structure that appears to the conservation administrator not to be properly maintained to refuse, after being presented with a administrative search warrant as issued under G.S. 15-27.2, to permit the conservation administrator or his duly appointed agents to enter upon the premises for the purpose of making examinations as authorized by this division. Violation of this section shall constitute a misdemeanor.

Sec. 10-223. Procedure for correction of nonresidential buildings or structures for occupancy.

- (a) *Issuance of complaint; hearing.* If a preliminary investigation discloses evidence of a violation of the minimum standards, the conservation administrator shall issue and cause to be served, upon the owner and parties in interest in the vacant nonresidential building or structure, a complaint. The complaint shall state the charges and contain a notice that an administrative hearing will be held before the conservation administrator (or his or her designated agent) at a place within the city scheduled not less than 10 days nor more than 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 give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the conservation administrator.
- (b) *Order.* If, after such notice and hearing, the conservation administrator determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by the city council, the conservation

administrator 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. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations in this division.

(1) *Repair or vacate and close.* The conservation administrator may cause to be served upon the owner thereof an order, requiring the owner, within the time specified in the order, to repair, alter or improve such vacant nonresidential building or structure or to vacate and close the nonresidential building or structure for any use, if the repair, alteration or improvement of the vacant nonresidential building or structure can be made at a reasonable cost in relation to the value of the nonresidential building or structure, not to exceed 50 percent of the then-current value of the nonresidential building or structure; or

(2) *Remove or demolish.* The conservation administrator may cause to be served upon the owner thereof an order, requiring the owner to remove or demolish the vacant nonresidential building or vacant structure if the costs of repair, alteration or improvement of the nonresidential building or structure cannot be made at a cost not to exceed 50 percent of its then-current value.

Notwithstanding any other provision of law, if the vacant nonresidential building or structure 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 as provided by this division, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the vacant nonresidential building or structure has not been condemned as unsafe, the order may require that the vacant nonresidential building or structure be vacated and closed ~~consistent with G.S. 160A-439(e)(1)~~ until it is brought into compliance with the minimum standards established in this division.

(c) *Vacant building or structure.* The conservation administrator's order shall also provide that the building or structure to which it applies shall not be occupied if it is vacant as of the date of the order unless the owner obtains from the conservation administrator a certificate of fitness for use, which shall be issued upon a finding by the administrator that the building or structure subject to the order is fit for use.

An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure 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 said building or structure closed for any use.

- (d) *Determination of value of building or structure.* The conservation administrator is hereby authorized to fix the reasonable value of any nonresidential building or structure for the purpose of this section, and such value shall be binding unless the owner protests such value in writing to the conservation administrator within ten days after receipt of an order. Upon such protest, the administrator shall nominate one competent and disinterested person, the protesting party shall nominate one competent and disinterested person, and the two persons so nominated shall nominate a third competent and disinterested person, and the three persons so nominated shall serve as commissioners of appraisal. The commissioners shall make their appraisal of the value of the building or structure under consideration, and shall return the appraisal to the administrator and the protesting party within ten days after their appointment, and the appraisal shall be binding and conclusive for the purpose of this section. The costs of any such appraisal shall be paid by the protesting party to the conservation administrator at the time of filing written protest.
- (e) *Authority of administrator on owner's failure to comply with order; placarding.* If the owner fails to comply with an order to repair, alter or improve or to vacate and close the vacant nonresidential building or structure, the city council may adopt an ordinance ordering the conservation administrator to proceed to effectuate the purpose of this section with respect to the particular property or properties that the conservation administrator found to be jeopardizing the health or safety of members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds of Forsyth County and shall be indexed in the name of the property owner or owners in the grantor index. Following the adoption of an ordinance, the conservation administrator may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The conservation administrator may cause to be posted on the main entrance of any vacant nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupancy of this building for

any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

- (f) *Adoption of ordinance ordering repair or demolition.* If the owner fails to comply with an order to remove or demolish the vacant nonresidential building or structure, the city council may adopt an ordinance ordering the conservation administrator to proceed to effectuate the purpose of this section with respect to the particular property or properties that the conservation administrator found to be jeopardizing the health or safety of members of the general public. No ordinance shall be adopted to require demolition of a vacant nonresidential building or vacant structure until the owner has first been given the opportunity to bring it into conformity with the minimum standards established by the city council. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds of Forsyth County and shall be indexed in the name of the property owner or owners in the grantor index. Following the adoption of an ordinance, the conservation administrator may cause the building or structure to be removed or demolished.
- (g) *Order by city council after failure to repair, vacate and closed for a period of two years.* Whenever the city council has adopted an ordinance or the conservation administrator has issued an order ordering an building or structure to be repaired or vacated and closed pursuant to the provisions of this division, and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the city council may make findings that the owner has abandoned the intent and purpose to repair, alter or improve the vacant nonresidential building or structure and that the continuation of the vacant nonresidential building or structure in its vacated and closed status would be inimical to the health, safety and welfare of the city in that it 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. Upon such findings, the city council may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:
 - (1) If the cost to repair the vacant nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50 percent of its then-current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or

(2) If the cost to repair the vacant nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then-current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order for a period of five years before the city council may take action under this subsection on the basis set forth in paragraphs (1) and (2) above. The ordinance shall be recorded in the office of the register of deeds in Forsyth County wherein the property or properties are located and shall be indexed in the name of the property owner or owners in the grantor index. If the owner fails to comply with the ordinance, the conservation administrator shall effectuate the purpose of the ordinance.

(h) *Payment of costs of work done by city.* The cost of such repairs, alterations, improvements, vacating and closing, including removal, demolition, grading, filling, seeding, or securing and making the vacant nonresidential building or structure safe by the conservation administrator shall be a lien in the nature of a special assessment against the real property upon which such cost was incurred. If the real property upon which the cost was incurred is located within the city limits, then the amount of the cost is also 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 subsection is inferior to all prior liens and shall be collected as a money judgment. If the vacant nonresidential building or structure is removed or demolished by the conservation administrator, he shall offer for sale the recoverable materials of such vacant nonresidential building or vacant structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the conservation administrator, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court. Nothing in this section shall be construed to impair or limit in any way the power of the city council to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(i) *Cancellation or reduction of demolition and other remediation liens in limited circumstances.*

(i) The city manager may authorize the reduction or cancellation of the amount of the cost of repairs, alterations, or improvements; vacating and closing; securing, or removal or demolition, or other remediation by the administrator which is a lien against the real property upon which the cost was incurred as provided for in this article, or other appropriate provisions of law, in the following circumstances:

a. When the owner of the property completes construction of a dwelling on the property to be used for affordable housing. The owner must also obtain and provide a certificate of compliance required by this article and agree to execute a declaration of restrictive covenant conditions limiting the use of the property for this purpose for a period of no less than X years commencing with the date the certificate of compliance is issued under this article or certificate of occupancy is issued by the city/county inspections department, whichever occurs last.

b. When the owner of the property conveys the property subject to the lien to a person who completes construction of a dwelling on the property to be used for affordable housing, completion of construction shall be evidenced by a certificate of compliance issued by the city/county inspections department.

(ii) The city council may, in its discretion, reduce or cancel the cost described in this subsection, when the cost is past due, the owner offers to convey the property to the city and the city council agrees to accept the deed to the property in payment of the cost.

(iii) The city manager shall establish a policy to implement this subsection. The policy shall define "affordable housing," and contain criteria for which owners may apply for the reduction or cancellation of a lien under this subsection. The policy shall include other provisions designed to effectuate the purposes of this subsection. Such other provisions may include time limits for completion of construction of the dwelling, descriptions of covenants to be incorporated in the title to property conveyed to ensure it will be used for affordable housing; and requirements that a lien be in effect for a specified period of time before the manager will consider reducing or canceling a lien under this subsection. For each instance of exercising the authority to reduce or cancel a lien under this subsection, the city manager shall make a record of the reasons why such action is appropriate.

(ij) *Order to occupant to vacate nonresidential building or structure; ejectment.* If any occupant fails to comply with an order and ordinance to vacate a nonresidential building or

structure, the conservation administrator may file a civil action in the name of the city to remove such occupant. The action to vacate the nonresidential building or structure shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such nonresidential building or structure. 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. 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 conservation administrator produces a certified copy of an ordinance adopted by the governing body pursuant to subsection (e) and (f) of this section authorizing the officer to proceed to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the nonresidential building or structure 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 such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the conservation administrator to proceed to exercise his duties as set forth in subsections (e) and (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

(j) *Service of complaints or orders.*

- (1) Complaints or orders issued by the conservation administrator or ordinances adopted pursuant to this division shall be served upon persons either personally or by ~~registered~~ ~~or~~ certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by ~~registered~~ ~~or~~ certified mail, a copy of the complaint, order or ordinance may be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is returned unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. If the regular mail is used, a

notice of the pending proceeding or ordinance shall be posted in a conspicuous place on the premises affected.

- (2) If the identity of any owner or the whereabouts of any owner is unknown and cannot be ascertained by the conservation administrator in the exercise of reasonable diligence, and the conservation administrator makes an affidavit to that effect, then the serving of the complaint, order or ordinance upon the owner(s) or other person(s) may be made by publishing the complaint, or order or ordinance at least once no less than ten days but no more than 30 days prior to hearing, and for orders and ordinances at least once no less than ten days but no more than 30 days after the issuance of the order or adoption of the ordinance in a newspaper having general circulation in the city. A copy of such complaint, order or ordinance shall be posted in a conspicuous place on the premises affected.

~~(k)~~ *Appeals.*

- (1) The ~~zoning~~ board of adjustment shall hear and determine appeals from any decision or order of the conservation administrator. An appeal from any decision or order of the conservation administrator is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the conservation administrator shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the conservation administrator and with the ~~zoning~~ board of adjustment a notice of appeal, which shall specify the grounds upon which the appeal is based and by paying any filing fees assessed pursuant to the ordinances, and rules applicable to the board of adjustment. Upon the filing of any such notice of appeal, the conservation administrator shall forthwith transmit to the ~~zoning~~ board of adjustment all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the conservation administrator refusing to allow the person aggrieved thereby to do any act, ~~his~~ the decision shall remain in force until modified or reversed. When any appeal is from a decision of the conservation administrator requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the administrator certifies to the ~~zoning~~ board of adjustment, after the notice of appeal is filed with ~~him~~ the officer, that, by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of ~~his~~ the

requirement would cause imminent peril to life or property, in which case the requirement shall not be 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 conservation administrator, by the board, or by a court of record upon petition made pursuant to subsection (4) of this subsection.

- (2) The ~~zoning~~ board of adjustment shall fix a reasonable time for the hearing of all appeals, shall give due 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 ~~zoning~~ board of adjustment may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision or order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the conservation administrator, but the concurring vote of four-fifths of the members of the board shall be necessary to reverse or modify any decision or order of the conservation administrator. The ~~zoning~~ board of adjustment shall have power also in passing upon appeals, in any case where there are ~~practical difficulties~~ or unnecessary hardships in the way of carrying out the strict letter of this division, to adapt the application of this division to the necessities of the case to the end that the spirit of this division shall be observed, public safety and welfare secured, and substantial justice done.
- (3) Every decision of the ~~zoning~~ board of adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the zoning board of adjustment, but not otherwise.
- (4) Any person aggrieved by an order issued by the conservation administrator or a decision rendered by the ~~zoning~~ board of adjustment may petition the superior court for an injunction restraining the administrator from carrying out the order or decision, and the court may, upon such petition, issue a temporary injunction restraining the administrator pending a final disposition of the cause; provided, however, that such 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 any such petition within 20 days and shall be given preference over other matters on the court's calendars. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require; provided, however, that it shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection (4).

- (5) In case any nonresidential building or structure is erected, constructed, altered, repaired, converted, maintained or used in violation of this division or of any ordinance adopted under authority of this division or any valid order or decision of the conservation administrator or ~~zoning~~ board of adjustment made pursuant to this division, the conservation administrator or ~~zoning~~ board of adjustment may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate such violation or to prevent any illegal act, conduct or use in or about the premises of the nonresidential building or structure.

(4m) *Additional powers of administrator.* The conservation administrator is hereby further authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this division, including the following powers in addition to others granted in this division:

- (1) To investigate vacant nonresidential building and structures in the city to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the members of the general public are not jeopardized.
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises pursuant to section 10-217 for the purpose of making examinations in a manner that will do the least possible inconvenience to the person(s) in possession.
- (4) To appoint and fix the duties of such officers, agents and employees as ~~he deems~~ necessary to carry out the purposes of this Code as adopted by the city council.
- (5) To delegate any of his or her functions and powers under this division to such officers and agents as he or she may designate.

Sec. 10-224. Removal of posted complaint, notice or order.

No person, without written consent of the conservation administrator, shall remove or permit the removal of any complaint, notice or order posted in accordance with the provisions of this division. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor.

Sec. 10-225. Occupation of unfit nonresidential building or structure.

Any person (landlord or tenant) violating any lawful ordinance of the city council or order of the conservation administrator to vacate and close or to demolish any nonresidential building or structure found to be unfit for use or occupancy shall, upon the expiration of the date for

compliance with such order or ordinance, be subject to a civil penalty in accordance with section 10-229. Any person occupying, or permitting the reoccupancy of a nonresidential building or structure found by the conservation administrator to be unfit for use or occupancy, without making the nonresidential building or structure fit for use or occupancy and receiving the approval of the conservation administrator, shall be subject to a civil penalty in accordance with section 10-229.

Sec. 10-226. Securing vacated property; approval before reoccupancy; order to reclose nonresidential building or structure.

Nonresidential buildings or structures ordered vacated and closed by the conservation administrator shall have all outer doors firmly locked and basement, cellar, and first story windows barred or boarded to prevent entry, and shall not again be used or occupied until written approval is secured from the conservation administrator. If the owner closes and secures a nonresidential building or structure pursuant to an order issued by the conservation administrator and thereafter the nonresidential building or structure is unlawfully opened, the conservation administrator shall serve the owner with an order to reclose and secure the nonresidential building or structure within 30 days after service of the order. Any person who fails to comply with an order to reclose and secure a nonresidential building or structure shall be subject to the civil penalty provided for in section 10-229.

Sec. 10-227. Conflicting provisions.

The provisions of this division shall not be construed to conflict with any other applicable laws, codes or ordinances pertaining to nonresidential structures and buildings, but are supplemental thereto. Where the provisions of this division are similar to provisions of other applicable laws, codes or ordinances, the more stringent provisions shall apply.

Sec. 10-228. Disposition of personal property, fixtures and appurtenances found in nonresidential buildings or structures ordered demolished.

Any article of personal property, fixtures or appurtenances found in or attached to a nonresidential building or structure, which items have been determined by the conservation administrator to be abandoned in a nonresidential building or structure which the city council has ordered the conservation administrator to demolish, shall be disposed of in the following manner:

- (a) The conservation administrator shall send a notice by certified ~~or registered~~ mail to the owner of personal property, fixtures and other items if such owner can be reasonably identified, and request that such owner remove the items from the premises within 15 days of receipt of notice. When service is made by ~~registered or~~ certified mail, a copy of the notice may be sent by regular mail. Service shall be deemed sufficient if the

~~registered or~~ certified mail is returned unclaimed or refused, but the regular mail is not returned from the post office within ten days after mailing. If the regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. If the regular mail and certified mail ~~or registered mail~~ are returned unclaimed or refused, notice shall be served by publication using the procedures set forth in section 10-223(j). The notice must be published at least once no less than 15 days before demolition.

- (b) If the owner of the property, fixtures or appurtenances found in or attached to the nonresidential building or structure fails or refuses to remove such property after being requested to do so, the property shall be subject to the sale by the city in accordance with subsection 10-223(h).

Sec. 10-229. Civil penalty; additional remedies.

- (a) An owner who fails to comply with an order to repair or to improve, or vacate and close any nonresidential building or structure determined unfit for use or occupancy pursuant to the provisions contained in section 10-223, who fails to comply with an order to reclose and secure the nonresidential building or structure issued pursuant to section 10-226, or who permits the re-occupancy of an unfit nonresidential building or structure in violation of section 10-225 shall be subject to a civil penalty of \$500.00 for the first day following the expiration of an order to repair or improve or vacate and close any nonresidential building or structure or following a determination that an unfit nonresidential building or structure has been reopened or reoccupied in violation of section 10-225. In each instance, a penalty of \$250.00 per day shall be imposed for each subsequent day that the unfit nonresidential building or structure or part thereof remains occupied in violation of an order or in violation of section 10-226. In addition, any owner of real property who fails to comply with section 10-220 shall be subject to a civil penalty of \$500.00 for the first day of violation and \$250.00 each day thereafter until the owner has complied with section 10-220. If the owner fails to pay the civil penalty within ten days after being notified of the amount due, the city may recover the penalty, together with all costs, by filing a civil action in the general court of justice in the nature of a suit to collect a debt.
- (b) The city manager or his or her designee, upon written request by an owner, shall have the authority to review, modify, reverse or affirm the assessment of a civil penalty, if practical difficulties or unnecessary hardships would result from carrying out the strict letter of this division, provided that the spirit of this division shall be observed, public safety and welfare secured and substantial justice done.

(c) The provisions of this division may also be enforced through any equitable or other remedy deemed appropriate by the city and permitted by law.

Sec. 10-230. Notice of lis pendens.

Upon the issuance of a complaint and notice of hearing or an order pursuant thereto, a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached thereto, may be filed in the office of the clerk of superior court of the county. The notice of lis pendens and a copy of the complaint and notice of hearing or order attached thereto shall be indexed and cross indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice of hearing or order shall be binding upon the successors and assigns of the owners of and parties in interest in the nonresidential building or structure. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the nonresidential building or structure at the time of filing in accordance with G.S. 160A-439(h) D-1127.

The notice of lis pendens shall remain in full force and effect until cancelled. The notice of lis pendens shall be cancelled upon compliance with the order. Upon receipt of notice of cancellation from the city, the clerk of superior court shall cancel the notice of lis pendens.

Sec. 10-231. Extra reinspections.

An owner shall be subject to a \$50.00 reinspection fee for the second and any subsequent reinspections. The initial inspection and the first reinspection being without charge. If the owner fails to pay the reinspection fee within ten days after being notified of the amount due, the city may recover the fee, together with all costs, by filing a civil action in the general court of justice in the nature of a suit to collect a debt.

Sec. 10-232.-Vacant building receivership.

In accordance with G.S. 160D-1130, the city council may petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell a vacant building, structure or dwelling if the owner fails to comply with an order to repair, alter, or improve, remove, or demolish a dwelling issued under this division, related to dwellings that are unfit for human habitation.”

Secs. 10-232 ~~3~~—10-240. Reserved.

Section 2. This ordinance shall become effective upon adoption.