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## Chapter 12 BUILDINGS AND BUILDING REGULATIONS<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 12-1. Fire limits.

The fire limits of the [cityCity](#) shall be that portion of the [cityCity](#) included in the following description:

Beginning at a point on the [cityCity](#) limit boundary due south of the terminus of the east curb of Jonesborough Street; thence to the intersection of the east curb of Jonesborough Street and the north curb of Davis Street; thence following the north curb of Davis Street to the east curb of Yarborough Street; thence following the east curb of Yarborough Street to the east curb of Kanuga Road; thence north to the Toxaway Railroad; thence west to a point 150 feet west of Kanuga Road; thence following Kanuga Road northerly and easterly to the east margin of Washington Street; thence north to West Fourth Avenue, following the east margin of Washington Street; thence, with the south curb of West Fourth Avenue in an easterly direction 100 feet to a point; thence in a northerly direction parallel with the east curb of Washington Street to the south curb of West Fifth Avenue; thence north to the north curb of West Seventh Avenue; thence west to the east curb of Buncombe Street; thence following the east curb of Buncombe Street north to the south curb of West Eighth Avenue; thence following the south curb of West Eighth Street east to a point 150 feet west of the west curb of Church Street; thence northerly 150 feet west of Highway 25 North to the [cityCity](#) limits; thence east to a point 150 feet east of Highway 25 North on the north [cityCity](#) limits; thence southerly to a point 150 feet east of Main Street and north of East Seventh Avenue; thence easterly 150 feet north of East Seventh Avenue to the east curb of Cherry Street; thence, south along the east curb of Cherry Street to the north curb of Seventh Avenue; thence, eastwardly along the north curb of Seventh Avenue to the [cityCity](#) limits; thence southerly to a point on the [cityCity](#) limits 150 feet south of East Seventh Avenue; thence westerly 150 feet south of East Seventh Avenue to the east curb of Grove Street; thence following the east curb of Grove Street south to the [cityCity](#) limits; thence westerly on the [cityCity](#) limits to the point of beginning.

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<sup>1</sup>Charter reference(s)—Regulatory codes, § 14.1Charter reference(s)—.

Cross reference(s)—Maintenance and inspection of buildings for pool rooms, discotheques and amusement centers, § 8-36Cross reference(s)—; maintenance of stables, sheds or other places where livestock are kept, § 10-45Cross reference(s)—; requirements for construction and maintenance of enclosures for fowl, § 10-70Cross reference(s)—; environment, ch. 20Cross reference(s)—; fire prevention and protection, ch. 22Cross reference(s)—; floods, ch. 24Cross reference(s)—; health and sanitation, ch. 26Cross reference(s)—; historic preservation, ch. 28Cross reference(s)—; housing, ch. 30Cross reference(s)—; manufactured homes and trailers, ch. 34Cross reference(s)—; planning and development, ch. 40Cross reference(s)—; environmental services, ch. 44Cross reference(s)—; construction and demolition wastes from private property, § 44-46Cross reference(s)—; streets, sidewalks and other public places, ch. 46Cross reference(s)—; utilities, ch. 52Cross reference(s)—; construction or alteration of drinking water systems, § 52-481Cross reference(s)— et seq.; zoning ordinance, app. A; subdivisions, app. B.

State law reference(s)—Municipal authority to regulate the construction of buildings, ~~G.S. 160A-411~~ [G.S. 160D-402\(b\); 404\(c\);1102; 160A-412](#) [G.S. 160D-402\(b\); 1104; Establishment of fire limits, G.S. 160D-1128.](#)

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Provided, however, that in the description set forth in this section the reference to 150 feet from any street or curblin shall be construed to include the total depth in feet of any lot abutting such street or curb, whichever distance is greater.

(Code 1971, § 7-1)

Editor's note(s)—The fire limits of the [cityCity](#) have changed and a complete legal description of such fire limits is on file and available in the [cityCity](#) clerk's office.

### **Sec. 12-2. State building code; county to perform inspections.**

The North Carolina State Building Code is applicable throughout the [cityCity](#) and is administered by the county through a contractual agreement with the [cityCity](#).

**Secs. 12-3—12-30. Reserved.**

## **ARTICLE ARTICLE II. CONDEMNATION OF BUILDINGS OR STRUCTURES<sup>2</sup>**

### **Sec. 12-31. Condemnation of buildings or structures, generally.**

- [\(1\) This Article II is adopted pursuant to the authority of N.C.G.S. § 160D-1119.](#)
- [\(2\) The Community Development Director and the code enforcement officer for the City of Hendersonville are hereby declared to be a local inspectors for the purposes of carrying out the duties authorized by N.C.G.S. § 160D-1117-1126 and this Article II. For the ease of reference, the Community Development Director and the code enforcement officer will collectively be referred to as “the code enforcement officer” in this Article II. The code enforcement officer shall have the authority and duties granted by N.C.G.S. § 160D-1117 through 1126, and is charged with carrying out these duties on behalf of the City of Hendersonville. The code enforcement officer shall have the authority to delegate any and all duties ascribed to a designee, and such designee shall be considered as, shall act as, and shall have authority as, a local inspector when carrying out the duties of the code enforcement officer. This designation of authority is made pursuant to N.C.G.S. § 160D-1102.](#)
- [\(3\) The code enforcement officer shall declare unsafe any residential or nonresidential building or structure which appears to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, or other causes determined to be unsafe. In such event, the code enforcement officer shall affix a notice of the dangerous character of the building or structure to a conspicuous place on the exterior wall of the building or structure. Any person removing this notice shall be guilty of a Class 1 misdemeanor as provided in N.C.G.S. § 160D-1120.](#)  
[—As used in this Chapter 12, the word “building” shall be deemed to refer to all structures, in addition to](#)
- [\(4\) buildings. Nothing in this Article II shall be deemed to limit any authority of City or County building inspectors granted pursuant to Chapter 160D Article 11 of the North Carolina General Statutes.](#)

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<sup>2</sup>Editor's note(s)—Ord. No. 04-1059, § 1, adopted October 7, 2004, amended [articleArticle](#) II in its entirety to read as herein set out. Formerly, [articleArticle](#) II pertained to the condemnation of nonresidential buildings or structures and derived from Ord. No. 01-0749, § 1, adopted July 12, 2001.

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(Ord. No. 04-1059, § 1, 10-7-04)

**Sec. 12-32. Condemnation of nonresidential buildings or structures in community development target areas.**

The code enforcement officer as necessary, may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

- (1) It appears to be vacant or abandoned.
- (2) It appears to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

If the code enforcement officer declares a nonresidential building or structure to be unsafe, the code enforcement officer must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term "community development target area" means an area that has characteristics of a development zone under G.S. § 105-129.3A, a "nonresidential development area" under G.S. § 160A-503(10), or an area with similar characteristics designated by cityCity council as being in special need of revitalization for the benefit and welfare of its citizens.

(Ord. No. 04-1059, § 1, 10-7-04)

**Sec. 12-33. Action in event of failure to take corrective action.**

As authorized by N.C.G.S. § 160D-1121, if the owner of a building or structure that has been condemned as unsafe pursuant to this Article II shall fail to take prompt corrective action, the code enforcement officer shall give him written notice, by certified or registered mail to his last known address or by personal service, of the following:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
  - a. Constitutes a fire or safety hazard;
  - b. Is dangerous to life, health, or other property;
  - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children;
  - d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (2) That an administrative hearing will be held before the code enforcement officer at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) That following the hearing, the code enforcement officer may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure at least ten (10) days prior to the hearing and a notice of the hearing is published in a newspaper having general

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circulation in the [City's planning and development regulation jurisdiction](#) at least once not later than one week prior to the hearing.

(Ord. No. 04-1059, § 1, 10-7-04)

### **Sec. 12-34. Order to take corrective action**

[As provided in N.C.G.S. § 160D-1122, if, upon a hearing held pursuant to the notice prescribed in Sec. 12-33 the code enforcement officer shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the code enforcement officer shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such period, not less than sixty \(60\) days, as the code enforcement officer may prescribe, provided that where the code enforcement officer finds that there is imminent danger to life or other property, the code enforcement officer may order that corrective action be taken in such lesser period as may be feasible.](#)

### **Sec. 12-35. Appeal of an order to take corrective action.**

[As provided in N.C.G.S. § 160D-1123, any owner who has received an order under Sec. 12-34 may appeal from the order to the City Council by giving notice of appeal in writing to the inspector and to the local government clerk within ten \(10\) days following issuance of the order. In the absence of an appeal, the order of the code enforcement officer is final. The City Council shall conduct an evidentiary hearing to consider the appeal in accordance with the requirements of N.C.G.S. § 160D-406 and render a decision within a reasonable time. The City Council may affirm, modify and affirm, or revoke the order.](#)

### **Sec. 12-36. Failure to comply with an order to take corrective action.**

[As provided in N.C.G.S. § 160D-1124, if the owner of a building or structure fails to comply with an order issued pursuant to Sec. 12-34 from which no appeal has been taken, or fails to comply with an order of the City Council following an appeal, the owner is guilty of a Class 1 misdemeanor.](#)

### **Sec. 12-37. Equitable enforcement.**

[\(1\) As provided in N.C.G.S. § 160D-1125\(a\), where violation of this Article, the City may enforce the provisions of this Article II by initiating any appropriate action or proceedings to prevent, restrain, correct, or abate the violation, or to prevent the occupancy of the building or structure involved, in lieu of or in addition to any other remedies.](#)

[\(2\) \(a\) — In the case of a ~~nonresidential~~ building or structure declared unsafe under this ~~Article II~~, the ~~city~~City may, in lieu of seeking civil enforcement under ~~Sec. 12-36, proceed as authorized by G.S. § 160A-432\(a\)~~ ~~G.S. 160D-1125~~, and cause the building or structure to be removed or demolished. The amounts incurred by the ~~city~~City in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in ~~Article~~Article 10 of Chapter 160A, ~~G.S. of the North Carolina General Statutes~~. If the building or structure is removed or demolished by the ~~city~~City, the ~~city~~City shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The ~~city~~City shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of Henderson County and shall be disbursed by the court to the person found to be entitled thereto ~~by final order or decree of the court~~.](#)

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—The amounts incurred by the City in connection with the demolition or removal under this section shall also be a lien against any other real property owned by the owner of the building or structure and located within the City’s planning and development regulation jurisdiction, except for the owner’s primary residence. The provisions of Sec. 12-37(2) also apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(3) ~~(b)~~—

(4) Nothing in this section shall be construed to impair or limit the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(Ord. No. 04-1059, § 1, 10-7-04)

### **Sec. 12-38. Records and Reports.**

The code enforcement officer shall keep all records and reports required by N.C.G.S. § 160D-1126.

### **Sec. 12-35. Appeals.**

~~If, upon a hearing held pursuant to the notice prescribed in section 12-33 the code enforcement officer finds that the building or structure meets one or more of the conditions specified in section 12-33(1), he shall render an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the code enforcement officer may prescribe. Provided, however, nothing herein shall preclude the county building inspector from requiring that corrective action be taken in a lesser period of time upon finding that there is imminent danger to life or other property.~~

~~(Ord. No. 04-1059, § 1, 10-7-04)~~

## **Article III. NONRESIDENTIAL PROPERTY MAINTENANCE AND REPAIR CODE**

### **Sec. 12-396. Applicability and compliance.**

(1) This Article is adopted pursuant to the authority of N.C.G.S. § 160A-174, N.C.G.S. § 160A-193, and N.C.G.S. §§ 160D-1129 and 1130. The Community Development Director and the code enforcement officer, or their designee, shall enforce the provisions of this Article III on behalf of the City. For ease of reference, the Community Development Director and the code enforcement officer will collectively be referred to as “the code enforcement officer” in this Article III. The code enforcement officer shall have such authority and power as is necessary or convenient to carry out and effectuate the purpose of this Article III, in addition to the others herein granted.~~(a)~~—

~~(1) Every commercial-nonresidential building or structure and the premises on which it is situated, used or intended to be used for commercial business occupancy shall comply with the provisions of this Code Article III, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this article Article, and irrespective of any permits or licenses which shall have been issued for the occupancy of the building or for the installment or repair of equipment or facilities prior to the effective date of this article Article. This article Article establishes minimum standards for the maintenance and repair initial and continual occupancy and use of all such nonresidential buildings, and does not replace or modify standards otherwise established by law for the construction, repair, alteration, or use of the building, equipment or facilities contained therein except as provided herein. Where there is mixed occupancy of a building, any commercial business nonresidential use therein shall be regulated by and subject to the provisions of this article Article.~~

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(2)

~~(b)~~ It shall be the duty of each and every owner, operator or other party in interest of a ~~commercial nonresidential~~ building or premises to which this ~~A~~article is applicable to comply with the regulations and requirements set forth herein. No license, permit or certificate of occupancy shall be issued unless and until all applicable sections of this ~~article~~Article have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this ~~A~~article.

(3) ~~(c)~~

(4) This Article establishes minimum standards for the initial and continual occupancy and use of all non-residential buildings or premises, in addition to any other requirements of applicable law; however, tThe provisions of this ~~Code~~Article that apply to the exterior or exterior components of a building shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured to prevent the entry of unauthorized persons or the occurrence of conditions not permitted by law in accordance with the standards set out herein.

(5) Nothing in this Article shall limit the City's authority to proceed with any other applicable statute, code, ordinance or other applicable law in lieu of or in addition to proceeding under the terms of this Article III.

(Ord. No. 08-0316, § 1, 3-6-08)

## **Sec. 12-~~3740~~. Maintenance and repair standards for ~~commercial nonresidential buildings and structures, and their premises.~~**

The failure of a nonresidential building or structure to comply with this Sec. 12-40 is hereby declared to be circumstances under which the public necessity requires that such nonresidential building or structure should be repaired, closed or demolished in accordance with the provisions stated. All ~~commercial nonresidential buildings and structures, including their~~ premises, shall be maintained in a state of good repair that prevents further decay from wind, rain and external weather and secures the building from any unauthorized admittance from humans, animals or birds. All ~~commercial premises nonresidential buildings and structures and their premises~~ shall be free of nuisances and shall be free of any hazards to the safety of occupants, customers or other persons utilizing the ~~buildings and structures included the~~ premises or to pedestrians and/or vehicles passing thereby. The nonresidential building and structure and the premises shall be kept in a condition that is not dangerous and injurious to the public health, safety and welfare. Without limitation of the foregoing requirements, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected. ~~;~~

- (1) Interior walls or vertical studs, which seriously list, lean or buckle, to such an extent as to render the building unsafe;
- (2) Supporting member or members which show 33 percent or more damage or deterioration, or non-supporting members or enclosing or outside walls that shows 50 percent or more damage or deterioration;
- (3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to reasonably be safe for the purpose used;
- (4) Such damage by fire, wind or other causes as to render the building unsafe;
- (5) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the ~~city~~City;

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- (6) Inadequate facilities for egress to such an extent that there does not exist at a minimum, sufficient operable doors that the building can be entered safely and exited in the same manner in case of fire or panic;
  - (7) Defects significantly increasing the 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 or general welfare of the occupants or other residents of the [cityCity](#);
  - (9) Lack of proper electrical, heating or plumbing facilities ~~required by this article~~ which constitutes a health or a definite safety hazard. If the electrical, heating or plumbing facilities are in such a condition that the service to those facilities needs to be discontinued to protect the general public, then the code enforcement officer shall be authorized to notify the appropriate official to disconnect service and that the service shall not be reconnected until the building has been re-inspected and cleared of all violations. Permits may be required from the county building inspections department. Temporary service connections may be permitted to allow for construction and/or cleaning;
  - (10) Any violation of the [cityCity](#) fire prevention code which constitutes a condition which is unsafe and especially dangerous to life;
  - (11) Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way;
  - (12) Flammable, combustibles, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the [cityCity](#) fire prevention code;
  - (13) The building and environs surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and repaired or replaced with like or similar material according to its original use;
  - (14) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other similar objects;
  - (15) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair and free of defects;
  - (16) Gutters and down-spouts shall be replaced or repaired as necessary and shall be appropriately located so as not to cause a hazard to pedestrian, vehicular traffic or property;
  - (17) Attached and unattached accessory structures shall not cause a safety hazard and shall be in good repair;
  - (18) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of the [cityCity](#);
  - (19) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated, or damaged, and shall not have other cracks which might admit rodents;
  - (20) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used and shall not leak;

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- (21) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged;
  - (22) Interior steps, railings, landings, porches or other parts or appurtenances, shall be maintained in such condition that they will not fail or collapse;
  - (23) All plumbing fixtures and pipes shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition;
  - (24) All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner;
  - (25) 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;
  - (26) All windows shall be maintained free of broken or cracked glass that could be in danger of falling or shattering.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-~~38~~41. Investigation.**

Whenever it appears to the code enforcement officer that a nonresidential building or structure has not been properly maintained or is otherwise in violation of the standards contained in Sec. 12-40, and/or so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by ~~section~~Sec. 12-3740, the code enforcement officer 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 N.C.G.S. § 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-~~39~~42. Complaint and hearing.**

(1) (a) — If the preliminary investigation discloses evidence that a building is in of a violation of the minimum standards contained in Sec. 12-40, he the code enforcement officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential such building or structure a complaint. The complaint shall state stating the charges and containing a notice that providing all of the following:

(a) That an administrative-a hearing will be held before the code enforcement officer, or their designated agent, at a place and time therein fixed fixed in the complaint, not less than ten nor more than 30 days after the serving of said complaint. Venue for the hearing must be within Henderson County.

(b) That the owner and parties in interest shall have the right to file an answer to the complaint and to appear at the administrative hearing in person, or otherwise, and give testimony at the place and time fixed in the complaint.

(c) That aAny person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.



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(d) That tThe rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(2) Following the administrative hearing, the code enforcement officer shall dismiss the complaint if he finds no violation. If the code enforcement officer ;if he finds that violations of this Article exist, he or she shall issue a written order stating findings of fact in support of the determination of violations. The order shall also set forth the remedial action to be taken to effect compliance with this Article, and shall specify a reasonable time for compliance. The code enforcement officer shall cause the order to be served on the owner and parties in interest. shall order compliance setting forth a maximum of up to 180 days within which to correct the violations. Such order shall contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article.

—Where, as part of the order, the code enforcement officer 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 set forth in Sec. 12-40, the order shall be comply with the requirements of N.C.G.S. 160D-1129(e) as follows:

(3)

—(b)If the code enforcement officer determines that the repairs, alterations or improvements necessary to bring the building into compliance with the provisions of this articleArticle can be made at a cost of less than 50 percent or less than the of the present value of the building, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof, an order directing and requiring the owner to repair, alter and improve such building to comply with the standards contained herein or otherwise to vacate and close the nonresidential building or structure for any use.

(a)

(b) (c) If the code enforcement officer determines that the cost of repairs, alterations or improvements necessary to bring the building or structure into compliance with the provisions of the articleArticle can not be made at a cost of more than will exceed 50 percent of the present value of the building or structure, the officer shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such building to comply with the standards contained herein or otherwise to demolish the building.

(c) Where a determination is made pursuant to Sec. 12-42(3)(b) that costs to remedy the violations exceed 50 percent of the present value of the building or structure, and the nonresidential building or structure is located in a local historic district, a historic district listed in the National Register of Historic Places, is designated as a local historic landmark, or is listed in the National Register of Historic Places, the City Council shall hold an administrative hearing to determine whether or not the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district prior to the code enforcement officer's issuance of the order. If City Council makes a determination that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, then the code enforcement officer's order shall order that the nonresidential building be vacated and closed until it is brought into compliance with the minimum standards contained in Sec. 12-40.

(d) The order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities of 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 the building or structure closed for any use.

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- (4) Where the order finds that violations of Sec. 12-40 constitute a nuisance without finding that the safety or health of the occupants of a nonresidential building or structure or members of the general public is jeopardized for failure of the property to meet the minimum standards set forth in Sec. 12-40, the order shall state the actions necessary to achieve compliance with Sec. 12-40, and shall state the remedies available to the City for failing to comply as contained in Sec. 1-6 of the Code of Ordinances for the City of Hendersonville. If the owner does not comply with such order, the code enforcement office may impose any penalties or utilize all available remedies provided under Sec. 1-6 of the Code.
- (5) The code enforcement officer shall have the authority to administer oaths, affirmations, examine witnesses, and receive evidence as part of the administrative hearing.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-4~~30~~30. Service of complaints and orders.**

- (a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer 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 of a complaint or order is accomplished personally ~~or by registered or certified mail~~, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. Regular mail that is not returned shall be deemed received on the 3<sup>rd</sup> consecutive calendar day following the date of mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, ~~or, if the owners are known but have refused to accept service by registered or certified mail~~ and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the ~~city~~City at least once no later than the time at which personal service would be required under the provisions of this ~~A~~article. When service is made by publication, a ~~copy of the complaint or order~~notice of the pending proceedings shall be posted in a conspicuous place on the premises affected ~~by the complaint or order; in the case of the complaint, it must be posted at least ten days prior to the hearing.~~
- (c) The code enforcement officer shall certify in writing for the City records the date(s) and method(s) of service.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-4~~14~~14. Failure to comply with orders.**

- (a) ~~(a)~~ —In the case of an order declaring the violations of Sec. 12-40 to be a nuisance, but not declaring that the violations jeopardize the safety or health of the occupants of the nonresidential building or the general public, the code enforcement officer may enforce this Article III will all remedies available under Sec. 1-6 of the Code of Ordinances for the City of Hendersonville for failures to comply with the order.
- (b) If an order, declaring that the violations of Sec. 12-40 will jeopardize the safety or health of the occupants of the nonresidential building or the general public, requires ~~if the owner fails to comply with an order~~ to repair the nonresidential building or structure and the premises or otherwise vacate and close the building or structure, and the owner fails to comply with the order, the code enforcement officer may:

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(1) Cause such structure to be repaired, ~~and pending such repairs, or otherwise~~ may order the building to be vacated and closed;

(2) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

~~"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the CityCity of Hendersonville."~~

~~Any person who occupies or knowingly allows the occupancy of a building or structure so posted is guilty of a Class 3 misdemeanor.~~

(~~cb~~) ~~If an order, declaring that the violations of Sec. 12-40 will jeopardize the safety or health of the occupants of the nonresidential building or the general public, requires the owner to~~ ~~if the owner fails to comply with an order to~~ remove or demolish the building, ~~and the owner fails to comply with the order~~ the code enforcement officer may:

(1) Cause such structure to be removed or demolished;

(2) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

~~"Notice is hereby given that this building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."~~~~"Notice is hereby given that this building is unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally, or may be dangerously infested with vermin rodents or insects. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."~~

~~Any person who occupies or knowingly allows the occupancy of a building or structure so posted is guilty of a Class 3 misdemeanor.~~

(~~de~~) The duties of the code enforcement officer set forth in subsections (~~ba~~) and (~~cb~~) shall not be exercised until ~~after t~~:

(1) ~~The city attorney shall institute in the general court of justice an appropriate action to seek an order of the court directing such owner to comply with the order of the code enforcement officer; or~~

(2) ~~The code enforcement officer shall request the council to order him by~~ City Council has adopted an ordinance specifically describing the subject property ~~and ordering him~~ to do either of the following as appropriate:

~~a.~~ To cause such building to be repaired, altered and improved ~~or otherwise vacated and closed~~ to comply with the standards established by this ~~article~~Article; or

(1)

(2) ~~b.~~ To cause such building to be vacated, closed, and removed or demolished. Provided however, that no ordinance shall be adopted to require the demolition of a nonresidential building or structure until the owner has first been given a reasonably opportunity to bring it into conformity with the standards contained in Sec. 12-40.

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- (3) The council, in ordering one of the aforesaid alternatives set out in Sec. 12-44(d)(1) or (d)(2), shall order the specific action that will best effectuate the purposes of this ~~article~~Article.
- (4) An ordinance adopted pursuant to Sec. 12-44(d)(1) or (d)(2) above shall describe the property or properties. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner or owners in the "grantor index."
- (e) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition carried out pursuant to Sec. 12-44 (b) or (c) above shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in ~~Article~~Article 10, Chapter 160A of the North Carolina General Statutes. If the real property upon which the cost was incurred is located in the City, the amount of the foregoing 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. This additional lien is inferior to all prior liens and shall be collected as a money judgment.
- (f) If the unsafe building is removed or demolished by the code enforcement officer, ~~he shall, if possible, the officer shall offer for sale~~ sell in any commercially reasonable manner the recoverable materials of the ~~unsafe building or structure~~ and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the code enforcement officer with the clerk of superior court, 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. ~~for subsequent disbursement by the court to the persons found by the court to be entitled thereto.~~
- (g) Nothing in this ~~section~~Article shall be construed to impair or limit in any way the power of the ~~city~~City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (h) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (i) If the City Council has adopted an ordinance, or the code enforcement officer has issued an order, requiring the nonresidential building or structure to be repaired or vacated and closed, 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 proceed in accordance with N.C.G.S. § 160D-1129(g) to enact an ordinance to require the repair or demolishing of the building or structure within 90 days as provided by said 160D-1129(g).
- (j) If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement officer may file a civil action in the name of the City to remove the occupant in accordance with the terms and requirements contained in N.C.G.S. § 160D-1129(j).

(Ord. No. 08-0316, § 1, 3-6-08)

## **Sec. 12-452. Appeals.**

- (a) Appeals shall be governed by N.C.G.S. § 160D-1208. The Zoning Board of Adjustment is designated as the housing appeals board. An appeal from any decision or order of the code enforcement officer pursuant to this ~~article~~Article may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision, or ~~if either the owner or his attorney was not present when the decision was rendered, then~~ within ten days of service of such order. Such appeal shall be taken by filing with the code enforcement officer and with the board of adjustment

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(hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code 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, unless the code enforcement officer certifies to the board after the notice of appeal is filed with him/her, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of ~~his-the~~ requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the code enforcement officer by the board, or by a court of record upon petition made pursuant to subsection (d) of this section. Except where in conflict with N.C.G.S. § 160D-1208, aAll regulations, fees and other rules of the board shall apply to these appeals.

- (b) The board 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 board may reverse or affirm wholly or partly, 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, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of  $\frac{1}{2}$  of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing upon appeals, in any case where ~~there are practical difficulties or unnecessary hardships in the way of~~ would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (c) ~~If the board determines that the building is a building of historical value, the board may enter an order holding the matter in abeyance provided that the owner repairs the building on a timely basis. Such repairs shall commence within six months of the board's order and shall be completed within two years of said date. All such repairs shall be completed in such a way as to maintain the historic character of the building and shall comply with the United States Secretary of Interior standards for the treatment of historic rehabilitation. If the repairs are not commenced and completed within the time periods set out in the order, the code enforcement officer shall proceed to enforce his original order. Reserved.~~
- (d) Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.
- (e) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within 30 days after the issuance of the order or rendering of a decision, to petition the superior court for a temporary injunction, restraining the code enforcement officer pending a final disposition of the cause.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-463. Violations and penalties for violations jeopardizing the safety and health of occupants or the general public.**

- (a) It shall be unlawful for the owner of any building to fail, neglect, or refuse to repair, alter, and improve the same; or to fail to vacate, close, and remove or demolish the same, upon order of the code enforcement officer ~~duly~~ made pursuant to Sec. 12-42(3) and served as herein provided, within the time specified in such order, and each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any building with respect to

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which an order has been issued pursuant to this ~~article~~Article to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration and improvement or its vacation, closing and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

- (b) Any owner of a building who fails to comply with any order described in subsection (a), or who allows occupancy of the building subject to such order after the compliance period in the order has expired, shall be subject to a civil penalty of \$500.00 for each day that noncompliance continues following the expiration of the compliance period specified in the order of compliance. If a person fails to pay the civil penalty within ten days of receipt of the citation, the ~~city~~City may seek to collect it in a civil action in the nature of a debt.
- (c) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
- (d) This ~~article~~Article may be enforced by any appropriate equitable action.
- (e) This ~~article~~Article may be enforced by any one, all, or any combination of the remedies authorized in this section.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-47. General provisions.**

- (a) A provided in N.C.G.S. § 160D-1125(a), where violation of this Article, the City may enforce the provisions of this Article III by initiating any appropriate action or proceedings to prevent, restrain, correct, or abate the violation, or to prevent the occupancy of the building or structure involved, in lieu of or in addition to any other remedies.
- (b) The definitions contained in N.C.G.S. § 160D-102 shall apply to this Article, except where applicable law provides a different definition or the context indicates otherwise.
- (c) The definitions contained in N.C.G.S. § 160D-1129(p) shall apply to this Article.
- (d) In addition to the remedies provided in this Article III, the city shall have and may also exercise any other remedies available at law or in equity, including but not limited to N.C.G.S. § 160D-1129(j) and N.C.G.S. § 160D-1130.

**Secs. 12-484—12-50. Reserved.**

## **ARTICLE ~~ARTICLE~~ III. ~~INTERNATIONAL PROPERTY MAINTENANCE~~ ~~CODE~~ MINIMUM HOUSING CODE<sup>3</sup>**

### **Sec. 12-51. Purpose and Findings.**

The City Council finds that there exists within the City of Hendersonville and its planning and development regulation jurisdiction dwelling conditions which are unfit for human habitation. Council further finds that the existence and occupation of the dwellings in the City of Hendersonville that are unfit for human habitation are

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<sup>3</sup>Editor's note(s)—Ord. No. 04-0745, §§ 1—4, adopted July 8, 2004, did not specify manner of inclusion; hence, inclusion as art. III is at the discretion of the editor.

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inimical to the welfare and dangerous and injurious to the people of the City and its planning and development regulation jurisdiction. The purposes of the this Minimum Housing Code are as follows:

- (1) To regulate and govern the conditions and maintenance of dwellings that are found to be unfit for human habitation in order to provide safe and decent housing for persons residing in the City and its planning and development regulation jurisdiction;
- (2) To provide the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that dwellings are safe, sanitary and fit for occupation and use;
- (3) To provide for the condemnation of dwellings that are unfit for human occupancy and use, and the demolition of such existing structures.

### **Sec. 12-52. Applicability and compliance.**

- (1) This Article is adopted pursuant to the authority of Article 12 of Chapter 160D of the North Carolina General Statutes.
- (2) Every dwelling and the premises on which it is situated shall comply with the provisions of this Article IV, whether or not dwelling shall have been constructed, altered, or repaired before or after the enactment of this Article, and irrespective of any permits or licenses which shall have been issued for the occupancy of the dwelling or for the installment or repair of equipment or facilities prior to the effective date of this Article. This Article establishes minimum standards for the maintenance and repair of all dwellings, and does not replace or modify standards otherwise established by law for the construction, repair, alteration, or use of the dwelling or the equipment or facilities contained therein except as provided herein. Where there is mixed occupancy of a building, any dwelling therein shall be regulated by and subject to the provisions of this Article.
- (3) It shall be the duty of each and every owner, operator or other party in interest of a dwelling or premises to which this Article is applicable to comply with the regulations and requirements set forth herein. No license, permit or certificate of occupancy shall be issued unless and until all applicable sections of this Article have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this Article.
- (4) This Article establishes minimum standards for the initial and continual occupancy and use of all dwellings including their premises, in addition to any other requirements of applicable law. All unoccupied or vacant dwellings shall be secured to prevent the entry of unauthorized persons or the occurrence of conditions not permitted by the standards set out herein.
- (5) Nothing in this Article shall limit the City's authority to proceed with any other applicable statute, code, ordinance or other applicable law in lieu of or in addition to proceeding under the terms of this Article IV.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-5531. Minimum Standards Adopted.**

A dwelling is unfit for human habitation if conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the City's jurisdiction. Defective conditions include, without limiting the generality of the foregoing, defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities, dilapidation, disrepair, structure defects, or uncleanness. In addition to and without limiting the generality of the foregoing, ~~A certain document, a copy of which is on file in the office of the city clerk, being marked and designated as the~~ Chapters 2 through 7 of ~~International Property Maintenance Code, 2003 Edition, as published by the International Code Council, hereinafter the "IMPC," are~~ is hereby adopted as ~~the Property Maintenance Code of the city~~ minimum standards for housing in the City of Hendersonville, and shall be

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additional standards used by the code enforcement officer in determining the fitness of a dwelling for human habitation. Each and all of the regulations, provisions, conditions and terms of Chapters Two through Seven of the IMPC are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Sec. 12-54 below. The IMPC is on file in the office of the City Clerk.

(Ord. No. 04-0745, § 1, 7-8-04)

**~~Sec. 12-52. Purpose.~~**

The purposes of the Property Maintenance Code are as follows:

- ~~(1) To regulate and govern the conditions and maintenance of all property, buildings and structures;~~
- ~~(2) To provide the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use;~~
- ~~(3) To provide for the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures;~~
- ~~(4) To provide for the issuance of permits and collection of fees therefor.~~

~~(Ord. No. 04-0745, § 2, 7-8-04)~~

**~~Sec. 12-53. Provisions adopted and on file with city clerk.~~**

~~Each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the city clerk are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in section 12-54 below.~~

~~(Ord. No. 04-0745, § 3, 7-8-04)~~

**Sec. 12-544. Revisions and Severability.**

(1) The following sections of the ~~Property Maintenance Code~~IMPC are hereby revised:

~~Section 101.1. Insert: "City of Hendersonville".~~

~~Section 103.5. Delete existing text and insert the following: "There shall be no fees for the activities and services performed by the department in carrying out its responsibilities under this code".~~

~~Section 304.14. Delete the following text: "During the period {date} to {date},".~~

{This will require that insect screens be provided year-round under the circumstances detailed in Section 304.14.}

~~Section 602.3. Delete the following text: "during the period from {date} to {date}."~~

{This will require that dwellings be provided heat, as specified in Section 602.3, for the entire year.}

~~Section 602.4. Insert: First date: "October 1"; second date: "May 1".~~

{This will require that indoor occupiable work spaces be provided heat from October 1 to May 1.}

(2) To the extent that any of the regulations, provisions, conditions, or terms, of the said Chapters 2 through 7 of the IMPC are deemed by a court of competent jurisdiction to be invalid, unenforceable, pre-empted or superseded by State law, or beyond the authority granted by N.C.G.S. Chapter 160D, Article 12, said regulation, provision, condition or term said be deemed severable, and the same shall not affect the enforceability or validity of the remainder of Chapters 2 through 7 of the IMPC as adopted herein.



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(Ord. No. 04-0745, § 4, 7-8-04)

### **Sec. 12-55. Designation and authority of enforcement officer.**

The Community Development Director and the code enforcement officer, and any person designated by the Community Development Director as a code enforcement officer, shall have the authority to exercise the powers prescribed by this Article IV within the City's jurisdiction. For ease of reference, the authorized enforcement officers identified by this section shall be collectively referred to in this Article IV as the "code enforcement officer." The code enforcement officer may determine that a dwelling is unfit for human habitation if the officer finds that conditions stated in Sec. 12-53 exist with respect to the dwelling. The code enforcement officer shall have such authority and power as is necessary or convenient to carry out and effectuate the purpose of this Article IV, in addition to the others herein granted.

### **Sec. 12-56. Definitions applicable to this Article IV.**

The definitions contained in N.C.G.S. § 160D-102 shall apply to this Article IV except to the extent that applicable state law provides a different definition, this Article contains a different definition, or the context of this Article indicates otherwise. To the extent the definitions in the IMPC conflict with the definitions provided by this Article, by N.C.G.S. § 160D-102, or by the North Carolina State Building Code, the definitions in the IMPC shall be superseded by the foregoing local and state laws, rules, codes and regulations in the stated order of priority. The following terms shall have the definition indicated when used in this Article IV:

- (1) Building – any structure used or intended for supporting or sheltering any use or occupancy.
- (2) Dwelling – as per N.C.G.S. § 160D-102: Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Article IV, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.
- (3) Owner - The holder of the title in fee simple and every mortgagee of record as provided in N.C.G.S. § 160D-1202. (This definition supersedes the definition of "Landowner or owner" provided in N.C.G.S. § 160D-102.)
- (4) Parties in Interest – All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof as provided in N.C.G.S. § 160D-1202.
- (5) Jurisdiction or City's jurisdiction– As use in this Article IV, the word "Jurisdiction" shall refer to the City's planning and development regulation jurisdiction (see N.C.G.S. § 160D-102)
- (6) Public authority – Any housing authority or any officer who is in charge of any department or branch of the City, Henderson County, or the State relating to health, fire, building regulations, or other activities concerning dwellings in the City and its planning and development regulation jurisdiction as provided in N.C.G.S. § 160D-1202.
- (7) Public officer – The code enforcement officer; the officer or officers who are authorized by ordinances adopted under Article 12 of Chapter 160D of the North Carolina General Statutes to exercise the powers authorized herein and by said Article 12 of Chapter 160D.

### **Sec. 12-56. Investigation, complaint and hearing.**

- (1) Whenever a petition is filed with the code enforcement officer by a public authority or by at least five residents of the City's jurisdiction charging that any dwelling is unfit for human habitation, or when it

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appears to the code enforcement officer that any dwelling is unfit for human habitation, the code enforcement officer shall, if a preliminary investigation<sup>4</sup> discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice providing all of the following:

- (a) That an administrative hearing will be held before the code enforcement officer, or their designated agent, at a place and time fixed in the complaint, not less than ten nor more than 30 days after the serving of said complaint. Venue for the hearing must be within Henderson County.
  - (b) That the owner and parties in interest shall have the right to file an answer to the complaint and to appear at the administrative hearing in person, or otherwise, and give testimony at the place and time fixed in the complaint.
  - (c) That any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard.
  - (d) That the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.
- (2) If, after notice and the administrative hearing, the code enforcement officer determines that the dwelling under consideration is unfit for human habitation, the officer shall issue a written order stating findings of fact in support of that determination, and shall issue and caused to be served upon the owner one of the following orders, as appropriate:
- (a) If the code enforcement officer determines that the repairs, alterations or improvements to the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. Without affecting the generality of the foregoing, repairs, alterations and improvements having a total cost of 50 percent or less than the present value of the dwelling, shall be deemed reasonable. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations or improvements, the current state of the property, and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under Sec. 12-58 below.
  - (b) If the code enforcement officer determines that the cost of repairs, alterations or improvements cannot be made a reasonable cost in relation to the value of the dwelling, the order shall require the owner, within the time specified in the order, to remove or demolish the dwelling. Without limiting the generality of the foregoing, a total cost of repairs, alterations or improvements which exceeds 50 percent of the present value of the dwelling, shall be deemed unreasonable.
  - (c) Where a determination is made pursuant to Sec. 12-56(2)(b) that costs to remedy the violations exceed 50 percent of the present value of the dwelling or are otherwise unreasonable, and the dwelling is located in a historic district, the Hendersonville Historic Planning Commission shall hold an administrative hearing to determine whether or not the dwelling is of particular significance or value towards maintaining the character of the district prior to the code enforcement officer's issuance of the order. If the Hendersonville Historic Planning Commission

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<sup>4</sup> 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 N.C.G.S. § 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

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makes a determination that the dwelling is of particular significance of value towards maintaining the character of the district, and the dwelling has not been condemned as unsafe, then the code enforcement officer's order shall order that the dwelling be vacated and closed consistent with N.C.G.S. § 160D-949.

- (3) The code enforcement officer shall have the authority to administer oaths, affirmations, examine witnesses, and receive evidence as part of the administrative hearing.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-57. Service of complaints and orders.**

- (a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service of a complaint or order is accomplished personally such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing. Regular mail that is not returned shall be deemed received on the 3<sup>rd</sup> consecutive calendar day following the date of mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of 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 Article. When service is made by publication, a notice of the pending proceeding shall be posted in a conspicuous place on the premises affected thereby.
- (c) In addition to the service described in 12-57(a) and (b), whenever a determination is made under Section 12-56(2) that a dwelling must be vacated and closed, or removed or demolished, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease or purchase the property for the purpose of providing affordable housing. The code enforcement officer shall certify the mailing of the notices and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the code enforcement officer to wait 45 days before causing removal or demolition.
- (c) The code enforcement officer shall certify in writing for the City records the date(s) and method(s) of service.

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-58. Failure to comply with orders.**

- (1) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the code enforcement officer may:
- (a) Cause the dwelling to be repaired, altered and improved, or to be vacated and closed;

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(b) Cause to be posted on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."

Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the dwelling, the code enforcement officer may:

(a) Cause the dwelling to be removed or demolished;

(b) Cause to be posted, pending demolition, on the main entrance of any structure so closed, a placard entitled, "Notice of condemnation" with the following words:

"Notice is hereby given that this building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful. Such building has been condemned under the building laws of the State of North Carolina and the City of Hendersonville."

Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(3) The duties of the code enforcement officer set forth in Sec. 12-58(1) or (2) shall not be exercised until the City Council has adopted an ordinance specifically describing the subject property and ordering the officer to do either of the following as appropriate:

(a) To cause such dwelling to be repaired, altered and improved or otherwise vacated and closed to comply with the standards established by this Article; or

(b) To cause such dwelling to be removed or demolished. Provided however, that no ordinance shall be adopted to require the demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the City's minimum housing code.

(4) The council, in ordering one of the aforesaid alternatives set out in Sec. 12-58(1) or (2), shall order the specific action that will best effectuate the purposes of this Article.

(5) An ordinance adopted pursuant to Sec. 12-58(1) or (2) above shall describe the property or properties. Once the ordinance is adopted by the council a true copy of such ordinance shall be recorded in the office of the register of deeds of the county and the registrar shall index the name of the property owner or owners in the "grantor index."

(6) The amount of the cost of repairs, alterations and improvements, or vacating, closing and removal or demolition carried out pursuant to Sec. 12-58(1) or (2) above shall be a lien against the real property upon which the cost was incurred. Such lien shall be filed, have the same priority and be collected as the lien for special assessment provided in Article 10, Chapter 160A of the North Carolina General Statutes. If the real property upon which the cost was incurred is located in the City, the amount of the foregoing 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. This additional lien is inferior to all prior liens and shall be collected as a money judgment.

(7) If the dwelling is removed or demolished by the code enforcement officer, the officer shall sell in any commercially reasonable manner the materials of the dwelling, and any personal property, fixtures, or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited by the code enforcement officer with the clerk of superior court, 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.

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- (8) Nothing in this Article shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (9) Nothing in this section shall be construed to impair or limit in any way the power of the building inspector in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of any other remedies provided herein or otherwise.
- (10) If the City Council has adopted an ordinance, or the code enforcement officer has issued an order requiring the dwelling to be repaired or vacated and closed, or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this Article IV, and the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order or during the proceeding, the City Council may proceed in accordance with N.C.G.S. § 160D-1203(6) to enact an ordinance to require the repair or demolishing of the dwelling within 90 days as provided by said 160D-1203(6).
- (11) If any occupant fails to comply with an order to vacate a dwelling, the code enforcement officer may file a civil action in the name of the City to remove the occupant in accordance with the terms and requirements contained in N.C.G.S. § 160D-1203(8).

(Ord. No. 08-0316, § 1, 3-6-08)

### **Sec. 12-59. Appeals.**

- (a) Appeals shall be governed by N.C.G.S. § 160D-1208. The Zoning Board of Adjustment is designated as the housing appeals board. An appeal from any decision or order of the code enforcement officer pursuant to this Article may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision or within ten days of service of such order. Such appeal shall be taken by filing with the code enforcement officer and with the board of adjustment (hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code 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, unless the code enforcement officer certifies to the board after the notice of appeal is filed with him/her, 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 that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the code enforcement officer by the board, or by a court of record upon petition made pursuant to subsection (d) of this section. Except where in conflict with N.C.G.S. § 160D-1208, all regulations, fees and other rules of the board shall apply to these appeals.
- (b) The board 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 board may reverse or affirm wholly or partly, 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, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of 2/3 of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The

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board shall have power also in passing upon appeals, in any case where unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(c) Reserved.

(d) Every decision of the board shall be subject to review by the county superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(e) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within 30 days after the issuance of the order or rendering of a decision, to petition the superior court for a temporary injunction, restraining the code enforcement officer pending a final disposition of the cause.

(Ord. No. 08-0316, § 1, 3-6-08)