

Chapter 8

BUILDINGS AND BUILDING REGULATIONS

Article I. In General

Sec. 8-1. Definitions.
Secs. 8-2—8-20. Reserved.

Article II. Building Numbers

Sec. 8-21. Required.
Sec. 8-22. Defacing numbers.
Sec. 8-23. Future buildings.
Sec. 8-24. Numbering system.
Secs. 8-25—8-51. Reserved.

Article III. State Building Code

Sec. 8-52. State building code adopted.
Sec. 8-53. Fire limits.
Sec. 8-54. Building moving.
Sec. 8-55. Permit.
Secs. 8-56—8-81. Reserved.

Article IV. Unsafe Structures

Sec. 8-82. Finding; intent.
Sec. 8-83. Director of inspections and permits division.
Sec. 8-84. Standards for enforcement.
Sec. 8-85. Investigations; issuance of complaint; hearing; decision of inspector.
Sec. 8-86. Definitions.
Secs. 8-87—8-115. Reserved.

Article V. Minimum Housing Standards

Sec. 8-116. Finding; purpose.
Sec. 8-117. Definitions.
Sec. 8-118. Fitness.
Sec. 8-119. Structural condition.
Sec. 8-120. Basic plumbing, heating and electrical equipment and facilities.
Sec. 8-121. Light, ventilation and screening.
Sec. 8-122. Space, use and location.
Sec. 8-123. Reserved.
Sec. 8-124. Sanitation.
Sec. 8-125. Reserved.
Sec. 8-126. Responsibilities of owners, operators and/or occupants.
Sec. 8-127. Powers and duties of housing inspector.
Sec. 8-128. Inspections.
Sec. 8-129. Procedure for enforcement.

CARY CODE OF ORDINANCES

- Sec. 8-130. Appeals from orders of the inspector; review by court.
- Sec. 8-131. Filing of notice of lis pendens.
- Sec. 8-132. Methods of service of complaints and orders.
- Sec. 8-133. Costs a lien on premises; disposition of property.
- Sec. 8-134. Other remedies.

ARTICLE I. IN GENERAL**Sec. 8-1. Definitions.**

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

Building official shall mean the director of the department of inspections and permits.

Department shall mean the department of inspections and permits.

Director shall mean the director of the department of inspections and permits.
(Code 1976, § 15-2(1—3); Code 1982, § 5-1)

Secs. 8-2—8-20. Reserved.**ARTICLE II. BUILDING NUMBERS****Sec. 8-21. Required.**

(a) Every owner of improved property shall furnish and at all times display in a conspicuous place on the street side of said property the correct property number as determined by the town. The numerals used to display this number shall be at least three inches high for residential properties and at least six inches high for commercial properties and shall be readily visible and legible from the street, and shall be of a color to contrast with their background, except that owners of multifamily property involving more than one primary building shall display property numbers at least six inches high for the shell building and unit or suite numbers at least three inches high.

(b) All primary buildings on property not fronting on a public street will display in a conspicuous place numbers or letters identifying said buildings. The characters used for such identification shall be at least six inches high, shall be readily visible and legible from the road, driveway, or parking lot that provides vehicular access to said buildings, and shall be of a color to contrast with their background.

(Code 1976, § 14-9; Code 1982, § 5-6; Ord. No. 85-2, § 1, 1-10-1985; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-22. Defacing numbers.

No person shall alter, deface or take down any number placed on any property in accordance with this article, except for repair or replacement of such number.

(Code 1976, § 14-9; Code 1982, § 5-17; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-23. Future buildings.

All residence and business buildings shall be assigned a number in accordance with the property-numbering policy adopted by the town council.

(Code 1976, § 14-8; Code 1982, § 5-18; Ord. No. 94-005, § 1, 4-14-1994)

Sec. 8-24. Numbering system.

Property shall be numbered in accordance with the policy adopted by the town council.
(Code 1976, § 14-6; Code 1982, § 5-9; Ord. No. 94-005, § 1, 4-14-1994)

Secs. 8-25—8-51. Reserved.**ARTICLE III. STATE BUILDING CODE*****Sec. 8-52. State building code adopted.**

The North Carolina Building Code as now or hereafter amended is adopted by reference.
(Code 1976, § 15-9; Code 1982, § 5-32)

Sec. 8-53. Fire limits.

The primary fire limits shall be identified as centering on Chatham Street with its boundaries defined by Walker Street to the east, the CSX Railroad right-of-way to the north, Harrison Avenue to the west, and Waldo Street to the south with its center line extending beyond Academy Street and intersecting Harrison Avenue at a point approximately 225 feet south of the Chatham Street center line.

(Code 1976, § 8-11; Code 1982, § 5-35)

State law reference—Fire limits, G.S. 160A-435 et seq.

Sec. 8-54. Building moving.

(a) No person shall move any house, building or structure upon or across the public streets or sidewalks without the written consent of the town manager and the deposit of a good and sufficient bond in an amount considered by the town manager to be sufficient to cover any damage occurring to public or private property.

(b) No person shall move or assist in moving from without into the fire district, or moving from one place to another within the same, any building of a type of construction other than those types permitted to be constructed within fire limits by the general statutes and the state building code.

(Code 1976, §§ 8-12, 14-50; Code 1982, § 5-36)

Sec. 8-55. Permit.

No permit shall be issued to any person who has failed after notice to remedy defective work, or has failed to pay a civil penalty assessed pursuant to this Code which is due and for which no appeal is pending for work performed under a permit issued pursuant to this chapter.

(Ord. No. 2007-18, 12-13-2007)

Secs. 8-56—8-81. Reserved.

***State law references**—Building code council and building code, G.S. 143-136 et seq.; building inspection by municipalities, G.S. 160A-411 et seq.; adoption of technical codes, G.S. 160A-76(b).

ARTICLE IV. UNSAFE STRUCTURES*

Sec. 8-82. Finding; intent.

It is hereby found that there exist within the town abandoned structures which the town council finds to be hazardous to the health, safety and welfare of the residents of the town due to the

***State law references**—Defective buildings, G.S. 160A-425 et seq.; minimum housing standards, G.S. 160A-441 et seq.

attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this article to provide for the repair, closing or demolition and removal of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition and removal of housing unfit for human habitation.

(Code 1982, § 5-72; Ord. No. 96-012, 11-14-1996)

Sec. 8-83. Director of inspections and permits division.

This article shall be enforced by the director and by his or her designee(s). The director is hereby designated and appointed to enforce the provisions of this article and to exercise the duties and powers prescribed herein, and in the minimum housing standards, including:

- (1) Investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this article;
- (2) Enter upon premises for the purpose of making inspections;
- (3) Administer oaths and affirmations, examine witnesses and receive evidence;
- (4) Designate such other officers, agents and employees of the town as the inspector deems necessary to carry out the provisions of this article;
- (5) Take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of such structures;
- (6) Keep an accurate record of the results of inspections made under this article and all enforcement proceedings begun pursuant to the provisions of this article; and
- (7) Perform such other duties as may be prescribed herein or in article V, or assigned to the inspector by the town council.

(Code 1982, § 5-73; Ord. No. 96-012, 11-14-1996)

State law reference—Mandatory provisions, G.S. 160A-443(1).

Sec. 8-84. Standards for enforcement.

(a) Every abandoned structure within the town shall be deemed in violation of this article whenever such structure constitutes a hazard to the health, safety or welfare of the town citizens as a result of:

- (1) The attraction of insects or rodents;
- (2) Conditions creating a fire hazard;
- (3) Dangerous conditions constituting a threat to children; or
- (4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(b) In making the preliminary determination of whether or not an abandoned structure is in violation of this article, the director may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

- (1) Holes or cracks in the structure's floors, walls, ceilings or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects.
- (2) The collection of garbage or rubbish in or near the structure which might attract rodents and insects, or become breeding places for rodents and insects.
- (3) Violations of the state building code, the state electrical code, or the fire codes which constitute a fire hazard in such structure.
- (4) The collection of garbage, rubbish or combustible materials which constitute a fire hazard in such structure.
- (5) The use of such structure or nearby grounds or facilities by children as a play area.
- (6) Violations of the state building code which might result in danger to children using the structure or nearby grounds or facilities as a play area.
- (7) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.

(Code 1982, § 5-74; Ord. No. 96-012, 11-14-1996)

Sec. 8-85. Investigations; issuance of complaint; hearing; decision of inspector.

The same powers and duties, provisions, and procedures shall apply for the investigation, issuance of orders, appeal procedures, and enforcement of orders pertaining to unsafe abandoned structures as apply to the enforcement of the town's minimum housing standards, article V, inclusive, except as follows: Wherever the term "housing" appears, the term "abandoned structure" shall be substituted therefor; wherever the phrase "unfit for human habitation" appears, the phrase "health, safety or welfare hazard" shall be substituted therefor.

(Code 1982, § 5-75; Ord. No. 96-012, 11-14-1996)

Sec. 8-86. Definitions.

(a) *Generally.* The following definitions to this article shall apply in addition to the applicable definitions contained in section 8-117:

Abandoned means deserted, or discontinuance of use.

Deteriorated means any structure which constitutes a hazard to the health, safety or welfare of the town and can be repaired, altered or improved to comply with this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspector.

Dilapidated means any structure which constitutes a hazard to the health, safety or welfare of the town citizens and cannot be repaired, altered or improved to comply with this article except at a cost in excess of 50 percent of its value, as determined by finding of the inspector.

Structure means that which is built or constructed.

(b) *Words having certain meanings.* Whenever the word "abandoned structure" is used herein, it shall be construed as though followed by the words "or any part thereof."
(Code 1982, § 5-76; Ord. No. 96-012, 11-14-1996)

State law reference—Similar provisions, G.S. 160A-445.

Secs. 8-87—8-115. Reserved.

ARTICLE V. MINIMUM HOUSING STANDARDS

Sec. 8-116. Finding; purpose.

(a) Pursuant to G.S. 160A-441, it is hereby declared that there exists in the town, housing which is unfit for human habitation due to:

- (1) Dilapidation;
- (2) Defects increasing the hazards of fire, accidents and other calamities;
- (3) Lack of ventilation, light and sanitary facilities; or
- (4) Other conditions rendering such dwellings unsafe or unsanitary for the occupants thereof or of neighboring dwellings or for other residents of the town.

(b) It is further declared that the existence of such unfit housing is dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of, the residents of the town.

(c) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. Ch. 160A, Art. 19, Pt. 6 (G.S. 160A-441 et seq.), it is the purpose of this article to establish and enforce minimum standards of fitness for the existence and initial and continued occupancy of all buildings used for human habitation, and for the protection of occupants of neighboring housing and other residents of the town, as expressly authorized by G.S. 160A-444.
(Code 1982, § 5-200; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010)

Sec. 8-117. Definitions.

(a) *Generally.* The following definitions shall apply in the interpretation and enforcement of this article:

Accessory structure means any building or structure used or intended to be used in conjunction with housing but not used for habitation, whether attached to or detached from a primary structure, including, but not limited to, sheds, storage buildings, carports and garages, and any attached fence.

Basement means a portion of any housing, at least 40 percent of the habitable space of which is located below finished grade level, having direct access to light and air from windows located above grade.

Cellar means a portion of any housing which is located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Deteriorated means housing which is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspector. Repair at a cost not in excess of 50 percent of the value is hereby deemed reasonable pursuant to G.S. 160A-443(3).

Dilapidated means housing which is substandard or unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this article except at a cost in excess of 50 percent of its value, as determined by finding of the inspector.

Dwelling means any building or structure, or part thereof, used or occupied for human habitation or intended to be so used, and includes any accessory structures and appurtenances belonging thereto or usually enjoyed therewith. Notwithstanding the preceding, manufactured homes, as defined in G.S. 143-145(7), are designed and constructed pursuant to standards other than those governing structures having permanent foundations. Therefore, manufactured homes shall not be subject to all of the standards contained herein; however, any conditions in a manufactured home that render housing "unfit" under this section shall constitute a violation of this article, and any combination of substandard conditions which, in the judgment of the inspector, renders a manufactured home dangerous or injurious to the health, safety or morals of the occupants of the home, nearby housing or other residents of the town shall constitute a violation of this article. Additionally, the term "dwelling" does not include any manufactured home which is used solely for a seasonal vacation purpose.

Dwelling unit means any habitable room or group of habitable rooms used or intended for occupation as a single housekeeping unit, with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Egress means a clear and unobstructed way of departure from the interior of housing to the exterior at street or grade level.

Extermination means the control and elimination of insects, rodents or other pests by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal pest elimination methods approved by the inspector.

Flue means an enclosed pipe, duct or passageway used only for the transmission of heat or the products of combustion.

Garbage means the organic waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room or habitable space means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, communicating corridors, wall areas, storage spaces, and any area beneath a ceiling of less than four and one-half feet in height.

Housing means any residential building, dwelling, dwelling unit, multiple dwelling, apartment, boardinghouse or similar building or structure, or part thereof, together with the premises of such building, and other appurtenances thereto.

Impervious to water (as to floors) means a clean, smooth floor, without cracks or holes, made of terrazzo, ceramic, asphalt or rubber tile, smooth concrete, linoleum or other similar material, or made of wood, and, if made of wood, then with tightly fitting joints, covered with varnish, lacquer or other similar water-resistant coating.

Infestation means the presence of any insects, rodents or other pests within or around housing in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

Inspector means the director of inspections and permits department and his or her designee(s). In addition to the powers and responsibilities granted in this article, the inspector shall have and may exercise the powers and responsibilities of "public officer" set forth in G.S. 160A-441 et seq.

Landings means any flat area around doorways, ramps, or stairs as required by the state residential building code and shall be at least three foot in depth with a minimum width no less than the door it serves.

Multiple dwelling means any housing containing more than two dwelling units.

Occupant means any person living, sleeping, cooking or eating in, or having actual possession of, housing.

Operator means any person who has charge, care or control of a building, or part thereof, in which housing is let.

Owner means any person who is the holder of title in fee simple to housing, and every mortgagee of record.

Party or parties in interest means all persons who have interest of record in housing, and any persons who are in possession thereof.

Person means any individual, corporation, limited liability company, firm, partnership, association, conservator, receiver, trustee, executor or other legal entity.

Plumbing means supplied fixtures, as defined herein, together with all connections to water, sewer or gas lines within the property lines of the premises, employed for use of water, sewer or gas utilities, including, but not limited to, gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), sewage disposal pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines, catch basins, drains, vents and traps.

Porch means a covered area greater than 25 square feet with a roof at an entrance to housing.

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

Public authority means any housing authority or any officer or employee of any department or branch of the governments of the town, county, or the state relating to health, safety, law enforcement, fire or building regulations or other activities concerning housing in the town.

Remove and demolish means the demolition and removal of the entire building or structure, leaving the premises free and clear of any debris, any excavation properly filled in, and with no holes or pockets which may retain water.

Rubbish means combustible or noncombustible waste materials, except garbage, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass or dust.

Structure means that which is built or constructed.

Substandard means any condition existing in any housing which does not meet the standards of fitness of this article as stated in Sections 8-119 through 8-126.

Unfit for human habitation or unfit means housing which is dangerous or injurious to the health, safety or morals of the occupants of the housing, the occupants of neighboring housing, or other residents of the town, as further described in Section 8-118(c).

Vacate and close means that housing shall be secured to prevent entry, including all outer doors firmly locked and basement, cellar and windows barred or boarded. It also means that such housing shall not again be used for human habitation until all violations are corrected and an inspection is conducted by the inspector to verify compliance with this article.

Value means the total value of any structure which is the subject of an order hereunder, as appraised for ad valorem tax purposes on the duly adopted and recorded tax rolls of the county on the date of the inspector's initial order pursuant to section 8-129(b) herein.

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Weathertight means so constructed that the housing resists weather and excludes precipitation and prevents the infiltration of air.

(b) *Words having certain meanings.* Whenever the words "housing," "dwelling," "dwelling unit," and "premises" are used in this article, they shall be construed as though they were followed by the words "or any part thereof."

(Code 1982, § 5-201; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-118. Fitness.

(a) All housing used as human habitation, or held out for use as human habitation, should comply with all of the minimum standards of fitness for human habitation set forth as sections 8-119 through 8-126, inclusive, of this article, and any housing which does not so comply is considered substandard.

(b) No person shall occupy as owner-occupant, or let to another for occupancy or use as a human habitation, any housing which is unfit for human habitation as provided below.

(c) The Town Council hereby finds that existence of any one of the following conditions renders housing unfit for human habitation:

- (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 nonsupporting, enclosing or outside wall or covering which shows 50 percent or more of damage or deterioration;
- (3) Floors or roof 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, water or other causes as to render the building unsafe or dangerous to the health, safety, or morals of the occupants or other people in the town;
- (5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or morals of the occupants or other people in the town;
- (6) The means of exit or escape in case of fire, accident or other calamity is blocked, structurally unsafe, or otherwise insufficient;
- (7) Defects significantly increasing hazards of fire, accident or other calamity;
- (8) Lack of adequate ventilation, light, heating or sanitary facilities required by this article to such an extent as to endanger the health, safety, morals or general welfare of the occupants or other residents of the town;
- (9) Lack of proper electrical, heating or plumbing facilities required by this article which constitute a health or safety hazard;
- (10) Lack of adequate weatherization as required by sections 8-119 and 8-121;
- (11) Lack of an operable smoke detector or an operable carbon monoxide detector, as required by section 8-126 and state law;
- (12) Any combination of other conditions that are substandard under this article which, in the judgment of the inspector, renders any housing dangerous or injurious to the health, safety or morals of the occupants of the housing, the occupants of neighboring housing, or other residents of the town, including, but not limited to, defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation disrepair; structural defects; or uncleanness.

(Code 1982, § 5-202; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-119. Structural condition.

The following standards shall constitute the minimum standards for structural condition of any housing:

(1) *Foundations.*

- a. A foundation wall shall support the building at all points and shall be free of holes and cracks which would admit rodents, water or dampness to the interior of the housing or lessen the capability of the foundation to support the housing.
- b. Footings shall be sound and have adequate bearing capacity.
- c. Piers shall be sound with no loose mortar or masonry.
- d. No pier in which the plumb line from top center falls outside the middle one-third of the pier base shall be allowed.
- e. No wood stiff-knees or other improper piers shall be allowed.
- f. The space between the ground and the first floor of all housing shall be enclosed with masonry or other permanent material of at least one-half inch in thickness, except where underpinning is not consistent with the architecture of the housing, as determined by the inspector. Where wood is used as underpinning, such wood, in addition to the conditions set out above, shall be weather-treated and permanently affixed. Where no underpinning is required, the ground level floor shall be substantially weathertight and insulated to R-19 value.
- g. Crawl space shall be graded so as to prevent any standing water.
- h. A crawl space access hole having a door shall be provided to any under-floor space in all housing.
- i. Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

(2) *Floors.*

- a. Floors shall have adequate supporting members and strength to be reasonably safe for the purpose used, shall not have improperly distributed loads, and shall not be overloaded.
- b. There shall be no use of the ground for floors, nor shall there be wood floors on the ground.
- c. There shall be no decayed, termite-damaged, fire-damaged, broken, overloaded or sagging sills, beams, girders, joists, or flooring that adversely affect the structural integrity of the housing framing system, floor framing system, or flooring.

- d. Flooring shall be weathertight and watertight without holes or cracks which permit excessive air to penetrate rooms, and shall be kept in a clean and sanitary condition.
- e. There shall be no loose flooring and floors and supporting members shall be reasonably smooth and level so as not to constitute a trip hazard.
- f. Every kitchen, laundry room, water closet compartment and bathroom floor surface shall be constructed and maintained so as to permit such floor to be reasonably impervious to water. The floor surfaces shall be covered with a nonabsorbent material.

(3) *Walls, exterior.*

- a. Walls or partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, and shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.
- b. There shall be no wall in which the plumb line from the top to the floor exceeds three inches.
- c. All exterior surfaces shall be structurally sound, waterproof, weatherproof and verminproof.
- d. All exterior finishes shall be weathertight with no holes, cracks or rotted boards which permit outside air or water to penetrate rooms.
- e. Windows shall be easily openable, shall have panes without cracks or holes, and the sash shall fit properly.
- f. There shall be no deterioration due to the elements because of lack of preventive maintenance consisting of painting, waterproofing and repair.

(4) *Walls, interior.*

- a. Interior walls of all rooms, closets and hallways shall be finished of suitable materials.
- b. The interior finish shall be free of holes and cracks which permit air to penetrate rooms excessively.
- c. No studs shall be rotted or termite-damaged.
- d. No broken or cracked studs or other broken or cracked structural members shall be allowed.
- e. All walls, woodwork, doors and windows shall be kept clean and free of any flaking, loose or peeling paint.
- f. Cardboard, newspaper or other highly combustible or improper wall finish is prohibited.
- g. No interior walls or vertical studs which seriously list, lean or buckle shall be allowed.

(5) *Ceilings.*

- a. Ceilings of all rooms, closets and hallways shall be finished of suitable materials, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.
- b. No joists shall be rotted, broken or sagging or have improperly supported ends.
- c. There shall be no holes or cracks which permit air excessively to penetrate rooms.
- d. No loose plaster, loose boards, loose sheetrock or other loose ceiling finish shall be permitted.
- e. There shall be no cardboard or other highly combustible material used as a ceiling finish.
- f. All ceilings shall be kept clean and free of any flaking, loose or peeling paint and paper.

(6) *Roof.*

- a. The roof and flashings shall be constructed and maintained so as to be weathertight and watertight.
- b. Rafters shall not be rotted, broken, sagging or have improperly supported ends.
- c. Attics shall be properly vented.
- d. No rotted, loose or sagging sheathing shall be allowed.
- e. No loose roof covering shall be allowed, nor shall there be allowed any holes or leaks which could cause damage to the structure or rooms.
- f. Walls and chimneys shall have proper flashing.
- g. No rafters shall be damaged by fire.
- h. Roofs shall not have improperly distributed loads and shall not be overloaded.

(7) *Porches, landings, etc.*

- a. Foundation, floor, ceiling and roof shall be equal to standards as set forth above, except sills and joists need not be level if providing drainage of floors; floors need not be weathertight; floors need not be level if providing for drainage; ceiling height shall not be less than seven feet, zero inches and attic need not be vented.
- b. Posts and railings shall not be rotted or termite-damaged.

- c. Every porch, terrace or entrance platform located at least 30 inches above the adjacent finished grade shall be equipped with adequate railings.
- d. Every porch and any railing or other appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.

(8) *Stairs and steps.*

- a. Stairs and steps shall be free of holes, grooves and cracks that are large enough to constitute accident hazards.
- b. Stairwells and flights of stairs, attached to or within a dwelling unit, that contain more than four risers shall have rails not less than 30 inches and not more than 38 inches measured vertically from the nose of the treads to the top of the rail.
- c. Every rail on all porches, balconies or any raised surface greater than 30 inches from finished grade shall be firmly fastened and maintained in good condition.
- d. No flight of stairs settled more than one inch out of its intended position or pulled away from supporting or adjacent structures shall be allowed.
- e. No rotting, sagging or deteriorated supports shall be allowed.
- f. Stairs shall be plumb, level and treads shall be uniform in width, and risers uniform in height, sound and securely fastened to structure. A slight uniform tilt of the treads to aid in the runoff of water is permissible for exterior steps.
- g. Every outside and inside stair and any railing or other appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.

(9) *Egress.* A safe, continuous and unobstructed egress shall be provided from every dwelling unit to required exit to the external street or grade level as required by the state residential building code in case of fire or panic.

(10) *Chimneys.* There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

(11) *Basement walls.* Basement walls shall be constructed and maintained so as to be weathertight and watertight.

(12) *Doors and windows.* All doors and windows exposed to the weather, and all basement or cellar doors and hatchways, shall be constructed and maintained so as to be weathertight, watertight, rodentproof, and in sound working condition and good repair.

(Code 1982, § 5-203; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-120. Basic plumbing, heating and electrical equipment and facilities.(a) *Plumbing system.*

- (1) All housing shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.
- (2) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.
- (3) All plumbing fixtures shall meet the standards of the state plumbing code and shall be maintained in a state of good repair and in good working order.
- (4) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of such dwelling unit. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

(b) *Heating system.* All housing shall have facilities for providing heat in accordance with the following:

- (1) *Central and electric heating systems.* Every central or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathrooms and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of 68 degrees Fahrenheit measured at a point three feet above the floor at an outside temperature of 20 degrees Fahrenheit.
- (2) *Other heating facilities.* Where a central or electric heating system is not provided, all housing shall be provided with sufficient fireplaces, chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms with a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor at an outside temperature of 20 degrees Fahrenheit.
- (3) All heating systems and facilities shall meet the standards of the state mechanical code and shall be maintained in a state of good repair and in good working order.
- (4) Portable kerosene heaters are not acceptable as a permanent source of heat, but may be used as a supplementary source in single family dwellings and duplex units.

(c) *Electrical system.*

- (1) All housing shall be wired for electric lights and receptacle outlets.
- (2) Every habitable room shall contain at least two floor or wall-type receptacle outlets, connected in such manner as determined by the state electrical code.
- (3) There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall-type electric light fixture.

- (4) In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three floor or wall-type receptacle outlets, one of which shall be a switched outlet.
- (5) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient, operable by means of conveniently located light switches.
- (6) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the state electrical code.
- (7) No receptacles, ceiling fixtures or other fixtures shall be broken or hanging loose.
- (8) There shall be no bare wires, open joints or spliced cables.
- (9) No branch circuits shall be overloaded or have overcurrent protection devices installed that exceed the current carrying capacity of that circuit.

(Code 1982, § 5-204; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-121. Light, ventilation and screening.

(a) *Window area.*

- (1) Every habitable room shall have at least one window or skylight facing directly to the outdoors.
- (2) The minimum total window area for every habitable room shall measure eight square feet or eight percent of the floor area, whichever is greater.
- (3) Whenever walls or other portions of structures face a window of any room and such light-obstructing structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area.
- (4) Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least 15 percent of the total floor area of such room.

(b) *Openable windows, ventilators.*

- (1) Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room.

(c) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.

(d) *Windows and doors.* Windows and doors shall be reasonably weathertight, shall have no broken glass, and shall have adequate operable locks and hardware.

(e) *Screening.*

(1) During the period of April 1 to October 1, inclusive, for protection against mosquitoes, flies and other insects, every door opening from any housing directly to outdoor space shall have supplied screens and a self-closing device, and every openable window or other device opening to outdoor space used, designed or intended to be used for ventilation shall likewise be supplied with screens.

(2) Habitable space which is mechanically ventilated year-round by permanently installed central air conditioning equipment shall be exempt from this standard.

(f) *Basement and cellar screening.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be equipped with screens or such other approved device as will effectively prevent their entrance.

(Code 1982, § 5-205; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-122. Space, use and location.

Every dwelling unit shall contain at least the minimum room size and egress requirements for habitable space required by the applicable state residential building code. In addition:

(1) *Principal room.* A living or principal room shall contain not less than 150 square feet.

(2) *Kitchens.* Kitchens shall contain not less than 50 square feet, and a kitchen-dining room combination, if any, shall contain not less than 100 square feet.

(3) *First bedrooms.* The first bedroom shall contain not less than 100 square feet.

(4) *Other bedrooms.* All other bedrooms, if any, shall contain not less than 70 square feet each.

(5) *Minimum room size.* Each habitable room shall have at least 70 square feet.

(6) *Minimum floor area.* Every dwelling unit shall contain a total floor area of at least 150 square feet of habitable space for the first occupant, at least 100 square feet of additional habitable floor area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant over the number of four occupants. Children less than one year of age shall not be counted.

(7) *Minimum sleeping area.* In every dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age. In addition, egress requirements per N.C. Building Code, 1968 Edition, shall be met.

- (8) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches.
- (9) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area; however, closet area and wall area within the dwelling unit may count for not more than ten percent of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.
- (10) *Cellars.* Cellars shall not be used for living purposes.
- (11) *Basements.* Basements shall not be used for living purposes, unless:
- a. The floor and walls are impervious to leakage of underground and surface runoff water;
 - b. The total window area, total openable window area and ceiling height are equal to those required for habitable rooms; and any room used for sleeping must meet subsection 7 above.
 - c. The required minimum window area of every habitable room is entirely above the grade adjoining such window area.

(Code 1982, § 5-206; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-123. Reserved.

Sec. 8-124. Sanitation.

(a) *Rubbish and garbage storage and disposal.*

- (1) Yards and courts within the premises of any housing shall be kept clean and free of rubbish, trash, garbage, debris, litter or unstacked wood.
- (2) All housing shall be supplied with approved containers and covers for storage of rubbish, as required by town ordinances, and the owner of such housing shall be responsible for the removal of rubbish.
- (3) Every dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit, or an approved outside garbage can as required by town ordinances.

(b) *Drainage.* Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.

(c) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of species of weeds or plant growth which are noxious or detrimental to health.

(d) *Infestation.*

- (1) Every occupant of housing consisting of a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises.
- (2) Any occupant of housing containing more than one dwelling shall be responsible for such extermination whenever his unit is the only one infested.
- (3) If infestation is caused by failure of the owner to maintain housing in a rodentproof or reasonably insectproof condition, or if infestation exists in two or more of the dwelling units in any housing in the shared or public parts of any housing containing two or more units, extermination shall be the responsibility of the owner.

(e) Violations of this Section may also be enforced pursuant to applicable sections of Chapter 18 of the Town Code of Ordinances.

(Code 1982, § 5-208; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-125. Reserved.

Sec. 8-126. Responsibilities of owners, operators and/or occupants.

(a) *Public areas.* Every owner of housing containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the housing and premises thereof.

(b) *Cleanliness.* Every occupant of housing shall keep in a clean and sanitary condition that part of the housing and premises thereof which he occupies and controls.

(c) *Rubbish and garbage.* Every occupant of housing shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases, the owner shall be responsible for the availability of rubbish and garbage storage facilities.

(d) *Supplied plumbing fixtures.* Every occupant of housing shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of such plumbing fixtures.

(e) *Care of facilities, equipment and structure.* No occupant shall willfully destroy, deface, or impair any of the facilities or equipment or any part of the structure of the housing occupied.

(f) *Smoke detectors.*

- (1) The owner or operator of every occupied dwelling or dwelling unit shall provide each dwelling or dwelling unit with at least one operable smoke detector installed outside the sleeping areas, to be located on or near the ceiling.
- (2) Detectors shall be electrically or battery operated and shall provide an audible alarm when activated.

- (3) For purposes of this subsection, the term "operable" is defined as working when a battery is inserted or the electricity is on; however, neither the owner nor the landlord is obligated to provide the electricity or replacement batteries for its operation.
- (4) Notwithstanding the provisions of this article, where the state building code requires the installation of an electrical smoke detector or alarm, that code or provision shall control.

(g) *Carbon monoxide detectors.* Carbon monoxide detectors shall be provided and maintained as required by state law.

(Code 1982, § 5-210; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-127. Powers and duties of housing inspector.

The housing inspector is hereby designated and appointed to enforce the provisions of this article and to exercise the duties and powers herein prescribed:

- (1) To investigate housing conditions and to inspect housing located in the town in order to determine which housing is unfit for human habitation, and to carry out and effectuate the objectives of this article with respect to the repair, closing or demolition of such housing;
- (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
- (3) To keep a record of the results of inspection made under this article and an inventory of housing that does not meet the minimum standards of fitness herein prescribed;
- (4) To administer oaths and affirmations, examine witnesses, and receive evidence;
- (5) To enter upon premises for the purposes of making examinations and inspections; provided, such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- (6) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of this article;
- (7) To delegate any of the inspector's functions and powers under this article; and
- (8) To perform such other duties as may be prescribed herein or by the town council.

(Code 1982, § 5-211; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-128. Inspections.

(a) *Authority to enter.* For the purpose of making inspections and otherwise performing duties under this article, the inspector is hereby authorized to enter, examine and survey at all reasonable times all housing for the purpose of performing the inspector's duty of safeguarding the health and safety of the occupants of housing and of the general public.

(b) *Obtaining a warrant.* Whenever an owner, occupant, or agent thereof shall deny the inspector reasonable access to any premises for purposes of making inspections, the housing inspector shall obtain a warrant to inspect as authorized by G.S. 15-27.2. (Code 1982, § 5-212; Ord. No. 96-012, 11-14-1996)

Sec. 8-129. Procedure for enforcement.

(a) *Preliminary investigation; notice; hearing.* On the inspectors own motion, on request of any public authority, or upon receipt of a petition signed by any five residents of the town alleging that any housing is unfit for human habitation, the inspector shall undertake a preliminary investigation of the premises. If the inspector's preliminary investigation discloses a basis for such charges, the inspector shall issue a complaint stating the charges and containing a notice that a hearing will be held before the inspector or the inspector's designated agent at a place within the county in which the property is located, not less than ten nor more than 30 days after the serving of the complaint. The inspector shall serve the complaint and notice upon the owner of, and parties in interest in, such housing. The owner and any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

(b) *Issuance of order after hearing.* If, after such notice and hearing, the inspector shall determine that the housing under consideration is unfit for human habitation under the terms of this article, the inspector shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. If any party in interest took part in the hearing, the order shall also be served on that person. The order shall do the following:

- (1) *Deteriorated housing.* If the housing is determined to be deteriorated, the order shall require the owner, within the time specified in the order, to repair, alter or improve it in order to render it fit for human habitation. The order may require that the housing 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 housing; 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 subdivision (d)(2)b of this section; or
- (2) *Dilapidated housing.* If the housing is determined to be dilapidated, the order shall require the owner, within the time specified in the order, to demolish or remove such housing.
- (3) *Historic housing.* Notwithstanding subsection (b)(2) above, or any other provision of law, if the housing is located in a historic district of the town and the historic district commission determines, after a public hearing as provided by ordinance, that the housing is of particular significance or value toward maintaining the character of the district, and the housing has not been condemned as unsafe, the order may require that the housing be vacated and closed consistent with G.S. 160A-400.14(a).

(c) *Notice to affordable housing organizations.* In compliance with G.S. 160A-443(8), whenever a determination is made that the housing must be vacated and closed, or removed or demolished, the inspector shall send notice of the order 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 inspector.

(d) *Failure to comply with order.*

- (1) It shall be unlawful for the owner of any housing to fail, neglect, or refuse to repair, alter, or improve the same, or to fail, neglect or refuse to vacate and close or vacate and demolish and remove such housing, upon order of the inspector duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense.
- (2) Unless specifically provided otherwise, violation of this article shall be a civil offense. If an owner fails to comply with an order to repair, alter or improve or to vacate and close, or demolish or remove any housing, any one, all, or combination of the enforcement actions authorized by law may be taken, including those set forth herein.

a. *Civil penalty.*

1. If the owner of any deteriorated or dilapidated housing shall fail to comply with an order of the inspector within the time specified therein, or if any housing is occupied in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, the owner shall be subject to a civil penalty of \$100.00 for the first 30 day period or part thereof in which a violation is allowed to persist, \$200.00 for the second 30 day period or part thereof in which a violation is allowed to persist, and \$400.00 for the third or any subsequent 30 day period in which the violation is allowed to persist. Each subsequent 30 day period after the third will be subject to a civil penalty of \$400.00. Each 30 day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense. If a person fails to pay the civil penalty within ten days after being notified of the amount due, the town may recover the civil penalty together with all costs by filing one or more civil actions in the general court of justice in the nature of a suit to collect a debt. The town attorney is hereby authorized to file suit on behalf of the town to collect any civil penalties, and the town manager is hereby authorized to verify and sign complaints on behalf of the town in such suits.
2. No civil penalty shall be imposed against an owner of unfit housing where the only violation rendering the housing unfit is a violation for which this article provides that the occupant is the sole person responsible, unless the owner is also the occupant.
3. If the owner of any deteriorated or dilapidated housing shall fail to comply with an order of the inspector within the time specified therein, or if any housing is occupied in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, two times or more within any 12-month

period regarding the same housing unit, the civil penalty for the second and all subsequent violations shall be double the amounts specified in subsection (d)(2)(a)(1) above.

- b. *Action pursuant to ordinance.* If the owner of deteriorated or dilapidated housing fails to comply with an order of the inspector within the time specified therein and court ordered relief has not been sought or has not been granted as provided in subsection (d)(2)e, the inspector may cause the housing to be repaired, altered, improved, vacated, closed or demolished and removed, as required by the order, provided the inspector takes the following steps. The inspector may submit to the town council for adoption an ordinance describing the property and ordering the inspector to proceed to effectuate the purpose of this article with respect to the particular property or properties which the inspector found to be unfit for human habitation. No such ordinance shall be adopted to require demolition and removal of housing until the owner has first been given a reasonable opportunity to bring it into conformity with this article. Such ordinance shall be recorded in the office of the register of deeds of the county where the property is located, and shall be indexed in the name of the property owner in the grantor index. After the adoption of an ordinance authorizing that housing be vacated and closed, the inspector may post a placard on the main entrance of any housing so closed stating "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." If any occupant fails to comply with an order to vacate housing after adoption of such ordinance, the inspector may file a civil action in the name of the town to remove such occupant in accordance with G.S. 160A-443(7), including the provision of 30 days' prior notice to an occupant who is a tenant of the owner.
- c. *Occupation in violation of posting a misdemeanor.* Notwithstanding any other provision of this article, in accordance with G.S. 160A-443(4), occupation of a building posted by the inspector pursuant to subsection (d)(2)b shall constitute a class 1 misdemeanor.
- d. *Additional ordinance one year later.* If the town council shall have adopted an ordinance pursuant to subsection (d)(2)b above or, if the inspector shall have issued an order ordering a dwelling to be repaired or vacated and closed, as provided in subsection (b)(1) above, and if the owner has vacated and closed such housing and kept such housing vacated and closed for a period of one year pursuant to the ordinance or order, then, if the town council shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the housing in its vacated and closed status would be inimical to the health, safety, morals and welfare of the town in that the housing would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, or would render unavailable property and housing which might otherwise have been made available to ease the persistent shortage of decent and affordable housing, in such circumstances the town council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner requiring the owner to either repair or demolish and remove the housing within 90 days. Such ordinance shall

meet the requirements set forth in G.S. 160A-443(5a) and shall be recorded in the office of the register of deeds of the county where the housing is located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance within the time fixed by such ordinance, then the inspector shall effectuate the purpose of the ordinance.

- e. *Court-ordered relief.* If the owner of any deteriorated housing shall fail to comply with an order of the inspector to repair, alter, or improve or to vacate and close such housing within the time specified therein, or if the owner of dilapidated housing shall fail to comply with an order of the inspector to demolish or remove such housing within the time specified therein, or if any housing is erected, constructed, altered, repaired, converted, maintained, or used in violation of this article or any valid order or decision of the inspector or board of adjustment made pursuant to this article, the inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use; to restrain, correct or abate the violation; to prevent the occupancy of the housing; or for any other purpose authorized by G.S. 160A-446(g) or other law.
- f. *Other enforcement action.* The failure of the owner to comply with an order issued by the inspector may also be enforced through any equitable or other remedy deemed appropriate by the town and permitted by law.

(Code 1982, § 5-213; Ord. No. 96-012, 11-14-1996; Ord. No. 05-003, 2-24-2005; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

State law reference—Penalties for ordinance violations, G.S. 14-4, 160A-175.

Sec. 8-130. Appeals from orders of the inspector; review by court.

(a) *Appeals board.* All appeals which may be taken from decisions or orders of the inspector pursuant to this article shall be heard and determined by the zoning board of adjustment. If the zoning board of adjustment ("board of adjustment") consists of more than five members, the chairman may designate five members to hear appeals under this article. As the appeals body, the board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall keep an accurate record of all its proceedings.

(b) *When appeal may be taken.* An appeal may be taken by any person aggrieved thereby, or by any officer, board or commission of the town, from a final decision or an order of the inspector, unless a different method of appeal is provided for herein. Any appeal shall be taken within ten days from the rendering of the decision or service of the order, as the case may be, by filing with the inspector and with the board of adjustment a written notice of appeal which shall specify the grounds upon which the appeal is based. The notice of appeal must be accompanied by the appropriate fee, as established by the town council in the annual operating budget.

(c) *Duty of inspector upon the filing of an appeal.* Upon the filing of any notice of appeal, the inspector shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the final decision or order appealed from was made.

(d) *Staying of action.* When an appeal is from a decision or order of the inspector refusing to allow the person aggrieved thereby to do any act, the inspector's decision or order shall remain in force until modified or reversed. When an appeal is from a decision or order of the inspector 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 inspector certifies to the board, after the notice of appeal is filed with the inspector, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of the inspector's 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 shown upon not less than one day's written notice to the inspector, by the board of adjustment, or by a court of record upon petition made pursuant to G.S. 160A-446(f) and this section.

(e) *Hearing of appeals.* The 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. The provisions of the Town of Cary Land Development Ordinance regarding notice of hearings do not apply to the hearing before the board of adjustment. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the inspector, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this article, to adapt the application of this article to the necessities of the case to the end that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. A copy of the board's decision shall be served on the appellant by the inspector.

(f) *Petition to superior court.*

(1) Every decision of the board of adjustment shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the date of service of the decision of the board, but not otherwise.

(2) Any person aggrieved by an order issued by the inspector or a decision rendered by the board of adjustment may petition the superior court for an injunction restraining the inspector from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be held in accordance with G.S. 160A-446(f).

(Code 1982, § 5-214; Ord. No. 96-012, 11-14-1996; Ord. No. 2010-Code-01, 3-10-2010; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-131. Filing of notice of lis pendens.

Lis pendens (a pending suit), in general terms, is a notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and they are in danger of being bound by an adverse judgment. Upon the issuance of a complaint and notice of hearing or 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 by the inspector in the office of the clerk of superior court for the county, as provided in G.S. 1-120.2. The inspector shall serve a copy of the notice of lis pendens upon the owners and parties in interest in the housing. The inspector may have the notice of lis pendens canceled at such time as the housing is brought into conformity with this article by sending to the clerk of superior court a notice asking that the notice of lis pendens be canceled.

(Code 1982, § 5-215; Ord. No. 96-012, 11-14-1996)

Sec. 8-132. Methods of service of complaints and orders.

(a) Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail. 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 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector 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 inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the town at least once no later than the time at which personal service would be required under these provisions. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

(Code 1982, § 5-216; Ord. No. 96-012, 11-14-1996; Ord. No. 05-003, 2-24-2005)

State law reference—Similar provisions, G.S. 160A-445.

Sec. 8-133. Costs a lien on premises; disposition of property.

(a) *Lien.* As provided by G.S. 160A-443(6), the cost of any repairs, alterations, or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the inspector pursuant to this article shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by G.S. ch. 160A, art. 10 (G.S. 160A-216 et seq.). Such lien, if against real property located within the town limits, is also a lien on any other real property of the owner located within the town limits or within one mile thereof except for the owner's primary residence. This additional lien is inferior to all prior liens and shall be collected as a money judgment. All liens shall be filed in the office of the register of deeds of the county where the property is located.

(b) *Disposition.* If the housing is removed or demolished by the inspector, the inspector shall sell the materials of the housing, and any personal property, fixtures or appurtenances found in or attached to the housing, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the inspector, 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.

(Code 1982, § 5-217; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)

Sec. 8-134. Other remedies.

Nothing contained herein or in any other part of this article shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary action or otherwise; to enforce any provision of its charter, or its ordinances or regulations; or to prevent or punish violations thereof, and the procedure described herein shall be in addition and supplemental to the powers conferred on the town by any other law.

(Code 1982, § 5-218; Ord. No. 96-012, 11-14-1996; Ord. No. 2011-Code-04, 6-16-2011)