

TOWN OF CARRBORO-NONRESIDENTIAL BUILDING ORDINANCE

Sec. 11A-1- Title. This ordinance shall be known and may be cited and referred to as the "Town of Carrboro Nonresidential Building Ordinance."

Sec. 11A-2. - Purpose. In order to protect the health, safety and welfare of the Town and its residents and citizens including but not limited to owners and occupants of nonresidential buildings or structures, it is the purpose of this ordinance to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by G.S. § 160A-439. This ordinance provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

Sec. 11A-3. - Definitions. The following words and phrases shall have the meanings set forth herein unless the context clearly indicates otherwise:

Administrator means the Town officer designated to administer and enforce this ordinance.

Agent means any person, firm or corporation who is responsible for the management, maintenance, operation, renting, leasing or sale of any property, or who makes application for or seeks a permit or certificate on behalf of the owner of any property or who in any other way represents the owner of the property in any particular case.

Bathroom means a heated enclosed space with privacy containing a toilet with access to a lavatory (either within enclosed space or specifically accessible by enclosed space).

Building means any structure built for the shelter or enclosure of persons, animals or property of any kind or any part of such structure, shelter or property.

Nonresidential means any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, or permanent living space or sleeping space for one or more human beings.

Owner shall mean any person who alone, jointly, or severally with others:

- (1) Shall have title in fee simple to, or hold mortgage or deed of trust in, any nonresidential building or structure, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this ordinance and of rules and regulations adopted pursuant thereto, to the same extent as if such person were the owner.

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

Premises means any lot or parcel of land inclusive of any building or improvements located thereon.

Structure means, in addition to its ordinary meaning, anything constructed, regardless of where it was constructed.

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

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

Sec. 11A-4. - Applicability and compliance.

- (a) This ordinance of this ordinance shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the corporate limits of the Town.
- (b) Every nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this ordinance, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this ordinance, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This ordinance establishes minimum standards for all nonresidential buildings or structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure contained therein.

Sec. 11A-5. - Maintenance standards for nonresidential buildings and structures.

(a) *Space and use standards.*

- (1) The floor and walls, if in contact with the earth, are waterproof and dampproof in accordance with the state building code requirements. Such waterproofing and dampproofing shall be between the floor or wall finish and the ground.
- (2) Access. Access shall be provided to all rooms within a nonresidential building or structure such that reasonable exit is available if necessitated by circumstances.
- (3) Doors. Doors shall be provided at all doorways leading to bathrooms.
- (4) Kitchens. Kitchens shall be used only for intended purposes and shall not be used in such a way that will promote danger for the occupants, employees or public in or near kitchen.

(b) *Entrances and exits.*

- (1) All entrances and exits must meet the standards set forth in the state building code.
- (2) Doors providing entrance and exit for any nonresidential building or structure shall have locking devices capable of being operated from the inside and outside of the nonresidential building or structure.

- (3) Safe, continuous and unobstructed exit shall be provided from interior of building or structure to the exterior at street or grade level.
- (4) Platforms and steps shall be provided, where appropriate, to serve exits and shall be maintained in a safe condition.
- (c) *Light and ventilation standards.* Window frames and glass shall be reasonably weathertight, with no cracked or broken glass. If, in the opinion of the administrator or his or her designee, certain cracked glass does not present a danger or hazard, a waiver of this provision may be granted.
- (d) *Lighting of halls and stairs.* Every enclosed area shall be adequately lighted at all times with fixtures with conveniently located light switches controlling the lighting system which provides the illumination required therein and which may be turned on when needed. This provision may be waived by the administrator.
- (e) *Heating.* Heating facilities. Every nonresidential building or structure shall have a heating unit appropriate for the use of the nonresidential building or structure.
- (f) *General requirements relating to safety and maintenance.*
 - (1) *Good repair and safe condition.* Every nonresidential building or structure and all parts thereof used or occupied as an enclosed area shall be kept in good repair, in safe condition and fit for any use. The roof and walls of all such buildings or structures shall be maintained so as not to leak; and all means of draining water therefrom shall be maintained as to prevent dampness in the walls, ceiling or crawl space or basement.
 - (2) *Quality of materials and workmanship.* Material used in making any repairs shall be of a quality suitable for the purpose and of a kind normally used by a contractor or tradesman to accomplish such a repair. Such repair shall be accomplished in a manner that is in accordance with the accepted standards and practices of the trade.
- (g) *Structural standards.*
 - (1) *Foundation.*
 - a. Every nonresidential building or structure unit shall be situated on firm ground. Foundation drainage shall be provided and maintained so as to prevent standing water.
 - b. Footings shall be sound with adequate bearing.
 - c. All elements of the foundation, including structural members and masonry, shall be in good repair.
 - d. No piers shall be used for support in which the plumb line from top center falls outside the middle one-third of the base of the pier. (A plumb bob held firmly against the top of the pier and hanging down the side wall indicates the vertical alignment).
 - e. No isolated masonry piers exceeding in height ten times the least dimension of pier shall be permitted.
 - f. A crawl space access hole having a door shall be provided to any under-floor space in all nonresidential buildings or structures.

(2) *Walls, exterior.*

- a. All exterior surfaces shall be structurally sound, waterproof, weatherproof and vermin proof.
- b. All exterior finishes shall be weathertight with no holes, cracks or rotted boards which permit outside air or water to penetrate rooms.
- c. All structure or load bearing walls, exterior or interior, shall not be bowed or out of plumb and shall be structurally sound.
- d. Studs shall provide sufficient support for sheathing or exterior finish.

(3) *Roofs.*

- a. Roofing shall be provided to prevent the entrance of moisture and shall be maintained by renewal, repair, waterproofing or other suitable means.
- b. Gutters and downspouts, if installed, shall be provided to properly collect, conduct and discharge the water from the roof and away from the structure.
- c. Roofs shall be supported and no rafters shall be rotted, broken, sagging or have improperly supported ends.
- d. Attics shall have ventilation that allows the movement of air to dissipate excessive heat build-up. Heat buildup is excessive if it causes deterioration of any structural member or roofing material.
- e. Sheathing shall not be rotted, loose or sagging excessively.
- f. Roof covering shall not be loose, nor have holes or leaks.
- g. Flashing shall be provided at walls and chimneys and shall be installed in accordance with the state building code.
- h. Soffits shall be maintained in a weathertight condition and shall not be rotted, loose or sagging.

(4) *Porches.* Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height. Such guardrails shall not be rotted, broken or termite damaged.

(5) *Stairs and steps.*

- a. Stairs and steps shall be free of holes, grooves and cracks large enough to constitute accident hazards.
- b. Handrails having minimum and maximum heights of 30 inches and 38 inches respectively, measured vertically from the nose of the treads, shall be provided on at least one side of stairways of four or more risers.
- c. No flight of stairs shall be settled out of its intended position or pulled away from supporting or adjacent members.
- d. Stairs shall be strongly supported and supports shall not be rotting, sagging or deteriorated.

- e. 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.
- f. Every stairway, including inside stairs and rails, porches, decks and appurtenances thereto shall be kept in sound condition and good repair.
- g. Platforms and steps shall be provided to serve exits and shall be maintained in a safe condition.

(6) *Ceilings.*

- a. Joists and supporting members shall provide sufficient support for the ceiling.
- b. No holes or cracks which permit outside air to penetrate rooms shall be permitted.
- c. There shall be no loose plaster, boards, sheetrock, or ceiling finish. Any materials used in the repair of the ceiling shall be of a material that is similar in texture and appearance to the original material. This provision does not prohibit the replacement of the entire ceiling; provided that the material used is contiguous over the entire ceiling area within the affected room.
- d. Ceilings shall be maintained free of holes, cracks or loose or deteriorated materials.
- e. All ceilings shall be kept clean and free of any flaking, loose or peeling paint and paper.

(7) *Walls, interior.*

- a. Interior finish shall be free of holes and excessive cracks which:
 - 1. Permit outside air or moisture to penetrate rooms; or
 - 2. Contain loose or flaking materials.
- b. All walls, woodwork, doors and windows shall be kept clean and free of any flaking, loose or peeling paint.
- c. There shall be no loose plaster, boards, or other loose wall materials.
- d. Cardboard, newspaper or other highly combustible or improper wall finish is prohibited.
- e. Studs shall provide sufficient support for interior wall.
- f. Doors must fit the opening in which they are hung and be equipped with hardware that allows for their opening and closing.

(8) *Floors.*

- a. Broken, overloaded, excessively decayed or sagging structural floor members are prohibited.
- b. Structural floor members shall be supported on foundation walls and piers that are not deteriorated and perform the function for which they were intended.
- c. Floor joists shall be supported on structural bearing members and shall not be made structurally unsound by deterioration.

- d. Flooring shall be reasonably smooth, not rotten or worn through, and without holes or excessive cracks which permit outside air to penetrate rooms.
- e. Flooring shall not be loose.
- f. Split, splintered or badly worn floor boards shall be repaired or replaced.
- g. Floors in contact with soil shall be paved either with concrete not less than three inches thick or with other masonry not less than four inches thick, which shall be sealed tightly to the foundation walls.
- h. All bathroom, laundry and kitchen floors shall be constructed and maintained so as to be impervious to water by covering with a waterproof nonabsorbent material.

Examples of this type of material include asphalt tile, ceramic tile, linoleum tile or sheet, rubber tile, terrazzo, vinyl tile, vinyl plastic tile or sheet, finished wood, parquet, masonry, polyurethane. Certain absorbent materials covered with a waterproof finish shall also be permitted. Porch and deck-type enamel paints shall be prohibited due to their nondurable nature. The administrator can approve other types of waterproof nonabsorbent materials that meet the criteria of this section.

(h) *Property maintenance.*

- (1) *Structures.* Floors, walls, ceilings and fixtures shall be maintained in a clean and sanitary condition.

- (2) *Open areas.*

- a. Surface and subsurface water shall be appropriately drained from open areas to protect structures and to prevent development of stagnant ponds.
- b. Fences and all accessory structures, either attached to or detached from the primary nonresidential building or structure, shall be maintained in a safe and substantial condition. Accessory structures shall include, but are not limited to, sheds, storage buildings, carports, and garages.

- (i) *Electrical standards.* Electrical service. Every enclosed area shall be supplied with adequate electric service, of at least 100 amp service which shall be properly installed and connected to the source of electric power in a manner prescribed by the ordinances, rules and regulations of the Town.

- (j) *Plumbing standards.*

- (1) *General.*

- a. Every nonresidential building or structure shall be connected to public water supply and/or sanitary sewer system where they are available; unless a private water supply and sanitary sewer system for each nonresidential building or structure is approved by the county health department. This provision may be waived by the administrator.
- b. All plumbing, water closets and other plumbing fixtures in every nonresidential building or structure shall be installed and maintained in good working condition and repair and in accordance with the requirements of this ordinance and the state

plumbing code. All plumbing shall be so maintained and used as to prevent contamination of the water supply through cross connections or back siphoning.

- d. All fixtures shall be in proper working condition with no leaks existing.
 - e. No fixtures shall be cracked, broken or badly chipped.
 - f. All water piping shall be protected from freezing by proper installation in enclosed or concealed areas or by such other means as approved by a Town plumbing inspector.
 - g. Access to all bathrooms shall be through a weathertight and heated area.
- (2) *Water heating unit.* Every enclosed area shall have supplied a water heating unit which has been listed by a testing agency and is properly installed, operated and maintained in safe and good working condition and is properly connected to the bathtub or shower, sink and lavatory basin, as required in this ordinance and the state plumbing code. Such water heating unit shall be capable of automatically heating water to a temperature of 120 degrees Fahrenheit and capable of meeting normal demands at every required outlet, even though the enclosed areas' heating unit is not in operation. All gas-fired water heaters shall be vented to the outside.
- (3) *Bathroom.* Every enclosed area shall have access to a bathroom in good working condition which shall be properly connected to the public sanitary sewer or to an approved sewage disposal system. The lavatory basin shall be properly connected to both hot and cold water lines, and the water closet shall be properly connected to a cold water line.
- (k) *Painting.* Effective January 1, 2009, all exterior surfaces of buildings and structures, not inherently resistant to deterioration, shall be treated with a protective coating, such as paint or other suitable preservative, with sufficient frequency to prevent deterioration. All such portions shall be cleaned and free of flaking, loose or defective surfacing materials prior to painting or coating. All interior loose or peeling wall covering or paint shall be removed and the exposed surface shall be placed in a smooth and sanitary condition. No paint shall be used for interior painting of any enclosed area unless the paint is free from any lead pigment.
- (l) *Fire and safety standards.*
- (1) *Fireproofing and fire protection.*
 - (2) *Fire extinguishing equipment.* All fire extinguishing equipment required by the state fire code shall be provided and maintained in an operable condition.
 - (3) *Smoke detectors.* Enclosed areas shall be equipped with a smoke detector (battery operated or 110 volt) which has been listed by a testing agency (such as Underwriters Laboratories). All smoke detectors shall be located on or near the ceiling of the room wherein it is located and shall be installed in accordance with the manufacturer's instructions and maintained in proper working condition.
 - (4) *Abandoned iceboxes.* The doors shall be removed from all iceboxes, refrigerators and other large air-tight containers which are abandoned and which are accessible to children, unless the door or lock can be released or opened from the inside.

- (m) *Awnings.* All canopies, metal awnings, stairways, porches, fire escapes, standpipes, exhaust ducts, air conditioners, and similar overhanging extensions shall be maintained so as to be free of missing, defective, rotting or deteriorated foundations, supports, floors, other members, and steps thereto, so as to be safe to use and kept in sound condition and in good repair.
- (n) *Other dangerous conditions prohibited.* Any combination of conditions which in the judgment of the administrator renders any nonresidential building or structure dangerous or injurious to the health, safety, or general welfare of owners, occupants or members of the general public.

Sec. 11A-6. - Designation of the administrator as public officer. The administrator is hereby designated as the public officer pursuant to G.S. 160A-439.

Sec. 11A-7. - Powers of the administrator. The administrator is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this ordinance, including the following powers:

- (a) To investigate nonresidential buildings and structures in the Town to determine whether they have been properly maintained in compliance with the minimum standards established by this ordinance so that the health, safety and/or welfare of the occupants or members of the general public are not jeopardized;
- (b) To administer oaths and affirmations, examine witnesses and receive evidence;
- (c) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession;
- (d) To appoint and fix duties of such officers, agents, and employees as the administrator deems necessary to carry out the purposes of this ordinance; and
- (e) To delegate any of his or her functions and powers under this ordinance to other officers and agents.

Sec. 11A-8. - Inspections. For the purpose of making inspections, the administrator is hereby authorized to enter, examine, and survey at all reasonable times, any nonresidential building or structure as defined in this ordinance. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

In addition, the administrator may adopt a periodic inspection program, subject to the council's approval, to provide for the routine inspection of all nonresidential buildings or structures as defined in this ordinance.

Sec. 11A-9. - Procedure for enforcement.

- (a) *Preliminary investigation.* Whenever it appears to the administrator that any nonresidential building or structure has not been properly maintained so that the health, safety and/or

welfare of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this ordinance, the administrator shall undertake a preliminary investigation.

- (b) *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this ordinance, the administrator shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the administrator at a place within the Town, not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the administrator.

- (c) *Procedure after hearing; issuance of order.*

- (1) If, after notice and hearing, the administrator determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this ordinance, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination and the matter shall be closed.
- (2) If, after notice and hearing, the administrator determines that the nonresidential building or structure has not been properly maintained so that the health, safety and/or welfare of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this ordinance, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of either subsections (c)(3) or (c)(4) and subject to the limitations set forth in this ordinance.
- (3) If the administrator determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would not exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - a. Repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this ordinance, or
 - b. Vacate and close the nonresidential building or structure for any use.
- (4) If the administrator determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - a. Remove or demolish the nonresidential building or structure, or

- b. Repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this ordinance.

(d) *Failure to comply with order; adoption of ordinance by Board of Alderman*

(1) If the owner fails to comply with an order to either:

- a. Repair, alter, or improve the nonresidential building or structure, or
- b. Vacate and close the nonresidential building or structure, the administrator may request that Board of Alderman adopt an ordinance ordering the administrator to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this ordinance or to be vacated and closed for any use. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the Board of Alderman adoption of an ordinance, the administrator may cause the building or structure to be either repaired or vacated and closed for any use. The administrator may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.

(2) If the owner fails to comply with an order to either:

- a. Remove or demolish the nonresidential building or structure, or
- b. Repair, alter, or improve the nonresidential building or structure, the administrator may request that the Board of Alderman adopt an ordinance ordering the administrator to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with this ordinance. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the Board of Alderman adoption of an ordinance, the administrator may cause the building or structure to be removed or demolished.

Sec. 11A-10. - Limitations on orders and ordinances—Historic landmark or historic district.

Notwithstanding any other provision of this ordinance, if the nonresidential building or structure is designated as a local historic landmark, listed in the national register of historic places, or located in a locally designated historic district or in a historic district listed in the national register of historic places and the Board of Alderman determines, after a public hearing, 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, an order issued by the administrator pursuant to this ordinance and an ordinance approved by Board of Alderman pursuant to this ordinance may only require that the

nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this ordinance.

Sec. 11A-11. - Same—Vacant manufacturing facility or vacant industrial warehouse.

Notwithstanding any other provision of this ordinance, an order issued by the administrator pursuant to this ordinance and an ordinance approved by the Board of Alderman pursuant to this ordinance may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require 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.

Sec. 11A-12. - Limitation on enforcement of complaint or order—Approved renovation plan.

- (a) If the owner of the nonresidential building or structure is served with complaint or order due to exterior and interior violations on such nonresidential building or structure and if such owner repairs the exterior violations and secures the nonresidential building or structure within an agreed upon timeframe, then administrator may suspend the enforcement of this ordinance for a two-year period from date of issuance of complaint or order if:
 - (1) Owner presents proof that owner is actively seeking to sell the property. Such proof includes posting a sign in a conspicuous place on the premises indicating such nonresidential building or structure and premises is for sale or lease or other evidence that such building or structure is being actively marketed for sale or lease; and
 - (2) Owner states that purpose of not repairing interior is to allow a new owner or tenant to upfit or renovate the interior of the building or structure.
- (b) When the owner secures the nonresidential building or structure pursuant to this section, the administrator may require the owner to take reasonable measures to ensure that the building or structure in its closed and boarded-up state is in a safe and sanitary condition. Such measures include but are not limited to requiring the owner to keep boarded windows free of graffiti.

However, the administrator may reinstate the enforcement of the provisions of this ordinance at any time if the nonresidential building or structure is no longer secure, other exterior violations appear or if the nonresidential building or structure has conditions or a change of circumstances that make it dangerous and injurious to public health, safety and welfare.

Sec. 11A-13. - Vacated and closed nonresidential buildings or structures; abandonment of intent to repair.

- (a) If the Board of Alderman has adopted an ordinance or the administrator has issued an order requiring the nonresidential building or structure to be repaired or vacated and closed and such building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, then if the Board of Alderman finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the Town in that it would continue to deteriorate, would

create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then the Board of Alderman may, after the expiration of the two-year period, adopt an ordinance and serve such ordinance on the owner, setting forth the following:

- (1) When the cost to repair is less than or equal to 50 percent of the nonresidential building or structure's current value, the ordinance shall require that the owner either:
 - a. Demolish and remove the nonresidential building or structure within 90 days, or
 - b. Repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this ordinance within 90 days; or
 - (2) When the cost to repair exceeds 50 percent of the nonresidential building or structure's current value, the ordinance shall require that the owner demolish and remove the nonresidential building or structure within 90 days.
- (b) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before Board of Alderman may take action under this section.
 - (c) If the owner fails to comply with the requirements of the ordinance, the administrator shall demolish and remove the nonresidential building or structure.

Sec. 11A-14. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by the administrator under this ordinance shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing, service shall be deemed sufficient. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.
- (b) If the identifies of any owner or the whereabouts of persons are unknown and cannot be ascertained by the administrator in the exercise of reasonable diligence, and the administrator 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 the provisions of this ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Sec. 11A-15. - Notice of lis pendens.

Upon issuance of a complaint and notice of hearing or order, a notice of lis pendens with a copy of the complaint and notice of hearing or order attached thereto may be filed in the office of the clerk of superior court of Durham County or the county where the property is located. The notice of lis pendens and a copy of the complaint and notice or order shall be indexed and cross-

indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice or order shall be binding upon the successors and assigns of the owners of and parties in interest in the nonresidential building or structure. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the nonresidential building or structure at the time of filing. The administrator may cancel the notice of lis pendens if the action in which the complaint and notice or order was issued has been settled, discontinued, or abated.

Sec. 11A-16. - Costs, lien on premises.

- (a) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. ch. 160A, art. 10.
- (b) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien on any other real property of the owner located within the Town limits except for the owner's primary residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.
- (c) If the nonresidential building or structure is removed or demolished by the administrator, the administrator shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the administrator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the council to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 11A-17. - Temporary injunction remedy for aggrieved person and certiorari review.

- (a) Any person aggrieved by an order issued by the administrator or a decision rendered by the Board of Alderman may petition the superior court for an injunction restraining the administrator from carrying out the order or decision. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. A hearing on the petition shall be as provided in G.S. 160A-446(f).
- (b) Certiorari review. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

Sec. 11A-18. - Conflict with other provisions.

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

Sec. 11A-19. - Ejectment.

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the administrator may file a civil action in the name of the Town to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the administrator produces a certified copy of an ordinance adopted by the Board of Alderman to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the Board of Alderman has ordered the administrator to proceed to exercise his duties to vacate and close or remove and demolish the nonresidential building or structure.

Sec. 11A-20. - Violations; penalty; fee; remedies.

- (a) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or remove or demolish the same, upon order of the administrator duly made 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.
- (b) It shall be unlawful for the owner or agent of the owner in charge of such nonresidential building or structure with respect to which an order has been issued pursuant to this ordinance, to occupy or permit the occupancy of the same in a dilapidated or deteriorated condition found to be unfit for any use in violation of such order for its repair, alteration or improvement or its vacation, closing or demolition, and each day that such unlawful occupancy continues after the expiration of the time prescribed in the order to repair, alter, improve, vacate, close or demolish such nonresidential building or structure shall constitute a separate and distinct offense.
- (c) Any person that fails to comply with any of the provisions of this ordinance shall be subject to a civil penalty in the amount of \$300.00 for the first day of noncompliance and \$50.00 for each day thereafter. This penalty may be recovered by the Town in a civil action in the nature of debt if the person does not pay the same within 30 days after the initial day of noncompliance.
- (d) The owner of any nonresidential building or structure who fails to repair or vacate and close it, or demolish or remove it, upon order of the administrator duly made and served as herein

provided, within the time specified in such order, shall be subject to an administrative fee in an amount set by the Town council for noncompliance. This fee allows the Town to recover some of its administrative costs incurred due to the owner's failure to comply with the administrator's order described herein.

- (e) The violation of any provision of this ordinance shall constitute a misdemeanor and shall be punishable in accordance with section 1-9.
- (f) A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by G.S. 160A-175. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.

DRAFT