

TOWN OF SMITHFIELD
North Carolina

ORDINANCE # 501

**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD CODE OF ORDINANCES
CHAPTER 5- BUILDINGS AND BUILDING REGULATIONS**

WHEREAS, Chapter 5 of the Town of Smithfield’s Code of Ordinances outlines the regulations concerning buildings and building regulations within the Town; and

WHEREAS, the Planning Director Stephen Wensman, is requesting the Ordinance be amended to add Article V. Commercial Building Maintenance and Appearance Regulations.

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Smithfield that Chapter 5 Building and Building Regulations; Article V. Commercial Building Maintenance and Appearance Regulations:

**ARTICLE V. Commercial Building Maintenance and Appearance
Regulations**

Sec. 5-171. Intent and Scope.

Appearance and good repair regulations for commercial buildings in the Commercial Zoning Districts of the Town of Smithfield (defined as zoning Districts, B-1, B-1 CUD, B-2, B-2 CUD, B-3, B-3 CUD, O/I, O/I CUD, L1 and L2 hereinafter referenced jointly as the “Commercial Zoning Districts”) will preserve the character and integrity of the commercial business districts of the Town. It will provide corollary benefits such as protection of property values, promotion of tourism, preservation of the character and integrity of the downtown, and contribute to the comfort, happiness, and emotional stability of downtown residents and the greater Smithfield community. It is the further purpose of this Code to minimize discordant, unsightly and offensive surroundings while preserving beauty as well as the usefulness of the environment.

Sec. 5-172. Scope and applicability.

The provisions of these Commercial Building Maintenance and Appearance Regulations shall apply to the exterior of all premises and improvements thereupon within the Commercial Zoning Districts and adjacent to a public street or parking area including but not limited to improvements, structures, parking areas, or buildings, or any lot upon which there were formerly located such improvements, structures, parking areas or buildings. It shall further apply to any lot that had in the past had located upon it a commercial structure or parking area. Exterior walls adjacent to alleys are exempt from these regulations. These regulations establish minimum standards, and do not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building, equipment or facilities contained therein, except as provided herein.

It is also the purpose and intent of the Smithfield Town Council, through the adoption of this Article, to establish a vacant property registration as a mechanism to preserve and to protect the Town's commercial districts from becoming blighted through the lack of adequate maintenance and security for abandoned and vacant properties. Additionally, the Town desires to deter crime and theft of materials, to minimize loss of property value to vacant properties and surrounding occupied properties, to reduce the risk of damage from fire, flooding or other hazards, and to promote the comfort, happiness and emotional stability of area residents. The Town finds that the presence of properties exhibiting evidence of vacancy pose special risks to the health, safety, and welfare of the community, hurt the appearance and fair market value of commercial areas, and therefore require heightened regulatory attention. The provisions of this Article shall apply to all properties in the Commercial Zoning Districts of the Town of Smithfield.

Sec. 5-173. Conflicting Provisions.

In any case where the provisions of this Code impose a standard other than that set forth in any other ordinance of the Town or under the laws of the State of North Carolina, then the more restrictive standard shall prevail.

Sec. 5-174. Definitions.

For the purposes of this Article, certain words and phrases used in this Article are defined as follows:

“Citations”. Written notices from an agent of the town as to an enforcement action or penalty.

“Cleared Lots” means lots whereupon there were in the past located improvements, structures, parking areas or buildings but the same have been removed for whatever reason and there are now no improvements on the lot.

“Commercial” means not just commercial but all commercial, business, institutional, industrial, warehouse or storage uses.

“Days” means consecutive calendar days.

“Evidence of Vacancy” means any aesthetic condition that on its own or combined with other conditions present would lead a reasonable person to believe that the Property is vacant. Such conditions include, but are not limited to, overgrown or dead vegetation, extensively chipped or peeling exterior paint, exterior walls in poor condition, porches and steps in poor condition, roof in poor condition, broken windows and other signs of general disrepair, accumulation of newspapers, circulars, flyers or mail, past due utility notices or disconnected utilities, accumulation of trash, junk or debris, the absence of window coverings such as curtains, blinds, or shutters, the absence of furnishings or personal items consistent with commercial habitation, statements by neighbors, passersby, delivery agents, government employees that the Property is vacant.

"Government Agency" means any public body having authority over the Property and residents of the Town, including but not limited to the Town of Smithfield, Johnston County, Smithfield Police Department, Smithfield Fire Department, and Johnston County Sheriff's Office.

"Government Official" means any public official representing a public body which has authority over the Property and residents of the Town, including but not limited to the Town Manager, County Building Inspector, Town Police Chief, County Fire Marshall, and Mayor. In some capacities agents of other governmental entities act for the Town under interlocal agreement and as such have authority to enforce the provisions of the Article in accord with town policy. For example, the Town does not have a building inspection office and the County performs those functions under an interlocal agreement.

"Local" means located within forty (40) road or driving miles distance of the subject Property.

"Non-residential Property" means any real property used or intended to be used for anything other than residential property as defined herein.

"Out of Area" means located in excess of forty (40) road or driving miles distance away from the subject Property.

"Owner" means any person, partnership, association, corporation or fiduciary having a legal or equitable title or any interest in any real property. No trustee in any Deed of Trust shall be considered an owner.

"Owner of Record" is the person or entity listed on recorded deed, probated will or heir by intestacy.

"Property" means any unimproved or improved real property or portion thereof, situated in the Commercial Zoning Districts of the Town and includes the buildings or structures located on the Property regardless of condition.

"Residential Property" means a building, or portion thereof, designed exclusively for residential occupancy, including one-family, two-family, multiple dwellings, mobile homes, house trailers, counseling and lodging houses, apartment houses, and apartment hotels.

"Town" means the Town of Smithfield corporate limits.

"Utilities" means water, sewer, telephone, natural and propane gas, and electric town services.

"Vacant" means a Property that has not been legally occupied for ninety (90) days. Legally occupied means occupancy by the owner or any business or individual whose presence therein is with the consent of the owner. A Property that has utilities that are not operational is Vacant as herein defined or any other Evidence of Vacancy as defined herein above.

Sect. 5-175. Registration.

- (a) Any vacant commercial property located within the Town's Commercial Zoning Districts must be registered by the Owner with the Town Manager, either (1) of the Owner of a Vacant Property's own accord before receiving a Notice of Registration Requirement, or (2) within 90 days of receiving a Notice of Registration Requirement from the Town.
- (b) The Town will send a Notice of Registration Requirement to the Owner of Record of Properties that exhibit Evidence of Vacancy. The Owner shall register Property within the time period set forth in Section (a) of this Section unless the Owner can provide clear and convincing evidence to the Town Manager, within such time period, that the Property is not Vacant.
- (c) The Registration shall contain:
 - (i) the name of the Owner (corporation or individual),
 - (ii) the direct street/office mailing address of the Owner and P.O. Box if applicable,
 - (iii) a direct contact name and phone number
 - (iv) the name, address and telephone number of any local property management company hired by the Owner to meet the maintenance requirements of this Article if Owner's principal residence is not local.
- (d) Any changes in the information in (b)(i) - (b)(iv) of this Section shall be reported to the Town within ninety (90) days of such changes.
- (e) Registration must be renewed annually.
- (f) Vacant properties shall remain subject to the annual registration, maintenance, and security requirements of this Article as long as they remain Vacant.
- (g) Once the Property is no longer Vacant or is sold, the owner must provide written proof of occupancy or sale to the Town Manager.
- (h) A Cleared Lot does not have to be registered.

Sec. 5-176. Maintenance Requirements.

Properties subject to this Article shall be kept in compliance with the following maintenance requirements:

- (a) The exteriors of building(s)/structure(s) on the Property shall be painted and maintained in a way that does not exhibit any Evidence of Vacancy.
- (b) The yard(s) of the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (c) The deck(s) and porch(s) located on the Property shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (d) The window(s) and door(s) of building(s)/structure(s) of the property shall be intact and operable and shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (e) Instances of visible rotting of building(s)/structure(s) located on the Property or portion thereof shall be corrected in order to eliminate Evidence of Vacancy, with the exterior painted and kept in good aesthetic condition.
- (f) The Property shall be maintained so as to exhibit no Evidence of Vacancy.
- (g) The storefronts and facades of buildings shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (h) The interiors, when visible to passersby through storefront windows, shall be maintained in a way that does not exhibit Evidence of Vacancy.
- (i) Cleared Lots will be maintained with the grass cut, shrubs trimmed, and any landscaping neatly maintained.

Sec. 5-177. Security Requirements.

Vacant properties subject to this Article shall comply with the following security requirements:

- (a) The Property shall be maintained in a secure manner so as not to be accessible to unauthorized persons. This includes, without limitation, the closure and locking of windows, doors (including but not limited to walk-through, sliding, and garage), gates, pet doors, and any other such opening of such size that it may allow a child to access the interior of the Property or structure(s).
- (b) Broken windows shall be replaced and/or re-glazed; windows at the basement (the floor for that level being below or partially below ground level), street level and the second story level shall not be boarded up.

Sec. 5-178. Requirement to Hire Local Property Management Company for Out of Area Owners.

- (a) If the Property Owner's principal residence is not local, then a locally present property management company, business, or resident shall be contracted to fulfill the maintenance and security requirements of this Article, set forth in Sections 5 and 6, and any other applicable laws for all Properties that are registered hereunder or subject to registration.
- (b) The Property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet and shall contain along with the name and 24-hour contact number the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." The posting shall be placed in the interior of a window facing the street to the front of the Property so it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the Property so it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the Property but not readily accessible to vandals. The exterior posting must be constructed of and printed with weather resistant materials.
- (c) The requirement set forth in part (a) of this section may be waived by the Town Manager for owners who (1) reliably demonstrate an ability to maintain the property and (2) have not received any citations for maintenance violations in the previous quarter.

Sec. 5-179. Inspections.

The Town shall have the authority and the duty to inspect properties subject to this Article for compliance and to issue citations for any violations. The Town shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure that this Article is enforced. The County Building Inspection Department or other entities acting for the Town may perform these inspections under Sec. 5-180 or enforcements under Sec. 5-181 under an interlocal agreement.

Sec. 5 -180. Enforcement; Violations; and Penalties.

- (a) It shall be unlawful for any Owner to be in violation of any of the provisions of this Article.
- (b) Any person who violates a provision of this Article or fails to comply with any order made thereunder and from which no appeal has been taken, or who shall fail to comply with such order as affirmed or modified by appeal, or by a court of competent jurisdiction, within the time fixed herein, shall severally, for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable as provided in this Article.
- (c) The imposition of one penalty for any violation shall not excuse the violation, or authorize its continuance.
- (d) All such persons shall be required to submit an acceptable plan of action to the Town Manager within 10 business days of notification. This plan of action must include, but is not limited to, a description of the work to be done, by whom and a specific schedule. Plans shall be reviewed by the Town Manager and work is to commence within 15 days of Manager's approval. When not otherwise specified, failure to meet any stated condition within 10 days of required action shall constitute a separate offense.
- (e) Penalties for failure to comply:
 - 1) Initial Registration. Failure to initially register with the Town within the time frame required is punishable by a civil penalty of \$50.
 - 2) Changes to Registration. Failure to report changes to registration information within time frame required is punishable by a civil penalty of \$50.
 - 3) Annual Registration. Failure to register annually is punishable by a civil penalty of \$50.
 - 4) Maintenance and Security Requirements. Failure to meet the maintenance and security requirements is punishable by a civil penalty per day of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 5) Failure to submit plan. Failure to submit plan of corrective action is a violation punishable by a civil penalty of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 6) Failure to implement plan. Failure to implement the plan within 15 days of approval or complete it in a timely manner is a violation punishable by a civil penalty of \$50 per day or up to the maximum allowed by Section 1-12 in the discretion of the Town.
 - 7) Concurrent Penalties. Civil Penalties for the violations enumerated above are separate so that an Owner could be subject to concurrent civil penalties under more than one of these subparagraphs. For instance, a person could be subject to civil penalties for failure to implement a plan, or failure to meet the maintenance and security requirements or other subparagraphs simultaneously.

Sec. 5-181. Appeals.

Any person aggrieved by any of the requirements of this Article may present an appeal in writing to the Town Manager and then, if not satisfied, to the Town Board of Adjustment.

Sec. 5-182. Severability.

Should any provision, section, paragraph, sentence or word of this Article be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Article shall remain in full force and effect.

Sec. 5-183. Preemption.

Except as specifically preempted by N.C.G.S. § 160A-441, et. seq. 160A-439 or town ordinances promulgated pursuant to N.C.G.S. § 160A-439, et. seq., or G.S. 160A-174, this Article shall apply to all Vacant Properties in the Commercial Zoning Districts in the Town of Smithfield.

Adopted by motion made by Councilman Barbour, seconded by Councilman Wood, and approved on a vote of 6 in favor and 0 against. The is the 4th day of February, 2020

This Ordinance becomes effective June 1, 2020.

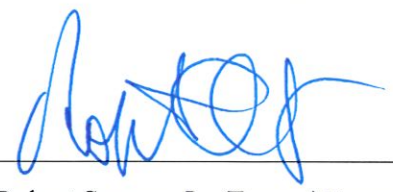
ATTEST

Shannan L. Parrish, Town Clerk


M. Andy Moore, Mayor



APPROVED AS TO FORM:


Robert Spence, Jr., Town Attorney