



SPECIAL MEETING
Tuesday, August 30, 2022
6:30 pm
Town Hall Council Chambers

I. Call to Order

II. Approval of the Agenda

Page

III. Topics of Discussion

- 1. Discussion concerning amendments to the Town's Code of Ordinances:** Chapter 5 Article IV: Unsafe Buildings, Chapter 5 Article V: Commercial Building Maintenance and Appearance Regulations and Chapter 8: Garbage, Trash and Refuse
(Town Attorney – Bob Spence) See attached information.....1
- 2. Discussion concerning Park in Lieu Fees**
(Parks and Recreation Director – Gary Johnson & Planning Director - Stephen Wensman) Information will be provided prior to the meeting
- 3. Discussion concerning Storm Water and Storm Water Funding**
(Town Manager – Michael Scott)

IV. Closed Session Pursuant to NCGS 143-318.11 (a) (5)

V. Adjourn

Current Code

ARTICLE IV. UNSAFE BUILDINGS

Sec. 5-151. Short title.

This article shall be known as the "Unsafe Building Code of the City of Smithfield."

(Ord. of 6-2-87(1), § 5-34)

Sec. 5-152. Definition.

In addition to the provisions of section 160A-426 of the General Statutes all buildings or structures which have any or all of the following defects shall be deemed "unsafe buildings," in addition to those set forth in section 160A-426 of the General Statutes:

- (1) Those buildings which have parts thereof which are so attached that they may fall and injure members of the public or damage public or private property.
- (2) Those buildings which because of their condition are unsanitary or dangerous to the health or welfare of the public.
- (3) Those buildings which are especially liable to fire including, but not limited to, those which are unoccupied and are not adequately secured against entry by unauthorized persons.

(Ord. of 6-2-87(1), § 5-35)

Sec. 5-153. Town's right to remedy upon inaction or failure to appeal by owner.

- (a) If an appeal is not taken pursuant to section 160A-430 of the General Statutes and the owner fails to comply with the orders issued pursuant to section 160A-429 of the General Statutes the chief inspector shall report such fact and the condition of the building or structure to the council for action at a meeting at which time the owner and other interested parties may be heard. The council may direct by ordinance the chief inspector to repair or demolish the building or structure, the cost of which shall be a lien against the premises.
- (b) The provisions herein shall be in addition to any remedy provided for in article 19, part 5, chapter 160A of the General Statutes, and also section 160A-175 of the General Statutes.

(Ord. of 6-2-87(1), § 5-36)

Sec. 5-154. Declared nuisances.

All unsafe buildings within the terms of section 5-152 of this article are hereby declared to be public nuisances, and shall be repaired, vacated or demolished as hereinbefore and hereinafter provided and as set forth in article 19, part 5, of chapter 160A of the General Statutes.

(Ord. of 6-2-87(1), § 5-37)

Sec. 5-155. Emergencies.

In cases where it appears that there is immediate danger to life or safety of any person unless an unsafe building, as defined herein, is immediately repaired, vacated or demolished, the building inspector shall order its immediate vacation if he deems it necessary and shall report such facts to the chief inspector and the chief inspector shall cause the immediate repair, vacation, or demolition of such unsafe building, as he may deem necessary, notwithstanding the other provisions of this article. The chief inspector may take the temporary measures necessary to safeguard persons from immediate danger of collapse of such building and is authorized to close temporarily sidewalks, streets, buildings and structures in places adjacent to such unsafe building and prohibit the same from being used, pending the removal of the danger. The cost of the emergency measures taken shall be a lien on the property on which the building stands or did stand and shall be perfected and enforced in the same manner as provided in section 5-153.

(Ord. of 6-2-87(1), § 5-38)

Sec. 5-156. Administrative liability.

No officer, agent or employee of the city shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this article.

(Ord. of 6-2-87(1), § 5-39)

Sec. 5-157. Violations; unlawful to disregard notices of orders.

In addition to the provisions of article 19, part 5, chapter 160A of the General Statutes, it shall be unlawful for an occupant to fail to vacate an unsafe building or structure after being given an order pursuant to section 160A-429 of the General Statutes.

(Ord. of 6-2-87(1), § 5-40)

Secs. 5-158—5-170. Reserved.

Proposed Amendments

Article IV. – Unsafe Buildings Condemned Under G.S. 160D-1119

Sec. 5-151. – Purpose

In the prior, repealed code the town quoted the statutory provisions under 160A. Consistent with their previous ordinances, the Town of Smithfield sets forth these ordinances, which are a direct repetition of the current General Statutes set out in article 11, part 1119 through 1127 of chapter 160D as of June 1, 2022. The General Statutes should be consulted for amendments in the future. It is the statutes that govern not these provisions.

Sec. 5-152. – G.S. § 160D-1119. Unsafe buildings condemned.

- (a) Designation of Unsafe Buildings. - Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress, or other causes shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.
- (b) Nonresidential Building or Structure. - In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets all of the following conditions:
- (1) It appears to the inspector to be vacant or abandoned.
 - (2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, or fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- (c) Notice Posted on Structure. - If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the governing board as being in special need of revitalization for the benefit and welfare of its citizens.
- (d) Applicability to Residential Structures. - A local government may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, a local government shall hold a legislative hearing with published notice as provided by G.S. 160D-601.

Sec. 5-153. – G.S. § 160D-1120. Removing notice from condemned building.

If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any local government and that states the dangerous character of the building or structure, that person shall be guilty of a Class 1 misdemeanor.

Sec. 5-154. – G.S. § 160D-1121. Action in event of failure to take corrective action.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160D-1119 fails to take prompt corrective action, the local inspector shall give written notice, by certified mail to the owner's last known address or by personal service, of all of the following:

- (1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
 - a. Constitutes a fire or safety hazard.
 - b. Is dangerous to life, health, or other property.
 - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
 - d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- (2) That an administrative hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner will be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the local government's area of jurisdiction at least once not later than one week prior to the hearing.

Sec. 5-155. – G.S. § 160D-1122. Order to take corrective action.

If, upon a hearing held pursuant to the notice prescribed in G.S. 160D-1119, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe, provided that where the inspector finds that there is imminent danger to life or other property, the inspector may order that corrective action be taken in such lesser period as may be feasible.

Sec. 5-156. – G.S. § 160D-1123. Appeal; finality of order if not appealed.

Any owner who has received an order under G.S. 160D-1122 may appeal from the order to the governing board by giving notice of appeal in writing to the inspector and to the local government clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector is

final. The governing board shall hear an appeal in accordance with G.S. 160D-406 and render a decision within a reasonable time. The governing board may affirm, modify and affirm, or revoke the order.

Sec. 5-157. – G.S. § 160D-1124. Failure to comply with order.

If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160D-1122 from which no appeal has been taken or fails to comply with an order of the governing board following an appeal, the owner is guilty of a Class 1 misdemeanor.

Sec. 5-158. – G.S. § 160D-1125. Enforcement.

(a) Action Authorized. - Whenever any violation is denominated a misdemeanor under the provisions of this Article, the local government, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(b) Removal of Building. - In the case of a building or structure declared unsafe under G.S. 160D-1119 or an ordinance adopted pursuant to G.S. 160D-1119, a local government may, in lieu of taking action under subsection (a) of this section, cause the building or structure to be removed or demolished. The amounts incurred by the local government in connection with the removal or demolition are a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of Chapter 160A of the General Statutes. If the building or structure is removed or demolished by the local government, the local government shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The local government shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(c) Additional Lien. - The amounts incurred by a local government in connection with the removal or demolition are also a lien against any other real property owned by the owner of the building or structure and located within the local government's planning and development regulation jurisdiction, and for cities without extraterritorial planning and development jurisdiction, within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(d) Nonexclusive Remedy. - Nothing in this section shall be construed to impair or limit the power of the local government to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 5-159. – G.S. § 160D-1126. Records and reports.

The inspection department shall keep complete and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance or occupancy granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the Department of Natural and Cultural Resources. Periodic reports shall be submitted to the governing board and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require

Sec. 5-160. – G.S. § 160D-1127. Appeals.

Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or the Commissioner's designee or other official specified in G.S. 143-139 by filing a written notice with the Commissioner and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law.

Secs. 5-161-5.170. - Reserved

Current Code

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.

(Ord. No. 501, 2-4-20)

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.

(Ord. No. 501, 2-4-20)

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.

(Ord. No. 501, 2-4-20)

Sec. 5-174. Definitions.

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

Citations means 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 Sheriffs 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 marshal, 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.

(Ord. No. 501, 2-4-20)

Sec. 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 ninety (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 subsection (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:
 - (1) The name of the owner (corporation or individual);
 - (2) The direct street/office mailing address of the owner and P.O. box if applicable;
 - (3) A direct contact name and phone number;
 - (4) 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 subsection (b)(1)—(4) 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.

(Ord. No. 501, 2-4-20)

Sec. 5-176. Maintenance requirements.

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

- (1) 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.
- (2) The yard(s) of the property shall be maintained in a way that does not exhibit evidence of vacancy.
- (3) The deck(s) and porch(s) located on the property shall be maintained in a way that does not exhibit evidence of vacancy.
- (4) 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.

- (5) 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.
- (6) The property shall be maintained so as to exhibit no evidence of vacancy.
- (7) The storefronts and facades of buildings shall be maintained in a way that does not exhibit evidence of vacancy.
- (8) The interiors, when visible to passersby through storefront windows, shall be maintained in a way that does not exhibit evidence of vacancy.
- (9) Cleared lots will be maintained with the grass cut, shrubs trimmed, and any landscaping neatly maintained.

(Ord. No. 501, 2-4-20)

Sec. 5-177. Security requirements.

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

- (1) 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).
- (2) 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.

(Ord. No. 501, 2-4-20)

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 5-175 and 5-176, 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 twenty-four-hour contact phone number of the local property management company. The posting shall be eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet and shall contain along with the name and twenty-four-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 subsection (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.

(Ord. No. 501, 2-4-20)

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 section 5-180 or enforcements under section 5-181 under an interlocal agreement.

(Ord. No. 501, 2-4-20)

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 (1) 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 ten (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 fifteen (15) days of manager's approval. When not otherwise specified, failure to meet any stated condition within ten (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 fifty dollars (\$50.00).
 - (2) *Changes to registration.* Failure to report changes to registration information within time frame required is punishable by a civil penalty of fifty dollars (\$50.00).
 - (3) *Annual registration.* Failure to register annually is punishable by a civil penalty of fifty dollars (\$50.00).
 - (4) *Maintenance and security requirements.* Failure to meet the maintenance and security requirements is punishable by a civil penalty per day of fifty dollars (\$50.00) 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 fifty dollars (\$50.00) 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 fifteen (15) days of approval or complete it in a timely manner is a violation punishable by a civil penalty of fifty dollars (\$50.00) 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 (1) 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.

(Ord. No. 501, 2-4-20)

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.

(Ord. No. 501, 2-4-20)

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.

(Ord. No. 501, 2-4-20)

Sec. 5-183. Preemption.

Except as specifically preempted by G.S. § 160A-441 et seq., § 160A-439 or town ordinances promulgated pursuant to 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.

(Ord. No. 501, 2-4-20)

Proposed Amendments

Draft Ordinance under 160D-1129

REPLACING

ARTICLE V. - COMMERCIAL BUILDING MAINTENANCE AND APPEARANCE REGULATIONS

Now

ARTICLE V. – COMMERCIAL BUILDING MAINTENANCE STANDARDS

5-171 Authority. – (160D-1129(a))

(1) Pursuant to G.S. 160D-1129, it is the purpose of this article to establish minimum standards for the maintenance, sanitation and safety of all nonresidential buildings and structures within the corporate limits of the town. This article does not replace or modify requirements or standards otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities, except as provided in this article.

(2) The community development director and the code enforcement officer, or their designee, shall enforce the provisions of this article V on behalf of the town. For ease of reference, the community development director and the code enforcement officer will collectively be referred to as "the code enforcement officer" in this article V. The code enforcement officer shall have such authority and power as is necessary or convenient to carry out and effectuate the purpose of this article V, in addition to the others herein granted.

(3) The provisions of this article 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. Every nonresidential building or structure and the property on which it is situated shall comply with the provisions of this article, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this article, 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.

(4) Nothing in this article shall limit the town's authority to proceed with any other applicable statute, code, ordinance or other applicable law in lieu of or in addition to proceeding under the terms of this article V.

5-172 Investigation. – (160D-1129(b))

Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained or is otherwise in violation of the standards contained in section V, so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by section 5-202 and 5-203, the code enforcement officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with 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.

5-173 Complaint and Hearing. – (160D-1129(c))

If the preliminary investigation discloses evidence of a violation of the minimum standards established by this article, the code enforcement official shall issue a complaint and cause it to be served upon the owner of and parties in interest in such nonresidential building or structure. The complaint shall state the charges and contain a notice that a hearing will be held before the code enforcement official at a place therein fixed, not less than ten days or more than 30 days after the serving of such complaint. The owner or any party in interest shall have the right to correct the violation or 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. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearing before the code enforcement official.

5-174 Order. – (160D-1129(d))

If, after notice and hearing provided for in section 5-173, the code enforcement official determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established in this article, the code enforcement officer 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.

5-175 Limitations on Orders. – (160D-1129(e))

- (1) An order may only require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the governing board or to vacate and close the nonresidential building or structure for any use.
- (2) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then current value. Notwithstanding any other provision of law, 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 town council determines, after an administrative hearing as provided by ordinance, 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, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing board.
- (3) An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order

may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

5-176 Actions by Town Council Upon Failure to Comply With Order. - (160D-1129(f))

(1) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the town council may adopt an ordinance ordering the code enforcement official to cause such building or structure to be repaired, altered or improved in order to bring it into compliance with the minimum standards established by this article 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 adoption of an ordinance, the code enforcement official may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The code enforcement official 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 remove or demolish the nonresidential building or structure, the town council may adopt an ordinance ordering the code enforcement official to cause such 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 the minimum standards established in this article. 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 adoption of an ordinance, the code enforcement official may cause the building or structure to be removed or demolished.

5-177 Action by Town Council Upon Abandonment of Intent to Repair. – (160D-1129(g))

(1) If the town council has adopted an ordinance or the code enforcement official has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the town council may make findings 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. Upon such findings, the town council may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50 percent of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or

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

(2) In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the town council may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the code enforcement official shall cause the building or structure to be removed or demolished.

5-178 Service of Complaint and Order. – (160D-1129(h))

(1) Complaints or orders issued by the code enforcement official pursuant to this article shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the property affected.

(2) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement official in the exercise of reasonable diligence, and the code enforcement official makes an affidavit to that effect, 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 this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the property affected.

5-178 Liens. – (160D-1129(i))

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer are 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 Article 10 of Chapter 160A of the General Statutes.

(2) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition expended by the code enforcement official is also 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.

(3) If the nonresidential building or structure is removed or demolished by the code enforcement official, he 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 code enforcement official, 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 article shall be construed to impair or limit in any way the power of the town council to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

5-179 Ejectment. – (160D-1129(j))

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement official may file a civil action in the name of the town to remove the occupant. Such action shall be filed in the nature of summary ejectment and conducted in accordance with G.S. 160D-1129(j).

5-180 Supplemental Powers. – (160D-1129(l))

This ordinance authorizes the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section including the following powers in addition to others herein granted:

- (1) To investigate nonresidential buildings and structures in the local government's planning and development regulation jurisdiction to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.
- (2) To administer oaths, affirmations, examine witnesses, and receive evidence.
- (3) To enter upon premises pursuant to subsection 5-172 of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.
- (4) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the governing board.
- (5) To delegate any of his or her functions and powers under the ordinance to other officers and agents.

5-181 Appeals. – (160D-1129(m) & 160D-1208)

(1) Appeals shall be governed by G.S. 160D-1208. The town council designates the board of adjustments as its appeals board. An appeal from any decision or order of the code enforcement officer pursuant to this article may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten days from the rendering of the decision or within ten days of service of such order. Such appeal shall be taken by filing with the code enforcement officer and with the board of adjustment (hereinafter called "the board") a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the chief code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the

code enforcement officer certifies to the board after the notice of appeal is filed with him/her, that by reason of the facts stated in the certificate (a copy of which shall be furnished to the appellant), a suspension of the requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by a restraining order, which may be granted for due cause upon not less than one day's written notice to the code enforcement officer by the board, or by a court of record upon petition made pursuant to subsection 5-174 of this section. Except where in conflict with G.S. 160D-1208, all regulations, fees and other rules of the board shall apply to these appeals.

(2) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of 4/7 of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing upon appeals, in any case where unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

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

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

5-182 Funding. – (160D-1129(n))

The town council is authorized pursuant to G.S. 160D-1129 to make appropriations from its revenues necessary to carry out the purpose of this section and may accept and apply grants or donations to assist in carrying out the provision of the adopted ordinances.

5-183 No Effect on Just Compensation for Taking by Eminent Domain. – (160D-1129(o))

Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

5-184 Definitions. – (160D-1129(p)).

As used in this section, the following definitions apply:

(1) Parties in interest. - All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

(2) Vacant industrial warehouse. - 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.

(3) Vacant manufacturing facility. - 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.

Secs. 5-185—5-200. - Reserved.

Article 5 Subsection A of Subsection V.

5-201 Penalties. – (160D-1129(k)).

(1) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect or refuse to repair, alter or improve the building or structure, or to vacate and close and remove or demolish, or to vacate and close the building or structure upon order of the code enforcement official duly made and served as provided in this article, 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.

(2) It shall be unlawful for the owner or agent of the owner of any nonresidential building or structure, with respect to which an order has been issued to occupy or permit the occupancy of the building after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, and removal or demolition, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.

(3) Any owner who fails to comply with an order of the code enforcement official to repair, alter or improve the building or structure or to vacate and close and remove or demolish the building or structure, or vacate and close the building or structure within the time specified in the order, shall be subject to a civil penalty in the amount of \$50.00 for the first day of noncompliance and \$50.00 for each day thereafter until the building or structure is brought into compliance with the order. The civil penalty may be recovered by the town in a civil action in the nature of a debt if the owner does not pay the penalty. Enforcement by any remedy provided in this article shall not prevent enforcement by any other remedy provided in this article or in other ordinances or laws.

5-202 Minimum External Maintenance Standards. -

It shall be the responsibility of the owner of all buildings, structures, and/or premises in the corporate limits of the Town of Smithfield that they be maintained in compliance with all applicable provisions herein. The following violations shall be corrected subsequent to the notice of violations as enumerated herein:

(1) Exit requirements.

- (a) Minimum number of exits shall conform to the requirements of the state building code as applicable.
- (b) Every stairway, deck, porch, and balcony, and all appurtenances attached thereto, including without limitation, handrails and guardrails, shall be maintained in a structurally sound condition, in good repair. Each shall be properly anchored and capable of supporting live or dead loads.

(2) Electrical facilities.

- (a) No receptacles, ceiling fixtures, or other fixtures shall be hanging loose, unless designed and rated for that purpose.
- (b) All switches and receptacles shall be safe.
- (c) There shall be no unsafe wiring.

- (d) There shall be no drop or extension cords in excess of six feet in length used in place of permanent wiring.
 - (e) No circuits shall be overloaded.
 - (f) Fuses shall be sized correctly and not bridged out.
 - (g) All wiring shall be in accordance with the National Electrical Code.
 - (h) All breaker boxes, wiring, junction boxes, busways, or other electrical enclosures shall be in good condition and maintained to prevent shock hazard.
- (3) **Exterior walls.**
- (a) There shall be no unsafe wall conditions such that the plumbline from the top center of studs falls outside the base plate at any point along the wall.
 - (b) Maximum spacing for studding, providing they show signs of being weak or overloaded, shall comply with the requirements of the state building code.
 - (c) Studs or other structural members shall be structurally sound and not likely to cause structural weakness in the future.
 - (d) There shall be no broken or cracked structural members.
 - (e) All siding shall be reasonably weathertight, with no holes or excessive cracks or decayed boards, or siding material.
 - (f) There shall be no loose siding.
 - (g) There shall be no deterioration because of lack of preventative maintenance consisting of painting, waterproofing and repair.
 - (h) All door fenestration shall be in operable condition.
- (4) **Roofs.**
- (a) All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the dead and live loads, including rafters and ceiling, or floor joists.
 - (b) The roof and flashing shall be sound, tight and not have defects which admit water or rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior of the structure. Roof drains, gutters, scuppers, and downspouts shall be maintained in good repair, and free from obstructions. Roof water shall not be discharged in a manner that creates a health or safety hazard.
- (5) **Porches, vestibules and external covered areas.**
- (a) The floor, ceiling, and roof shall be equal to requirements set forth in this article, except sills, joists and floors need not be level if providing drainage of floors; floors need not be weathertight.
 - (b) Every stairway, deck, porch and balcony, and all appurtenances attached thereto, including, without limitation, handrails and guardrails, shall be maintained in a structurally sound condition, in good repair. Each shall be properly anchored, and capable of supporting imposed loads.
- (6) **Windows.**
- (a) Windows, where provided, including frames, sash components, and glazing shall be maintained in good condition, with no broken, cracked, or missing glazing. Broken or missing glass may not be replaced with material other than glass.
- (7) **Property maintenance.**
- (a) Building structure. Exterior wood surfaces not inherently resistant to deterioration shall be treated with a protective coating of paint or other suitable preservative with sufficient frequency to prevent deterioration.

- (b) Open areas. There shall be no heavy undergrowth or accumulation of plant growth which is noxious or detrimental to health, or because it is overgrown, may provide harborage for criminal activity.
- (c) Infestation. Grounds, buildings and structures shall be maintained free of infestation by rodents, insects and other pests.
- (d) Chimneys and towers. All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.

5-203 Minimum Interior Maintenance Standards. -

The interior of a structure, including wall and ceiling coverings, and equipment therein shall be maintained in good order, shall be structurally sound, and be in a sanitary condition. Occupants shall keep that part of the building or structure which they occupy or control in a clean and sanitary condition.

- (1) **Exit requirements.**
 - (a) Minimum number of exits shall conform to the requirements of the state building code as applicable.
- (2) **Plumbing systems and facilities.**
 - (a) In general, all fixtures and piping shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects. All plumbing shall be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.
 - (b) Plumbing fixtures shall have adequate clearance for usage and cleaning.
 - (c) Where it is found that a plumbing system in a building or structure creates an unsafe condition that is hazardous to the occupants, or by reason of inadequate service, inadequate venting, cross connection, backsiphonage, improper installation deterioration or damage, or for similar reasons, the code enforcement official shall require the defects to be corrected to eliminate the unsafe condition.
- (3) **Heating facilities.**
 - (a) Building shall be weatherproof.
 - (b) Heating systems shall be maintained in good order and repair and shall be of sufficient capacity so as to heat all occupied areas in accordance with the state building code.
 - (c) All safety controls and all clearances to combustible materials for electrical equipment which produces heat shall be maintained in effective operation.
 - (d) Other heating facilities, where provided, shall meet the requirements of the state building code.
 - (e) All electric, gas and heating oil heating equipment installed on the property shall be listed by Underwriters' Laboratories, Inc. or American Gas Association and installed in accordance with the provisions of the state building code.
 - (f) All mechanical appliances, including ventilation and air conditioning or cooling systems, or appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

- (g) All fuel burning equipment or appliances shall be connected to an approved chimney or vent. Fuel burning equipment and appliances labeled for unvented use are an exception to this requirement.
 - (h) All required clearances to combustible materials shall be maintained.
 - (i) All safety controls for fuel burning equipment shall be maintained in effective operation.
- (4) **Electrical facilities.**
- (a) No receptacles, ceiling fixtures, or other fixtures shall be hanging loose unless designed and rated for that purpose.
 - (b) All switches and receptacles shall be safe.
 - (c) There shall be no unsafe wiring.
 - (d) There shall be no drop or extension cords in excess of six feet in length used in place of permanent wiring.
 - (e) No circuits shall be overloaded.
 - (f) Fuses shall be sized correctly and not bridged out.
 - (g) All wiring shall be in accordance with the National Electrical Code.
- (5) **Structural standards.**
- (a) **Foundation.**
 - i. Beneath the building or structure there shall be firm ground, which is reasonably dry, properly drained and no water shall be running under the building or structure.
 - ii. There shall be sound footings and adequate bearing.
 - iii. There shall be sound piers and no loose mortar or masonry.
 - iv. There shall be no piers in which the plumbline from the top center falls outside the middle one-third of the pier base.
 - v. There shall be no isolated masonry piers exceeding in height ten times the least dimension of the pier.
 - vi. There shall be no wood stiff-knee piers.
 - (b) **Floors.**
 - i. Flooring shall be weathertight without holes or excessive cracks which permit air to penetrate rooms.
 - ii. Flooring or floor covering shall be reasonably smooth and not decayed, fire damaged or worn through.
 - iii. There shall be no loose flooring.
 - iv. Floors shall be reasonably level.
 - v. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the dead and live loads.
 - (c) **Interior load bearing walls.**
 - i. There shall be no unsafe wall conditions such that the plumbline from the top center studs falls outside the base plate at any point along the wall.
 - ii. Maximum spacing for studding, providing the studs show signs of being weak or overloaded, shall comply with the requirements of the state building code.
 - iii. Studs or other structural members, including posts and columns, shall be structurally sound and not likely to cause structural weaknesses in the future.
 - iv. There shall be no broken or cracked structural members.
 - (d) **Interior porches, landings and vestibules.**
 - i. The floor and ceiling shall be equal to the requirements set forth in this article.

- ii. Every stairway, deck, porch and balcony and all appurtenances attached thereto, including, without limitation, handrails and guardrails, shall be maintained in a structurally sound condition and in good repair.
- iii. Any interior porch, landing or vestibule shall be properly anchored and capable of supporting live and dead loads.

5-204 Minimum Maintenance Standards For Vacant Buildings. –

(1) The interior maintenance standards set forth in section 5-203 shall not apply to vacant nonresidential buildings or structures unless one or more of the following serious conditions is present on the property:

- (a) Overall conditions present a serious health or safety hazard.
- (b) The building or structure is a breeding area for rodents or insects.
- (c) The building or structure presents a fire hazard.
- (d) The building or structure is structurally unsafe and presents a threat to the safety of code enforcement personnel, fire department personnel and law enforcement officers or members of the general public.
- (e) The building or structure is frequented by vagrants.
- (f) The building or structure is not properly secured to prevent unauthorized access.

(2) If the code enforcement official orders a nonresidential building or structure vacated and closed pursuant to this article, the owner shall board and secure such building or structure in accordance with the guidelines for boarding and securing a building or structure provided by the code enforcement official.

5-205 Alternative Remedies. -

Enforcement by any remedy provided in this article shall not prevent enforcement by any other remedy provided in this article or in other ordinances or laws; including but not limited to G.S. 160D Art. 11, G.S. 160A-193 and G.S. 160A-174.

Secs. 5-206—5-220. - Reserved.

Current Code

Chapter 8 GARBAGE, TRASH AND REFUSE¹

ARTICLE I. IN GENERAL

Sec. 8-1. Sweeping or depositing from building onto sidewalk.

It shall be unlawful for any person to sweep or throw any litter, dirt or garbage, from within any dwelling house, store or other building onto any sidewalk.

(Code 1967, § 16-1)

Sec. 8-2. Depositing on travelled portion of street.

It shall be unlawful for any person to deposit or to allow or to cause to be deposited any leaves, debris, trash or garbage within the travelled portion of the streets of the town. For the purpose of this section, the term "travelled portion" means the street from curbing to curbing.

(Code 1967, § 16-2)

Sec. 8-3. Containers required; capacity.

- (a) *Generally.* It shall be unlawful for any person to have or to keep on his premises or any other premises or the street or sidewalk adjacent thereto in the town, any garbage, or other refuse of like nature, except in leakproof, metal garbage cans or other like containers with tightly closed lids thereon, so that such garbage, slops or other refuse shall be at all times inaccessible to flies. No such container shall be of a capacity of more than thirty (30) gallons.
- (b) *Places of business.* No person shall place waste paper or rubbish from any place of business in any street or alley or any other place where the same may be scattered by the winds; provided, however, that such waste paper may be placed in a barrel, box or other container for the purpose of preventing it from being scattered.

(Code 1967, §§ 16-3, 16-4)

Secs. 8-4—8-25. Reserved.

¹Cross reference(s)—Superintendent of public works, § 2-196Cross reference(s)— et seq.; community appearance commission, § 2-236Cross reference(s)— et seq.; animals and fowl, Ch. 4Cross reference(s)—; water and sanitary sewer mains extension, § 18-76Cross reference(s)— et seq.; sewers and sewage disposal, § 18-151Cross reference(s)— et seq.

ARTICLE II. NOXIOUS WEEDS AND GRASS AND SIMILAR NUISANCES²

Sec. 8-26. Procedures in article not exclusive.

The procedures set forth in this article shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances, and this article shall not prevent the town from proceeding in a criminal action against any person violating the provisions of this article as provided in G.S. § 14-4.

(Ord. No. 269, § 1, 7-22-93)

Sec. 8-27. Nuisances declared.

The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger, and hazard to the health, safety, morals and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances per se wherever the same may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

- (1) Any condition which is a breeding ground or harbor for mosquitoes or a breeding ground or harbor for rats, snakes, or other pests or has the potential for becoming a breeding ground or harbor for such pests;
- (2) A place, other than a "wooded area" of heavy growth of weeds or grasses over twelve (12) inches in height which lies less than one hundred (100) feet from any adjoining property line which contains a dwelling or business structure. "Wooded areas" are exempt from this restriction and are defined as any tax parcel of property which is covered over substantially all its surface with trees of a size and density that the trees in themselves prohibit cleaning with a five-foot wide bush hog type mower or which in the opinion of the town manager or his designee is so substantially covered by mature trees as to be a wooded lot; whether a parcel is so covered will be determined by a town code enforcement officer, if so designated by the town manager.
- (3) Except for agricultural properties, any growth of weeds or grasses over twelve (12) inches in height, not including wooded areas, in or along a public right-of-way, including an alley or easement. The right-of-way as herein referenced is defined as the land between the "edge", hereinafter edge, of pavement, alley or curb line and the property line. Some of that area herein defined to be right-of-way may not technically be the right-of-way of the street but nevertheless as herein defined the obligation to maintain growths extends to the edge. The maintenance of such right-of-way shall be the responsibility of the property owner with property adjacent to or fronting on such right-of-way.
- (4) A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus toxicodendron*), in a location likely to be accessible to the general public;
- (5) An open place of collection of water for which no adequate natural drainage is provided and where insects tend to breed or which is or is likely to become a nuisance or a menace to public health;
- (6) An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, trash, refuse, brush, old clothes, rags or any other combustible materials or objects of a like nature;

²Editor's note(s)—Ord. No. 269, adopted July 22, 1993, repealed former art. II, §§ 8-26Editor's note(s)—8-33, which pertained to conditions of premises. Sections 1—9 of said ordinance added a new art. II to read as herein set out.

- (7) Is an open place of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;
- (8) Hides, dried or green provided the same may be kept for sale in the town when thoroughly cured and odorless;
- (9) Any furniture, appliances, automotive parts or pieces or other wood or metal products of any kind or nature openly kept which have jagged edges of metal or glass, or areas of confinement, or areas which may provide a habitat for rats, snakes, insects, or other pests;
- (10) Any improper or inadequate drainage on private property which causes flooding, interferes with the use of, or endangers in any way the streets, sidewalks, parks or other town owned property of any kind;
- (11) Any stormwater retention or detention pond or other impoundment device which is operating improperly;
- (12) Any stormdrain, sewer manhole, abandoned well or other private or public facility which is not properly covered with a grate or other means to remove any hazard to pedestrians or motor traffic;
- (13) Any ditch, trench, or below ground portion of a construction project which remains open for more than fourteen (14) days without being completed or which is not protected with barricades, flags or other means so as to constitute a hazard to pedestrians or motor traffic;
- (14) Failure to clean or clear a public street of mud and debris related to a construction, timbering or other similar land use project within twelve (12) hours after notification by the town manager or his designee for major and minor thoroughfares or within twenty-four (24) hours after such notification for collector and local streets; however, if it is found by the town manager or his designee that the situation is causing a clear and present danger or hazard to traffic or the general public, such cleaning or clearing may be required to take place as soon after notification as practicable;
- (15) Any condition which violates the rules and regulations of the Johnston County Health Department;
- (16) Any other condition specifically declared to be a danger to the public health, safety, morals, and general welfare of inhabitants of the city and a public nuisance by the town council which proceeding may be initiated by the town manager or his designee before the board after giving written notice thereof. Such notice shall state the condition existing, the location and that the board will be requested on a day certain, after a public hearing at which the person notified may appear and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals and general welfare of the inhabitants of the city and a public nuisance. After such declaration by the board in the form of an ordinance, the condition will be abated as provided for in this chapter, provided no administrative appeal shall lie from the proceeding pursuant to the subsection and initiated by the town manager or his designee before the town council; or
- (17) The outdoor storage of any tire upon any premises with the town in such a manner that it does not conform to the approved storage methods defined in article III, section 8-51.

(Ord. No. 269, § 2, 7-22-93; Ord. No. 503, 2-4-20 ; Ord. No. 505, pt. I, 9-1-20)

Sec. 8-28. Duty to cause investigation of possible nuisances.

The town manager, or his designee, upon notice from any person of the existence of any of the conditions described in this article, shall cause to be made by the appropriate county health department or official or town official such investigation as may be necessary to determine whether in fact such condition exists as to constitute a public nuisance.

(Ord. No. 269, § 3, 7-22-93)

Sec. 8-29. Duty to give notice of existence of nuisance and require abatement.

- (a) Upon a determination that a public nuisance as described in this article exists, the town manager or his designee shall notify in writing the owner, occupant or person in possession of the premises in question of the condition constituting such public nuisance and shall order the prompt abatement thereof within the ten (10) days from the receipt of such written notice.
- (b) Within the ten-day period mentioned in subsection (a) above, the owner of the property where the nuisance exists may appeal the findings of the town manager or his designee made pursuant to subsection (a) above to the town council by given written notice of appeal to the town clerk. The filing of the appeal shall stay the abatement of the nuisance by the town until a final determination by the board, unless the town manager or his designee certifies to the board that, because of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property or that, because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this chapter. In that case, abatement proceedings shall not be stayed except by order of the town council or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the town manager or his designee. In the event no appeal is taken, the town may proceed to abate the nuisance.
- (c) The board, in the event an appeal is taken as provided in subsection (b) above and after hearing all interested persons and reviewing the findings of the town manager or his designee, may reverse the findings made pursuant to subsection (a) above; but if the board shall uphold the findings of the town manager or his designee made pursuant to such subsection, the board shall adopt an ordinance specifically declaring the condition existing on the property to be a danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the town and public nuisance and directing the appropriate town employees to cause the condition or conditions to be abated.
- (d) If any of the above-defined nuisances are found to exist, the responsibility for abatement shall rest with the owner, occupant or person in possession of the property or their agent, notwithstanding that the nuisance is found to exist, wholly or in part, within a town easement which crosses private property.

(Ord. No. 269, § 4, 7-22-93)

Sec. 8-30. Abatement of nuisance by town; violator may; have town abate nuisance.

- (a) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within ten (10) days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.
- (b) Any person who has been ordered to abate a public nuisance may within the time allowed by this article request the town in writing to remove such condition, the cost of which shall be paid by the person making such request.

(Ord. No. 269, § 5, 7-22-93)

Sec. 8-31. Cost of nuisance abatement to be charged to owner of premises; statement of charges.

The actual cost incurred by the town in removing or otherwise remedying a public nuisance defined in this article shall be charged to the owner of such lot or parcel of land, and it shall be the duty of the collector to mail a

statement of such charges to the owner or other person in possession of such premises within instructions that such charges are due and payable within thirty (30) days from the receipt thereof.

(Ord. No. 269, § 6, 7-22-93)

Sec. 8-32. Lien created upon failure to pay nuisance abatement costs.

In the event charges for the removal or abatement of a public nuisance described by this article are not paid within thirty (30) days after the receipt of the statement of charges as provided for in this section, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes.

(Ord. No. 269, § 7, 7-22-93)

Sec. 8-33. Second and subsequent violations.

Upon second and subsequent violations of this article, no notice of the violation as required in section 2-30 shall be given, but the town, through its agents and employees, may enter upon such lots or premises and cut and destroy such weeds, and the costs and expense thereof shall be paid by the owner, lessee, occupant or agent or it shall become a lien against the property the same as taxes.

(Ord. No. 269, § 8, 7-22-93)

Sec. 8-34 Chronic violator provision.

The town may notify a "chronic violator" of the town's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. A chronic violator is defined as a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three (3) times under any provision of the public nuisance ordinance.

The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

(Ord. No. 505, pt. II, 9-1-20)

Sec. 8-35. Civil penalty provided.

- (a) A violation of any provision of this article shall constitute a misdemeanor punishable as provided in section 1-12, as set forth below.
- (b) A violation of any provision of this article shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00). No penalty shall be imposed if the offender abates the nuisance within the prescribed time or requests the town to abate the nuisance as allowed in section 6-31. If the offender does not abate the nuisance within the prescribed time limit, the penalty may be imposed for each day the nuisance remained after the written notice of violation was given and terminating on the date the nuisance was abated by the town.
- (c) The offender shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid within the ten (10) days of its receipt by the offender.

- (d) The penalty may be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been issued a citation.

(Ord. No. 269, § 9, 7-22-93)

Editor's note(s)—Ord. No. 505 Editor's note(s)—, pt. II, adopted Sept. 1, 2020, renumbered former § 8-34 Editor's note(s)— as § 8-35 Editor's note(s)—.

Secs. 8-35—8-50. Reserved.

ARTICLE III. OUTDOOR STORAGE OF USED AND SCRAP TIRES

Sec. 8-51. Outdoor storage.

All used tires for sale and scrap tires stored in the Town of Smithfield shall be kept in a manner which prevents their exposure to and collection of the elements of nature. Tires must not be allowed to hold water, dirt, rubbish or other foreign materials to prevent mosquito breeding and rodent harborage.

- (1) Used or scrap tires stored outside shall be screened from public view.
- (2) Used or scrap tires stored outside shall be stored on racks or neatly stacked not in excess of ten (10) feet in height; or in a roll-off front-load dumpster, or other metal storage container, including a trailer not exceeding forty-five (45) feet x eight (8) feet x thirteen (13) feet if covered and if the stacked tires do not exceed height of thirteen (13) feet and used and scrap tires shall be shielded from rainwater.
- (3) There shall be no more than one (1) roll-off front-load dumpster, metal storage container or tire storage trailer per business. Such dumpster, container or trailer shall not occupy required parking areas. Tire storage trailers shall only be stored on approved paved surface areas and used and scrap tires shall be removed from the site on a regular basis.
- (4) Outdoor storage areas for tires shall be screened by a six (6) to eight (8) foot high opaque durable fence or wall. Tire storage dumpsters and containers shall be screened on three (3) sides by means of a durable opaque fence, opaque wall or solid vegetative buffer.

(Ord. No. 503, 2-4-20)

Proposed Amendments

Ordinance Key	
Black	New Sections
Red	Parts that were in existence in Chapter 8 previously
Blue	Provisions that need particular attention

REPLACING CHAPTER 8 – GARBAGE, TRASH, AND REFUSE

NOW

CHAPTER 8. – OFFENSIVE CONDITIONS ON PRIVATE PROPERTY

Article I. – Nuisances and Detrimental Conditions

Sec. 8-1. – Prohibited Conditions

- (a) *Duty to abate and remedy and public health considerations.* It shall be the duty of every person owning or leasing, renting or occupying any lot within the city to keep such lot free from certain offensive conditions which might constitute a threat, either immediate or in the future, to the health, safety and welfare of surrounding properties, or any offensive aesthetic condition, upon a finding that the abatement or removal thereof, would bestow aesthetic benefits to the community that outweigh the burden imposed on the private property owner which would promote the peace and the dignity of the town. Such finding shall be in writing and shall be based on a balancing of the monetary loss to the apparent property owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance.
- (b) *Offensive conditions defined.* In determining the existence of offensive conditions, the following among other relevant facts may be considered:
- (1) Direct or indirect protection of public health and safety which may be indicated when one or more of the following exist:
 - a. A breeding ground or harbor for mosquitoes, insects, snakes, rats or other pests, or
 - b. A point of heavy growth of weeds or other noxious vegetation, or
 - c. A point of collection of pools or ponding water, or
 - d. A point of concentration or source of fire hazard due to flammable or explosive solids or liquids, or
 - e. A danger from any exposed surfaces of metal, glass or other jagged materials.
 - (2) Protection of property values;
 - (3) Promotion of tourism and other economic development opportunities;
 - (4) Preservation of the character and integrity of the community;

(5) Promotion of the comfort, happiness and emotional stability of area residents.

The cleaning up of any lot in accordance with the procedure prescribed by this article shall not prevent the city from proceeding in a criminal action against any person violating the provisions of this section.

(c) *Specific conditions of noxious weeds, grass and similar instances declared to be public nuisance.* The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the city and are found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

- (1)** A place, other than a "wooded area" of heavy growth of weeds or grasses over twelve (12) inches in height which lies less than one hundred (100) feet from any adjoining property line which contains a dwelling or business structure. "Wooded areas" are exempt from this restriction and are defined as any tax parcel of property which is covered over substantially all its surface with trees of a size and density that the trees in themselves prohibit cleaning with a five-foot wide bush hog type mower or which in the opinion of the town manager or his designee is so substantially covered by mature trees as to be a wooded lot; whether a parcel is so covered will be determined by a town code enforcement officer, if so designated by the town manager.
- (2)** Except for agricultural properties, any growth of weeds or grasses over twelve (12) inches in height, not including wooded areas, in or along a public right-of-way, including an alley or easement. The right-of-way as herein referenced is defined as the land between the "edge", hereinafter edge, of pavement, alley or curb line and the property line. Some of that area herein defined to be right-of-way may not technically be the right-of-way of the street but nevertheless as herein defined the obligation to maintain growths extends to the edge. The maintenance of such right-of-way shall be the responsibility of the property owner with property adjacent to or fronting on such right-of-way.
- (3)** A place of growth of noxious vegetation, including poison sumac (*Rhus vernix*), poison ivy (*Rhus radicans*) or poison oak (*Rhus toxicodendron*), in a location likely to be accessible to the general public.
- (4)** Any accumulation of trash and/or garbage which is the result of the absence or of overflowing or improperly closed trash or garbage containers.
- (5)** Accumulation in an open place of hazardous or toxic materials and chemicals.
- (6)** An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature.
- (7)** Any condition or accumulation of garbage, rubbish, trash, or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes, or vermin prejudicial to the public health.

- (8)** Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.
- (9)** The open storage of any discarded ice box, refrigerator, stove, washer, dryer, other "white goods," glass, building materials, building rubbish or similar items.
- (10)** Any furniture, appliances, automotive parts or pieces or other wood or metal products of any kind or nature openly kept which have jagged edges of metal or glass or area of confinement, or areas which may provide a habitat for rats, snakes, insects, or other pests.
- (11)** Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the City Manager or his designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.
- (12)** Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.
- (13)** Any improper or inadequate drainage on private property which causes flooding, interferes with use of, or endangers in any way the streets, sidewalks, parks or other town owned property of any kind.
- (14)** Any stormwater retention or detention pond or other impoundment device which is operating improperly.
- (15)** Any stormdrain, sewer manhole, abandoned well or other private or public facility which is not properly covered with a grate or other means to remove any hazard to pedestrians or motor traffic.
- (16)** Any ditch, trench, or below ground portion of a construction project which remains open for more than fourteen (14) days without being completed or which is not protected with barricades, flags or other means so as to constitute a hazard to pedestrians or motor traffic.
- (17)** Any condition which violates the rules and regulations of the Johnston County Health Department.
- (18)** The outdoor storage of any tire upon any premises with the town in such a manner that it does not conform to the approved storage methods defined in article III, section 8-21.
- (19)** Nuisance vehicle as set out in and controlled by Chapter 10 – Motor Vehicles and Traffic Article VI – Abandoned Nuisance and Junked Motor Vehicles.
- (20)** Any other condition specifically declared to be a danger to the public health, safety, morals, and general welfare of inhabitants of the city and a public nuisance by the town council which proceeding may be initiated by the town manager or his designee before the board after giving written notice thereof. Such notice shall state the condition existing, the location and that the board will be requested on a day certain, after a public hearing at which the person notified may appear and be heard, to declare that the conditions existing constitute a danger to the public health, safety, morals and general welfare of the inhabitants of the city and a public nuisance. After such declaration by the board in the form of an ordinance, the condition will be abated as provided for in this chapter,

provided no administrative appeal shall lie from the proceeding pursuant to the subsection and initiated by the town manager or his designee before the town council.

(d) Specific external conditions for commercial and industrial properties declared detrimental.

Pursuant to G.S. 160A-174, the town may enact ordinances that protect the health, safety, or welfare of its citizens and the peace and dignity of the town. The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare and to harm the peace and dignity of the town and are hereby declared unlawful:

- (1)** Every stairway, deck, porch, and balcony, and all appurtenances attached thereto, including without limitation, handrails and guardrails, shall be maintained in a structurally sound condition, in good repair. Each shall be properly anchored and capable of supporting live or dead loads.
- (2)** No receptacles, ceiling fixtures, or other fixtures shall be hanging loose, unless designed and rated for that purpose.
- (3)** There shall be no broken or cracked structural members.
- (4)** All siding shall be reasonably weathertight, with no holes or excessive cracks or decayed boards, or siding material.
- (5)** There shall be no loose siding.
- (6)** The roof and flashing shall be sound, tight and not have defects which admit water or rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior of the structure. Roof drains, gutters, scuppers, and downspouts shall be maintained in good repair, and free from obstructions. Roof water shall not be discharged in a manner that creates a health or safety hazard.
- (7)** Windows, where provided, including frames, sash components, and glazing shall be maintained in good condition, with no broken, cracked, or missing glazing. Broken or missing glass may not be replaced with material other than glass.

- (e) Procedure is alternative.** Nothing in this article nor any of its provisions shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. In addition to the remedies provided for herein, any violation of the terms of this article shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in section 8-6 and in other parts of the Code of Ordinances of the Town of Smithfield. **This article shall not prevent the town from proceeding in a criminal actions against any person violating the provisions of this article as provided in G.S. 14-1.**

Sec. 8-2. - Service of notice requiring correction of condition.

If any person shall violate the provisions of section 8-1, it shall be the duty of the code enforcement officer to give notice to the owner or to any person in possession of the lot in question directing that,

within a reasonable about of time from the date of such notice, all offensive, nuisance, or detrimental conditions must be removed from such lot. Such notice may be given by mail, or written notice may be personally served by the director of inspections or by any police officer of the city when so authorized by the director of inspections. If any such lot is owned by more than one person, notice to any person having any estate or interest in such lot shall be deemed sufficient compliance with this section.

Sec. 8-3. - Correction of condition by city.

- (a) *Authorized.* Upon the failure of a person served notice as provided by this article to comply with the notice within the time prescribed by the notice, or within a reasonable time frame after the determination of an appeal if one has been taken, or within such additional time as may be prescribed by the council on appeal, it shall be the duty of the code enforcement officer to go upon such lot and remove or abate the offensive, nuisance, or detrimental conditions.
 - (b) *Payment of costs.* Upon the completion of the work referred to in subsection (a) of this section, the code enforcement officer shall deliver to the city clerk a statement showing the actual cost of the cleaning up of the lot in question, including the cost of labor and hauling and other necessary items. The city clerk shall thereupon send to the owner of the lot a bill covering such cost, and the amount of such bill shall become a lien upon such lot, and if not paid **within 30 days** shall be collected in the manner provided for the collection of liens for special assessments.
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Sec. 8-4. - Abatement and collection procedure when property owner unknown.

If the owner of any lot upon which offensive, nuisance, or detrimental conditions exist cannot be ascertained by the exercise of reasonable diligence, it shall not be necessary to give the notice otherwise required by section 8-2, and the code enforcement officer, upon failure to ascertain the name of the owner, shall proceed to have such lot cleaned up. The statement of the cost of cleaning such lot, as made to the city clerk by the code enforcement officer, shall show the location of the lot so that it can be subsequently identified. In such case it shall not be necessary for the city clerk to send out a bill for the cost involved, but the bill shall be kept on file until the name of the owner of the lot can be ascertained. When the name of the owner of the lot is ascertained, such bill shall be sent to the owner, and upon his failure to pay the bill it shall become a lien upon the lot as provided in section 8-4(b).

Sec. 8-5. – Offensive, Nuisance, or Detrimental Conditions—Misdemeanor.

If any person owning or leasing, renting, or occupying any lot within the limits of the city shall create or shall permit the creation of an offensive or dangerous menace or threat to public health or safety by virtue of the presence nuisance or detrimental conditions, said person shall be deemed to be in violation of this section and the maintenance of such condition shall be a misdemeanor. Every day on which a violation of this section exists shall constitute a separate violation and separate offense, and the violation of this section shall be punishable as provided in section 1-12.

Sec. 8-6. - Appeal of notice requiring correction of condition.

Any person served with notice as provided by section 8-2 may appeal such notice to the city council. Such appeal must be filed within seven days of service of the notice and shall stay all proceedings under this article until the appeal has been heard and determined. *The city council may hear and determine such appeal at any regular or special meeting, of which the appellant shall be given reasonable notice, but shall in any event act on such appeal no later than its next regular meeting following the filing of the appeal.*

Secs. 8-7---8.20. – Reserved

ARTICLE II. - OUTDOOR STORAGE OF USED AND SCRAP TIRES

Sec. 8-21. - Outdoor storage.

All used tires for sale and scrap tires stored in the Town of Smithfield shall be kept in a manner which prevents their exposure to and collection of the elements of nature. Tires must not be allowed to hold water, dirt, rubbish or other foreign materials to prevent mosquito breeding and rodent harborage.

- (1) Used or scrap tires stored outside shall be screened from public view.
- (2) Used or scrap tires stored outside shall be stored on racks or neatly stacked not in excess of ten (10) feet in height; or in a roll-off front-load dumpster, or other metal storage container, including a trailer not exceeding forty-five (45) feet x eight (8) feet x thirteen (13) feet if covered and if the stacked tires do not exceed height of thirteen (13) feet and used and scrap tires shall be shielded from rainwater.
- (3) There shall be no more than one (1) roll-off front-load dumpster, metal storage container or tire storage trailer per business. Such dumpster, container or trailer shall not occupy required parking areas. Tire storage trailers shall only be stored on approved paved surface areas and used and scrap tires shall be removed from the site on a regular basis.
- (4) Outdoor storage areas for tires shall be screened by a six (6) to eight (8) foot high opaque durable fence or wall. Tire storage dumpsters and containers shall be screened on three (3) sides by means of a durable opaque fence, opaque wall or solid vegetative buffer.

Secs. 8-22-8—40. – Reserved

ARTICLE III. – Miscellaneous

Sec. 8-41. - Sweeping or depositing from building onto sidewalk.

It shall be unlawful for any person to sweep or throw any litter, dirt or garbage, from within any dwelling house, store or other building onto any sidewalk.

Sec. 8-42. - Depositing on travelled portion of street.

It shall be unlawful for any person to deposit or to allow or to cause to be deposited any leaves, debris, trash or garbage within the travelled portion of the streets of the town. For the purpose of this section, the term "travelled portion" means the street from curbing to curbing.

Sec. 8-43. - Containers required; capacity.

- (a) *Generally.* It shall be unlawful for any person to have or to keep on his premises or any other premises or the street or sidewalk adjacent thereto in the town, any garbage, or other refuse of like nature, except in leakproof, metal garbage cans or other like containers with tightly closed lids thereon, so that such garbage, slops or other refuse shall be at all times inaccessible to flies. No such container shall be of a capacity of more than thirty (30) gallons.
 - (b) *Places of business.* No person shall place waste paper or rubbish from any place of business in any street or alley or any other place where the same may be scattered by the winds; provided, however, that such waste paper may be placed in a barrel, box or other container for the purpose of preventing it from being scattered.
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Secs. 8-44—8-60. – Reserved