

CHAPTER 90: ABANDONED STRUCTURES; UNFIT DWELLINGS

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§ 90.01 FINDING; INTENT; DEFINITION

- (A) It is hereby found that there exists within the town dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accident or other calamities; lack of ventilation, light, or sanitary facilities; and other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the town, and that there exists within the town abandoned structures which the Town Council finds to be hazardous to the health, safety, and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-174, et seq., and 160A-441 et seq., it is the intent of this chapter to provide for the repair, closing, or demolition of any such dwellings or abandoned structures in accordance with the provisions and procedures as are set forth by law. (Amended 3-13-12)
- (B) A “STRUCTURE” is defined as a combination of material to form a construction; the term “STRUCTURE” shall be construed as if followed by the words “or part thereof”.
- (C) Abandoned Structure. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Code Enforcement Officer to be unfit for human habitation or occupancy based upon the standards as set forth in this Ordinance. (Adopted 3-13-12)

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- (D) Code Enforcement Officer. The Code Enforcement Officer designated or appointed by the Town Council to carry out the administration and enforcement of this Ordinance. (Adopted 3-13-12)

§ 90.02 DUTIES OF THE CODE ENFORCEMENT OFFICER

The Code Enforcement Officer is hereby designated as the town officer to enforce the provisions of this chapter. It shall be his duty to:

- (A) Locate abandoned structures within the town and determine which structures are in violation of this chapter;
- (B) Locate dwellings within the town that are unfit for human habitation;
- (C) Take such action, pursuant to this chapter as may be necessary to provide for the repair, closing, or demolition of such structures and dwellings;
- (D) Keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this chapter, and
- (E) Perform such other duties as may be prescribed herein or assigned to him by the Town Council.
(Ord, passed 3-23-82, amended 3-13-12)

§ 90.03 POWERS OF THE CODE ENFORCEMENT OFFICER.

The Code Enforcement Officer is authorized to exercise such powers as may be necessary to carry out the intent and the provisions of this chapter, including the following powers in addition to others granted herein:

- (A) To investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this chapter and to report same to Town Council;
- (B) To investigate the condition of dwellings within the town in order to determine those that are in violation of this chapter at to report the same to Town Council;
- (C) To enter upon premises for the purpose of making inspections;
- (D) To administer oaths and affirmations, examine witnesses, and receive evidence; and
- (E) To designate such other officers, agents, and employees of the town as he deems necessary to carry out the provisions of this chapter.

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(Ord, passed 3-23-82, amended 3-13-12)

§ 90.04 STANDARDS FOR ENFORCEMENT.

- (A) Every abandoned structure within the town shall be deemed in violation of this chapter whenever such structure constitutes a hazard to the health, safety, or welfare of the town citizens as a result of:
 - (1) The attraction of insects or rodents;
 - (2) Conditions creating a fire hazard;
 - (3) Dangerous conditions constituting a threat to children; or
 - (4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.
- (B) In making the determination of whether or not an abandoned structure is in violation of this chapter, the Code Enforcement Officer may, by way of illustration and not limitation, consider the presence or absence of the following conditions:
 - (1) Holes or cracks in the structure's floors, walls, ceilings, or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects;
 - (2) The collection of garbage or rubbish in or near the structure which might attract rodents or insects, or become breeding places for rodents or insects;
 - (3) Violations of the fire prevention code which constitutes a fire hazard in such structure;
 - (4) The collection of garbage, rubbish, or combustible material which constitutes a fire hazard in such structure;
 - (5) The use of such structure or nearby grounds or facilities by children as a play area;
 - (6) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking, or eating.

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- (C) A dwelling within the town shall be deemed unfit for human habitation, and the Code Enforcement Officer may so determine, if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the town.
 - (D) In seeking the determination of whether or not a dwelling is in violation of this chapter, the Code Enforcement Officer may, by way of illustration and not limitation, consider the following defective conditions:
 - (1) Defects therein increasing the hazards of fire, accidents, or other calamities;
 - (2) Lack of adequate ventilation, light, or sanitary facilities;
 - (3) Dilapidation;
 - (4) Disrepair;
 - (5) Structural defects;
 - (6) Uncleanliness.
- (Ord, passed 3-23-82, amended 3-13-12)

§ 90.05 PROCEDURE FOR ENFORCEMENT.

- (A) Preliminary investigation; notice; hearing. Whenever a petition is filed with the Code Enforcement Officer by a public authority or by at least five residents of the town charging that any dwelling or structure is in violation of this chapter or whenever it appears to the Code Enforcement Officer, upon inspection, that any dwelling or structure exists in violation hereof, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or structure a complaint stating the charges and containing a notice that a hearing will be held before the Code Enforcement Officer at a place therein fixed, not less than tenor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling or structure. Any person so desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing

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in courts of law or equity shall not be controlling in hearings before the Code Enforcement Officer.

- (B) Notice of lis pendens. Upon the issuance of a complaint and notice of hearing pursuant to this Section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of Rutherford County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with Section 160A-445 of the North Carolina General Statutes, as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.
- (C) Procedure after Hearing; Order. If, after notice and hearing, the Code Enforcement Officer determines that the structure under consideration is unfit for human habitation in accordance with the standards set forth herein, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order as provided herein. (Amended 3-14-13)
 - (1) If the repair, alteration or improvement of the dwelling can be made at a cost of less than fifty (50) percent of the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. (Amended 3-14-13)
 - (2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than fifty (50) percent of the value of the dwelling, the order shall require the owner, within the time specified, to repair, alter, or improve the dwelling in order to render it fit for human habitation or, at the owner's option, to remove or demolish such dwelling. (Amended 3-14-13)

If continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements, the current state of the property, and any additional risks due to the presence and capacity of minors under the age of eighteen or occupants with physical or mental disabilities, the order may require that the property be vacated and closed. The order shall

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state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the remedies afforded the Town in § 90.05(D) of this Chapter. (Amended 3-14-13)

(D) Failure to comply with order.

- (1) In personam remedy. If the owner of any dwelling or structure shall fail to comply with an order of the Code Enforcement Officer within the time specified therein, the Code Enforcement Officer may submit to the Town Council at its next regular meeting a resolution directing the Town Attorney to petition the superior court for an order directing such owner to comply with the order of the Inspector, as authorized by G.S. 160A-446 (g).
- (2) In rem remedy. After failure of an owner of a dwelling or structure to comply with an order of the Code Enforcement Officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in division (D)(1) above, the Code Enforcement Officer shall submit to the Town Council an ordinance ordering the Code Enforcement Officer to cause such dwelling or structure to be repaired, altered or improved, vacated and closed, or removed or demolished, as provided in the original order of the Code Enforcement Officer and pending such repair, alteration, improvement, vacating, closure, removal or demolition, to placard any such dwelling as provided by G.S. 160A-443.

(E) Appeals.

- (1) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Code Enforcement Officer may be taken. Except where this Chapter provides for different rules or procedures, the Board of Adjustment acting as the Housing Appeals Board shall follow its rules of procedure, which may be amended to provide specifically for this function.
- (2) An appeal from any decision or order of the Code Enforcement Officer may be taken by any person aggrieved thereby or by any officer, board or commission of the Town. Any appeal from the Code Enforcement Officer shall be taken within fifteen (15) days from the rendering of the decision or service of the order by filing with the Code Enforcement Officer and with the Board a notice of appeal which shall

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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 Code Enforcement Officer refusing to allow the person aggrieved thereby to do any such 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, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Code Enforcement Officer, by the Board, or by a court of record upon petition made pursuant to Subparagraph (E)(5) of this Section.

- (3) The Board of Adjustment shall fix a reasonable time for hearing appeals, shall give due notice to 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 any decision and order that 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 four-fifths 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, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Chapter, to adapt the application of the Chapter to the necessities of the case to the end that the spirit of the Chapter shall be observed, public safety and welfare secured, and substantial justice done.
- (4) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.
- (5) Any person aggrieved by an order issued by the Code Enforcement Officer or a decision rendered by the Board may petition the Superior

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Court for an injunction, restraining the Code Enforcement Officer from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Code Enforcement Officer pending a final disposition of the cause—as provided by G.S. 160A-446(f). The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days, and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Subsection.

(Ord. passed 3-23-82, amended 3-13-12)

§ 90.06 METHODS OF SERVICE OF COMPLAINTS AND ORDERS.

- (A) Complaints or orders issued by the Code Enforcement Officer shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the Town at least not later than the time at which personal service would be required under the provisions of this Ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Ord. passed 3-23-82, amended 3-13-12)

§ 90.07 IN REM ACTION BY CODE ENFORCEMENT OFFICER; PLACARDING.

- (A) After failure of an owner of a structure to comply with an order of the Code Enforcement Officer issued pursuant to the provisions of this chapter, and upon adoption by the Town Council of an ordinance authorizing and directing him to

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do so, as provided by G.S. 160A-443(5) and § 90.05(C) of this chapter, the Code Enforcement Officer shall proceed to cause such structure to be repaired, altered or improved, vacated and closed, or removed or demolished, as directed by the ordinance of the Town Council and shall cause be to posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

- (B) Each such ordinance shall be recorded in the office of the Register of Deeds in Rutherford County, and shall be indexed in the name of the property owner is the grantor index, as provided by G.S. 160A-443(5).
(Ord. passed 3-23-82, amended 3-13-12)

§ 90.08 COSTS A LIEN ON PREMISES.

- (A) As provided by G.S. 160A-443(6), the amount of the cost of any removal or demolition caused to be made or done by the Code Enforcement Officer pursuant to this chapter shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10 Chapter 160A of the General Statutes.
- (B) If the dwelling is removed or demolished by the Code Enforcement Officer, he shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Code Enforcement Officer, 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 of the decree of the Court.
(Ord. passed 3-23-82, amended 3-13-12)

§ 90.09 ALTERNATIVE REMEDIES.

- (A) Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this chapter by criminal process, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinance or laws.
- (B) In addition to the remedies provided for herein, any violation of the terms of this Chapter shall subject the violator to the penalties and remedies as set forth in

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Chapter 10, Section 10-99, Enforcement, of the Code of Ordinances of the Town of Lake Lure.

(Ord. passed 3-23-82, amended 3-13-12)

90.10 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this Chapter is found to be in conflict with any provision of any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the Town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this Chapter. (Adopted 3-13-12)

90.11 VIOLATIONS.

In addition to the conditions, acts or failures to act that constitute violations specified in this Chapter above, it shall be a violation of this ordinance for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Code Enforcement Officer duly made and served as herein provided, within the time specified in such order. It shall be a violation of this ordinance for the owner of any dwelling, with respect to which an order has been issued pursuant to Section 90.05, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition. (Adopted 3-13-12)

90.12 VALIDITY.

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

(Adopted 3-13-12)