

ARTICLE I. IN GENERAL

Sec. 38-1. Definitions.

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

Abandoned structure means any building, structure, manufactured home or mobile home or part thereof not included in the definition of the term "dwelling" hereinbelow.

Dwelling means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any out-houses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home which is used solely for a seasonal vacation purpose. Temporary family health care structures, as defined in G.S. 160A-383.5, shall be considered dwellings for purposes of this chapter, provided that any provision requiring minimum square footage shall not apply to such structures.

Manufactured home or mobile home means a structure as defined in G.S. 143-145(7).

Owner means the holder of the title in fee simple and every mortgagee of record.

Parties in interest means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

Public authority means any housing authority or any officer who is in charge of any department or branch of the government of the town, county or state relating to health, fire, building regulations or other activities concerning dwellings in the town.

Public officer means the officer who is authorized hereunder to exercise the powers prescribed herein.

(Code 2015, § 153.04; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-2. Title.

This chapter shall be known and may be cited as the "Minimum Housing Ordinance of the Town of Waxhaw."

(Code 2015, § 153.01; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-3. Exercise of police power.

In accordance with G.S. 160A-441, the Board of Commissioners finds that there exists in the town dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to 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 further finds that provision is needed for the repair, closing or demolition of abandoned structures, the Board of Commissioners expressly finding that certain abandoned structures exist which are a health or safety hazard as a result of 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.

(Code 2015, § 153.02; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-4. Purpose.

In order to protect the health, safety and welfare of the residents of the town, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation; and, fur-

ther, to provide for the repair, closing or demolition of any abandoned structure which the Board of Commissioners finds to be a health or safety hazard as a result of 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.

(Code 2015, § 153.03; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-5. Scope.

(a) The provisions of this chapter shall apply to the construction, alteration, repair, equipping, use, occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to the buildings or structures within the municipal limits.

(b) No provision of this chapter shall be held to deprive any federal or state agency, or any other authority having jurisdiction, of any power or authority which it had on the effective date of the ordinance from which this chapter is derived or any remedy then existing for the enforcement of its orders, nor shall it deprive any individual or corporation of its legal rights as provided by law. (Code 2015, § 153.05; Ord. of 3-28-1988; Ord. of 4-12-1990)

Secs. 38-6—38-28. Reserved.

ARTICLE II. STANDARDS

Sec. 38-29. General determination of dwelling as unfit.

The code enforcement officer may determine that a dwelling is unfit for human habitation 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. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident or other calamity; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness.

(Code 2015, § 153.20; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-30. Minimum standards for plumbing systems and equipment.

Every building and dwelling unit shall contain not less than the following for plumbing systems and equipment:

- (1) A connection to a potable water supply and to the public sewer supply and to the public sewer or other approved sewage disposal system.
- (2) Sink, lavatory, tub or shower and water closet.
 - a. A kitchen sink, lavatory, tub or shower and a water closet, all in good working condition and installed in accordance with the applicable plumbing code, and located within the dwelling unit and accessible to the occupants.
 - b. The water closet and tub or shower shall be located in a room affording privacy to the user.
- (3) Connections to cold and hot water; pipe distribution system.
 - a. Connections to the kitchen sink, lavatory and tub or shower of an adequate supply of both cold water and hot water.

- b. All water shall be supplied through an approved pipe distribution system connected to a potable water supply.
- (4) Installations of all hot water heating appliances according to the applicable plumbing code and capable of supplying a continuous source of hot water, on demand, to all the required fixtures at a temperature of not less than 120 degrees Fahrenheit.

(Code 2015, § 153.21; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-31. Minimum standards for ventilation.

Every building and dwelling unit shall contain not less than the following for ventilation:

- (1) *Windows and the like.*
 - a. Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room, shall be ten percent of the floor area of the room.
 - b. Whenever walls or other portions of structures face a window of any such room and the light obstruction structures are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area.
 - c. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area

of the skylight shall equal at least 15 percent of the total floor area of the room.

(2) *Habitable rooms.*

- a. Every habitable room shall have at least one window or skylight which can easily be opened or other device as will adequately ventilate the room.
- b. The total openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size or minimum skylight-type window size, as required, or shall have other approved, equivalent ventilation.

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

(4) *Substitutions.*

- a. Year-round mechanically ventilating conditioned air systems may be substituted for windows, as required herein, in rooms other than rooms used for sleeping purposes.
- b. Window-type air conditioning units are not included in this exception.

(Code 2015, § 153.22; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-32. Minimum standards for electrical systems.

Every building and dwelling unit shall contain not less than the following for electrical systems:

- (1) Electric convenience receptacles.
 - a. Every building and dwelling unit shall be wired for electric lights and con-

venience receptacles. Every habitable room shall contain at least two floor or wall type electric convenience receptacles, connected in a manner as determined by the applicable electric code.

- b. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling, or wall type electric light fixture.
- c. In the event wall or ceiling light fixtures are not provided in any habitable room, then each habitable room shall contain at least three floor or wall type electric convenience receptacles.

- (2) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.
- (3) All fixtures, receptacles, equipment and wiring should be maintained in a state of good repair, safe, capable of being used and installed in accordance with the applicable electric code.
- (4) The minimum capacity of the service supply and the main disconnect switch shall be sufficient to carry adequately the total load as required by the applicable electrical code.

(Code 2015, § 153.23; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-33. Minimum standards for heating.

Every building and dwelling unit shall have facilities for providing heat in accordance with either subsection (1) or (2) of this section, as well as complying with subsection (3) of this section.

- (1) *Central and electric heating systems.* Every central or electric heating system shall be

of sufficient capacity so as to heat each dwelling unit to which it is connected with a minimum temperature of 68 degrees Fahrenheit measured at a point three feet above the floor during ordinary minimum winter conditions.

- (2) *Other heating facilities.* Where a central or electric heating system is not provided, each dwelling unit shall be provided with sufficient fireplaces, chimney, flues or gas vents whereby heating appliances may be connected so as to furnish a minimum temperature of 68 degrees Fahrenheit measured at a point three feet above the floor during ordinary minimum winter conditions.
- (3) *Installation and maintenance.* Heating appliances and facilities shall be installed in accordance with the applicable building code and shall be maintained in a safe and good working condition.

(Code 2015, § 153.24; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-34. Minimum standards for space, use and location.

Every building and dwelling unit shall contain not less than the following for space, use and location:

- (1) *Dwelling unit.* Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable floor area for each of the next three occupants, and at least 75 square feet of additional habitable floor area for each additional occupant.
- (2) *Room sizes.*
 - a. Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the applicable building code.

- b. In every dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 feet of floor area for each occupant under 12 years of age.
- (3) *Floor area calculation.*
- a. Floor area shall be calculated on the basis of habitable room area.
- b. However, closet area and hall area within the dwelling unit, where provided, may count for no more than ten percent of the required habitable floor area.
- c. The floor area of any part of any room where the ceiling height is less than 4½ feet shall not be considered as part of the floor area in computing the total floor area of the room to determine maximum permissible occupancy.
- (4) *Occupant.* For the purposes of this section, a person under one year of age shall not be counted as an occupant.
- (5) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet.
- (6) *Cellar.* No cellar shall be used for living purposes.
- (7) *Basements.* No basement shall be used for living purposes unless:
- a. The floor and walls are substantially watertight;
- b. The total window area, total openable window area and ceiling height are equal to those required for habitable rooms; and
- c. The required minimum window area of every habitable room is entirely above the grade adjoining the window area, except where the windows face a stairwell, window well or accessway.
- (Code 2015, § 153.25; Ord. of 3-28-1988; Ord. of 4-12-1990)
- Sec. 38-35. Minimum standards for safe and sanitary maintenance.**
- Every building and dwelling unit shall comply at least with the following for safe and sanitary maintenance:
- (1) *Exterior foundation wall and roofs.*
- a. Every foundation wall, exterior wall and exterior roof shall be substantially weather-tight, watertight and rodent-proof; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.
- b. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.
- (2) *Interior floors, walls and ceilings.* Every floor, interior wall and ceiling shall be substantially rodent-proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load placed thereon.
- (3) *Floor area calculation.*
- a. Floor area shall be calculated on the basis of habitable room area.

- b. However, closet area and hall area within the dwelling unit, where provided, may count for no more than ten percent of the required habitable floor area.
 - c. The floor area of any part of any room where the ceiling height is less than 4½ feet shall not be considered as part of the floor area in computing the total floor area of the room to determine maximum permissible occupancy.
- (4) *Stairs, porches and appurtenances.* Every inside and outside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair.
 - (5) *Bathroom floors.* Every bathroom floor surface and water closet compartment floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit the floor to be easily kept in a clean and sanitary condition.
 - (6) *Supplied facilities.* Every supplied facility, piece of equipment or utility which is required under this Code shall be so constructed and installed that it will function safely and effectively, and shall be maintained in sound working condition.
 - (7) *Drainage.* Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.
 - (8) *Egress.* Every dwelling unit shall be provided with means of egress as required by the applicable building code.

- (9) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of noxious weeds or plant growth which are in excess of 24 inches, and which cause or threaten to cause a hazard detrimental to the public health and safety.

(Code 2015, § 153.26; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-36. Minimum standards for control of insects, rodents and infestations.

Every building and dwelling unit shall at least comply with the following for control of insects, rodents and infestations:

- (1) *Screens.* For protection against mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall have supplied and installed screens and a self-closing device; and every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens installed.
- (2) *Rodent control.* Every basement or cellar window used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with screens installed or other approved device as will effectively prevent their entrance.
- (3) *Infestation.*
 - a. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for the extermination whenever his dwelling unit is the only one infested.

- b. Notwithstanding the foregoing provisions of subsection (2) of this section, whenever infestation is caused by failure of the actual owner to maintain a dwelling in a rodent-proof or reasonably insect-proof condition, extermination shall be the responsibility of the actual owner, as opposed to the tenant/occupant.
 - c. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner, and not the tenants.
- (4) *Rubbish.* Every dwelling unit shall be supplied with adequate rubbish storage facilities.
 - (5) *Garbage.* Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers, having a capacity of not more than 30 gallons per container. (Code 2015, § 153.27; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-37. Minimum standards for structural conditions.

Every building and dwelling unit shall at least comply with the following for structural conditions:

- (1) Walls or partitions or supporting members, sills, joints, rafters or other structural members shall not list, lean or buckle, and shall not be rotten, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.
- (2) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

- (3) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (4) Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in a condition that they will not fail or collapse.
- (5) Adequate facilities for egress in case of fire or panic shall be provided.
- (6) Interior walls and ceilings of all rooms, closets and hallways shall be finished of suitable materials, which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in a manner so as to enable the occupants to maintain reasonable privacy between various spaces.
- (7) The roof, finishings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather-tight and watertight.
- (8) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling or in a condition or location as to constitute a fire hazard.
- (9) There shall be no use of the ground for floors or wood floors on the ground.

(Code 2015, § 153.28; Ord. of 3-28-1988; Ord. of 4-12-1990)

Secs. 38-38—38-62. Reserved.

ARTICLE III. ADMINISTRATION AND ENFORCEMENT

Sec. 38-63. Code enforcement officer.

(a) The public office of the code enforcement officer is hereby created and the inspector shall be appointed by the town manager and serve at the discretion of the town manager.

(b) The inspector is designated the public officer to exercise the powers prescribed by this chapter, as well as any powers necessary or convenient to carry out and effectuate the purpose and provisions hereof, including the following powers, in addition to others specifically granted elsewhere herein:

- (1) To investigate the dwelling conditions in the town in order to determine which dwellings therein are unfit for human habitation;
- (2) To investigate any abandoned structure in the town in order to determine whether any structure should be repaired, closed or demolished;
- (3) To administer oaths, affirmations, examine witnesses and receive evidence;
- (4) To enter upon premises for the purpose of making examinations in a manner that will be limited to all reasonable hours and cause the least possible inconvenience to the persons in possession;
- (5) To appoint and fix, with the advice and consent of the Board of Commissioners, the duties of officers, agents and employees necessary to carry out the purposes of this chapter; and
- (6) To delegate, with the advice and consent of the Board of Commissioners, any of his functions and powers under this chapter to other officers and other agents.

(Code 2015, § 153.40; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-64. Enforcement.

(a) *Dwellings unfit for human habitation; hearing.*

- (1) 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 is unfit for human habitation, or whenever it appears to the code enforcement officer (on his own motion) that any dwelling is unfit for human habitation, the code enforcement officer shall, if his preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner of and the parties in interest in the dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the code enforcement officer (or his designated agent) at a place within the municipal limits fixed not less than ten days nor more than 30 days after the serving of the complaint.

- (2) The owner and parties 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.
- (3) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement officer.

(b) *Order to repair or vacate dwellings.* If, after notice and hearing, the code enforcement officer determines that the dwelling under consideration is unfit for human habitation, 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:

- (1) If the repair, alteration or improvement of the structure can be made at a cost not exceeding 50 percent of the value of the dwelling, as determined by the code enforcement officer, then the owner, within a prescribed period of time, not to exceed 90 days, shall be required to repair, alter or improve the structure in order to render it

fit for human habitation or to vacate and close the structure as a dwelling for human habitation; or

- (2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of 50 percent or less of the value of the dwelling, as determined by the code enforcement officer, then the owner, within a specified period of time, not to exceed 90 days, shall remove or demolish the dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the town and the historic district commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(c) *Failure to comply with code enforcement officer's order.*

- (1) If the owner fails to comply with the code enforcement officer's order to repair, alter or improve or to vacate and close the dwelling, the code enforcement officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; provided, however, that the code enforcement officer shall have caused to be posted on the main entrance of any dwelling so closed a placard with the following words: "This building is unfit for human habitation; the use of or occupation of this building for human habitation is prohibited and unlawful." The duties of the public officer set forth in this provision shall not be exercised until the Board of Commissioners shall have by ordinance ordered the public officer to proceed to effectuate the pur-

pose of this provision with respect to the particular property which the public officer shall have found to be unfit for human habitation and which property shall be described in the ordinance. Said ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located and shall be indexed in the name of the property owner in the grantor index.

- (2) Occupation of a building so posted shall constitute a misdemeanor punishable in accordance with the provisions of G.S. 14-4.
- (3) If the owner fails to comply with an order to remove or demolish the dwelling, the code enforcement officer may cause the dwelling to be removed or demolished; provided, however, that, prior to the code enforcement officer proceeding to cause the dwelling to be repaired, altered or improved or to be vacated and closed in accordance with the foregoing, the Board of Commissioners shall have ordered, by ordinance duly adopted, that the code enforcement officer proceed to effectuate the purpose of this chapter with respect to the particular property which the code enforcement officer shall have found to be unfit for human habitation and which property shall be described therein; and provided, further, that no ordinance shall be adopted to require demolition of the dwelling until the owner has first been given a reasonable opportunity to bring it in conformity with the minimum standards provided for hereunder.
- (4) The ordinance shall then be recorded in the office of the county register of deeds and shall be indexed in the name of the property owner in the grantor index.

(d) *Liens; selling of materials of real property.*

- (1) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the code enforcement officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. 143-139.
- (2) If the dwelling is removed or demolished by the code enforcement officer, he shall sell the materials of the dwelling and any personal property, fixtures 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 office of the county clerk of superior court by the inspector, shall be secured in a manner directed by the county clerk of superior court, and shall be dispersed by the court to the persons found to be entitled thereto by final order or decree of a court of competent jurisdiction.
- (3) Nothing herein shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(e) *Vacating a dwelling.*

- (1) If any occupant fails to comply with an order to vacate a dwelling, the code enforcement officer may file a civil action in the name of the town to remove the occupant.
- (2) The action to vacate the dwelling shall be in the nature of summary ejectment and

shall be commenced by filing a complaint naming as parties-defendant any person occupying the dwelling.

(3) Summons and complaint.

- a. The county clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a time, date and place certain not to exceed ten days from the issuance of the summons to answer the complaint.
- b. The summons and complaint shall be served as provided in G.S. 42-29.
- c. The summons shall be returned according to its tenure, and if on its return it appears to have been duly served, and if at the hearing the code enforcement officer produces a certified copy of an ordinance adopted by the Board of Commissioners pursuant to subsection (c) of this section authorizing the code enforcement officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed.

- (4) An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this chapter unless the occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Board of Commissioners has ordered the code enforcement officer to proceed to exercise his duties to vacate and close or remove and demolish the dwelling.

(Code 2015, § 153.41; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-65. Service of complaints and orders.

(a) Complaints or orders issued by the code enforcement officer pursuant to an ordinance adopted hereunder shall be served upon persons, either personally or by registered or certified mail.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, and the code enforcement officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown 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 hereunder.

(c) When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Code 2015, § 153.42; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-66. Housing appeals board.*(a) General.*

- (1) The housing appeals board referenced herein will consist of and is designated as the board of adjustment.
- (2) The board shall elect its officers, fix the times and places for its meetings, adopt necessary rules of procedure, and adopt other rules and regulations as may be reasonable or necessary for the proper discharge of its duties.
- (3) It shall keep an accurate record of all its proceedings.

*(b) Appeal.**(1) Timeframe; filing of notice.*

- a. An appeal from any decision or order of the code enforcement officer

to the appeals board 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 ten days from the rendering of the decision or service of the order by filing with the code enforcement officer and with the housing appeals board a notice of appeal which shall specify the grounds upon which the appeal is based.

- b. The filing of a notice of appeal with the town clerk shall constitute filing with the housing appeals board. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the housing appeals board all the papers constituting the record upon which the decision appealed from was made.
- c. When an appeal is from a decision of the code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed.

- (2) *Appeal from decision of code enforcement officer.* 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 to the appellant), a suspension of his requirement would cause eminent 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 this chapter.

(3) *Hearing appeals; decisions.*

- a. The housing appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties and shall render its decision within a reasonable time.
- b. Any party may appear in person or by agent or attorney.
- c. 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 members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer.
- d. 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 this chapter to the necessities of the case to the end that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done.

(c) *Certiorari.*

- (1) Every decision of the appeals 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.

- (2) Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board may petition the superior court for an injunction restraining the code enforcement officer from carrying out the order or decision and the court may, upon the petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision.
- (3) Hearing 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 the final order or decree as law and justice may require.
- (4) It shall not be necessary to file bond in any amount before obtaining a temporary injunction hereunder.

(Code 2015, § 153.43; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-67. Estimate of annual expenses or costs.

The Board of Commissioners shall, as soon as possible, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the town for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of this chapter and the ordinances adopted pursuant hereto.

(Code 2015, § 153.44; Ord. of 3-28-1988; Ord. of 4-12-1990)

Sec. 38-68. Penalty.

(a) *Violations.* Except as otherwise provided herein, each violation of this chapter shall constitute a misdemeanor and violations of the provisions of this chapter shall be punished by a fine not exceeding \$50.00 or by imprisonment for a term not exceeding 30 days, or both.

(b) Civil penalty.

- (1) Violations of this chapter shall constitute either a misdemeanor or, at the election of the town, shall subject the offender to a civil penalty upon the issuance of a citation for the violation as hereinafter provided.
- (2) The civil penalty, if not paid to the town clerk within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt.
- (3) The civil penalties shall be in the amount of \$50.00 for each violation.

(c) Equitable remedy.

- (1) In addition to the penalties set out above, any provision of this chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
- (2) In such case, the general court of justice shall have jurisdiction to issue orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

(d) Injunctions.

- (1) In addition to the penalties set out above, any provision of this chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction by a general court of justice.

(2) When a violation of a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

(3) The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(e) Order of abatement.

(1) In addition to an injunction, the town may seek an order of abatement as a part of the judgment in the cause.

(2) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this chapter.

(3) If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement.

(4) The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.

(5) The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order.

- (6) The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge.
- (7) Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) *Remedies.* The provision of this chapter may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

(g) *Continuing violations.* Each day's continuing violation of any provision of this chapter shall be a separate and distinct offense.

(h) *Warning citation.*

- (1) Upon determination of a violation of any section of this chapter, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator setting out the nature of the violation, the section violated, the date of the violation, an order to immediately cease the violation, or if the violation is in the nature of an infraction for which an order or abatement would be appropriate in a civil proceeding, a reasonable period of time is stated in which the violation must be abated.
- (2) The warning citation shall specify that a second citation shall incur a civil penalty, together with costs and attorney fees.

(i) *Civil citation.*

- (1) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the code enforcement officer and either served directly on the violator, his duly designated agent, or registered agent

if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last-known address of the violator as contained in the records of the town or obtained from the violator at the time of issuance of the warning citation.

- (2) The violator shall be deemed to have been served upon the mailing of the citation.
- (3) The citation shall direct the violator to appear before the town clerk, located in the town hall, within 15 days of the date of the citation, or alternatively to pay the citation by mail.
- (4) The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued.
- (5) Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

(j) *Civil action.* If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therefor, the town may institute a civil action of the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty, costs, attorney fees and other relief as permitted by law. (Code 2015, § 153.99; Ord. of 4-12-1990)