

**CHAPTER 155: NON-RESIDENTIAL BUILDING MAINTENANCE
STANDARDS**

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General Provisions

§ 155.01 TITLE

This Chapter shall be known as the “Non-Residential Building Maintenance Standards”, and may be cited as such, as will be referred to hereinafter as “this Chapter.”

§ 155.02 PURPOSE

It is the purpose of the provisions of this Chapter to provide a just, equitable and practicable method whereby non-residential buildings and premises which from any cause, endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, diminish property values or detract excessively from the appropriate appearance of the area in which they are located may be required to be repaired, closed, vacated or demolished. The provisions of this Chapter are cumulative with and in addition to, any other remedy provided by law including the current editions of standard codes adopted by the Town of Tryon.

§ 155.03 FINDINGS; AUTHORITY

Pursuant to Chapter 160A-174 of the General Statutes of North Carolina, it is hereby found and declared that there exist in the Town non-residential buildings and premises which are unsafe and especially dangerous to life because of liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress of other causes.

In addition, it is hereby found and declared, that there exist in the Town non-residential buildings and premises which, although not meeting the classification of unsafe and especially dangerous to life, fail to fully comply with all the minimum standards for non-residential buildings and premises fitness as established herein and therefore have present one or more conditions which are inimical to the public health, safety and general welfare. Such conditions, if not corrected, can lead to deterioration and dilapidation of non-residential buildings and premises which render them unsafe and especially dangerous to life.

§ 155.04 SCOPE; JURISDICTION

The provisions of this Chapter shall apply to all existing non-residential buildings and premises and to all non-residential buildings and premises hereafter constructed within the Town limits as now or hereafter established.

§ 155.05 GENERAL DEFINITIONS AND INTERPRETATIONS

Unless specifically defined in Section 155.06, words used in the Non-Residential

Building Maintenance Standards shall have their respective customary dictionary definitions. For the purpose of these regulations certain words, terms or phrases used herein are interpreted and defined as follows:

Words used in the present tense shall include the future tense.

Words used in the singular shall include the plural and words used in the plural shall include the singular.

The words “shall” and “will” always indicate MANDATORY. The words “should” and “may” always indicate OPTIONAL.

The word “lot” includes the words “plot” and/or “parcel”.

The word “building” includes the word “structure”.

The word “person” includes a “firm, association, organization, partnership, trust, company, corporation, and/or individual”.

The word “use” includes the terms “arranged, designed, and/or intended” for a use, activity and/or purpose.

The term “Board of Adjustments” shall always indicate the BOARD OF ADJUSTMENTS OF THE TOWN OF TRYON, NORTH CAROLINA as created and appointed by the Town Council of said Town.

The Term “Town Council” shall always indicate the TOWN COUNCIL OF THE TOWN OF TRYON, NORTH CAROLINA.

§ 155.06 SPECIAL DEFINITIONS AND INTERPRETATIONS

The following definitions shall apply in the interpretation and enforcement of this Chapter:

Building: Any covered structure intended for shelter, housing or enclosure of persons, animals, facilities, equipment or chattels; the term Building shall be construed to include the term Structure; furthermore, it shall be construed as if followed by the term or part thereof.

Building, Accessory: A detached subordinate building located on a lot, parcel or tract whose use is incidental to that of the principal building. A building cannot be considered accessory unless it accompanies a principal on the same lot, parcel or tract.

Building, Principal: A building in which the principal use of the lot, parcel or tract is conducted.

Building Code: The North Carolina State Building Code.

Deterioration: The condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeling paint or other evidence of physical decay or loss of structural integrity.

Fire Chief: The Fire Chief of the Town of Tryon.

Fire Hazard: (see also Nuisance) Any thing or act which increases, or may cause an increase of the hazard, likelihood or menace of fire to a greater degree than reasonable for the conduct of the non-residential use on the premises, or which may unreasonably obstruct, delay, or hinder, or may unreasonably become the cause of an obstruction, a delay, a hazard or an unreasonable hindrance to the prevention, suppression, or extinguishment of fire.

Garbage: The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Non-Residential Building Maintenance Standards Inspector: The person delegated as such by the Town Manager of the Town of Tryon.

Nuisance:

- 1) Any public nuisance known as common law or in equity jurisprudence, or as provided by the statutes of the State of North Carolina, or the ordinances of the Town of Tryon; or
- 2) Any condition including an attractive nuisance which may prove detrimental to human health or safety whether in a building, on the premises of a building, or part of a building or upon an occupied lot; or
- 3) Physical conditions dangerous to human life or detrimental to health of persons in, on or near the premises where the condition exists; or
- 4) Unsanitary conditions or conditions that are dangerous to public health, well-being or the general welfare; or
- 5) Fire hazards or other safety hazards.

Occupant: Any person who has charge, care or control of a non-residential building and/or premises or a part thereof, whether with or without the knowledge and consent of the owner, or any person, individually or jointly, entitled to possession regardless of whether the building and/or premises are actually occupied or not.

Owner: The holder of the title in fee simple and every mortgagee of record of a property.

Physical Valuation: The estimated cost to replace the building in kind.

Plumbing: All of the following supplies, facilities, and equipment: gas pipes, gas burning equipment, water pipes, water heaters, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower bath, installed clothes washing machines, catch basins, vents, and other similar fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with HVAC equipment.

Premises: A lot, plot or parcel of and including the buildings or structures thereon, under control by the same owner or occupant, devoted to or zoned for non-residential use.

Public Sanitary Sewer: Any sanitary sewer owned, operated and maintained by the Town of Tryon and available for public use for the disposal of sewage.

Rubbish: Combustible and non-combustible waste materials, except garbage and ashes, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glad crockery and dust.

Sewage: Waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture of equipment or machine.

Structurally Sound: Substantially free from flaw, defect, decay or deterioration to the extent that such structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

Structure: Anything constructed or erected which requires location on the ground. The term “structure” does not include the terms “retaining wall”, “fence”, “utility pole” or driveway”. (Refer to the definition of “building” herein.)

Supplied: Paid for, furnished or provided by, or under control of, the owner or occupant.

§ 155.07 DUTIES AND RESPONSIBILITIES OF THE OWNER

It shall be the duty and responsibility of the owner to maintain all non-residential buildings and premises in accordance with all standards for non-residential buildings and premises fitness as stated in Article II.

§ 155.08 DUTIES AND RESPONSIBILITIES OF THE OCCUPANT

It shall be the duty and responsibility of the occupant to ensure that:

- 1) All parts of the premises under the control of the occupant shall be kept in a safe, clean and sanitary condition consistent with the non-residential use and the occupant shall refrain from performing any acts which would render any parts of

- 2) Every occupant shall be responsible for the elimination of infestation in and on the premises, subject to his control.
- 3) Every occupant shall maintain all supplied plumbing fixtures in a safe and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.
- 4) No garbage or solid waste shall be stored or allowed by the occupant to accumulate on the premises unless contained in a trash receptacle(s) which is in accordance with the Code of Ordinances of the Town of Tryon.
- 5) Damage to public sidewalks and/or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the Town when such damage is caused by vehicles making deliveries to the non-residential use under the control of the occupant.
- 6) Where the owner would not otherwise know of a defect of any facility, utility or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the occupant affected thereby shall, upon learning of such defect provide notice to the owner.

§ 155.09 RELATIONSHIP OF DUTIES AND RESPONSIBILITIES TO OCCUPANCY

The provisions of this Chapter that apply to the exterior or exterior components of a structure or building or to the premises shall be complied with whether the structure or building or premises is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by their owners to prevent the entry of unauthorized persons or the formation of nuisance conditions such as infestation including the roosting birds.

§ 155.10 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 Chapter 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.

§ 155.11 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 jurisdiction shall prevail. The North Carolina State 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.

§ 155.12 AMENDMENTS

The Town Council may, from time to time amend, supplement, or change the provisions and requirements of this Chapter. Any such amendment shall be by ordinance of the Town Council.

STANDARDS FOR NON-RESIDENTIAL BUILDINGS AND PREMISES FITNESS

§ 155.20 UNLAWFUL TO OWN UNSAFE BUILDINGS AND STRUCTURES

(a) It shall be unlawful for any firm, person or corporation to own a building or a structure situated in the jurisdiction of the Town of Tryon which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Tryon Town Council has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety and welfare of the citizens of Tryon, that such unsafe and especially dangerous buildings and structures shall be condemned, and that the owners of such unsafe and especially dangerous buildings and structures shall immediately remedy the unsafe, dangerous, hazardous or unlawful conditions or demolish such buildings or structures.

(b) A building or structure shall be found to be especially dangerous to life and held unsafe by the Inspector if the Inspector finds that any one (1) of the following conditions exists in such building or structure:

- (1) Interior walls or vertical studs which seriously list, lean or buckle to an extent as to render the building unsafe.
- (2) Supporting member or members which show thirty-three (33) percent or more damage or deterioration, or non-supporting, enclosing or outside walls or covering which shows fifty (50) percent or more of damage or deterioration.
- (3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used.
- (4) Such damage by fire, wind or other causes as to render the building unsafe.
- (5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other

- (6) Inadequate facilities for egress in case of fire or panic.
- (7) Defects significantly increasing the hazards of fire, accident or other calamities.
- (8) Lack of adequate ventilation, light, heating or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or other residents of the jurisdiction.
- (9) Lack of proper electrical, heating or plumbing facilities required by this Chapter which constitutes a health or a definite safety hazard.
- (10) For any building whose occupancy classification requires it, lack of connection to a potable water supply and/or to the public sanitary sewer or other approved sewage disposal system. For the purposes of this standard, a building is not connected to a potable water supply if the water supply has been "cut off" because of nonpayment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.
- (11) Any violation of the State Fire Prevention Code which constitutes a condition which is unsafe and especially dangerous to life.
- (12) Any abandoned non-residential building which is found to be a health or safety hazard by the Inspector 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.

(c) In addition to conditions 1-12 enumerated in (b) above, any one of which renders a building or structure unsafe, the Inspector shall determine that a non-residential building or structure is unsafe if he finds that a building or structure fails to fully comply with any five (5) or more of the following enumerated standards of building and premises fitness. Full compliance with a standard means that if any part of the stated standard is not complied with by a particular building and premises, then that building and premises has failed to fully comply with the enumerated standard.

GENERAL

- (1) Buildings and premises shall be kept clear of accumulations of garbage, trash, or rubbish which create health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way.

- (2) Flammable, combustible, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the State Fire Prevention Code.
- (3) Buildings and premises shall be kept free of loose and insufficiently anchored overhanging objects which constitute a danger of falling on persons or property.
- (4) The premises shall be kept free of insufficiently protected holes, excavations, breaks, projections, obstructions and other such dangerous impediments on and around walks, driveways, parking lots and other areas which are accessible to and generally used by persons on the premises.
- (5) Buildings and premises surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration.
- (6) Buildings and premises shall be kept free of objects and elements protruding from building walls, roof or premises which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.

APPURTENANCES

- (7) All chimneys, flues and vent attachments thereof shall be maintained structurally sound. Chimneys, flues, gas vents or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight and capable of withstanding the action of flue gases.
- (8) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair, and free of defects.
- (9) All cornices shall be made structurally sound. Rotten or weakened portions shall be removed and/or replaced. All exposed wood shall be treated or painted.
- (10) Gutters and down spouts shall be replaced or repaired as necessary and shall be appropriately located and securely installed so as not to cause

- (11) Attached and unattached accessory structures shall be maintained in a state of good repair.
- (12) Advertising sign structures, attached or freestanding, awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a nuisance or safety hazard.

STRUCTURAL

- (13) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes and cracks which might admit rodents.
- (14) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (15) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (16) Interior steps, railings, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.
- (17) Where a wall of a building has become exposed as a result of demolition of adjacent buildings said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed if necessary due to construction material to prevent deterioration of the wall.

PLUMBING, ELECTRICAL AND SUPPLIED FACILITIES

- (18) All plumbing fixtures and pipes shall meet the standards of the State Plumbing Code and shall be maintained in a state of good repair and in good working order.
- (19) All electrical fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the State Electric Code.

- (20) Every supplied facility, piece of equipment or utility which is required under this Chapter or the State Building Code for occupancy or use shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

EGRESS

- (21) Facilities for egress in case of fire or panic shall be adequate and shall remain clean for such purposes.
- (22) All windows must be tight-fitting and have sashes or proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- (23) All windows shall be maintained free of broken glass that could be in danger from falling or shattering.
- (24) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure.

ENCLOSURE

- (25) All yards and premises shall be properly graded and maintained so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

§ 155.21 BUILDINGS AND PREMISES NOT DECLARED UNSAFE BUT WHICH ARE NOT IN COMPLIANCE WITH ALL STANDARDS

In any case where the Inspector determines that a non-residential building and/or premises fails to fully comply with one or more but less than five of the standards or non-residential buildings and premises fitness set forth in Section 155.20(c) such building and/or premises shall not be found to be unsafe and shall not be subject to the procedures and remedies as provided for in this Chapter for unsafe buildings and premises. Each such failure of non-compliance, however, shall constitute a violation of the terms of this Chapter and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of Section 155.64. In such case the Inspector shall notify the owner as provided for in Section 155.44.

PROCEDURES FOR ENFORCEMENT

§ 155.40 UNSAFE BUILDINGS SHALL BE CONDEMNED BY THE INSPECTOR

If a building or structure shall appear to the Inspector to be especially dangerous to life and unsafe under Section 155.20 the Inspector shall: (a) make a written finding that the building or structure appears to be unsafe and is condemned; and (b) affix a CONDEMNED NOTICE of the dangerous character or conditions of the building or structure to a conspicuous place on the exterior wall of such building or structure.

§ 155.41 REMOVAL OF CONDEMNATION NOTICE UNLAWFUL

It shall be unlawful for any person to remove a CONDEMNED NOTICE from a building or structure after such CONDEMNED NOTICE has been affixed to it by the Inspector pursuant to the provisions of Section 155.40.

§ 155.42 COMPLAINT AND NOTICE OF HEARING

If a building or structure has been condemned by the Inspector as unsafe pursuant to Section 155.40, the Inspector shall serve the owner with a written complaint and notice of hearing which notice shall state that:

- (1) The building or structure is condemned due to its condition that appears to constitute a fire or safety hazard or appears to be dangerous to life, health or other property and that it is held to be unsafe; and
- (2) A hearing will be held before the Inspector at a designated place and time, which time shall be not less than ten (10) days nor more than thirty (30) days after the date of such notice, and that at such hearing the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) Following the hearing, the Inspector may issue such order to repair, close, vacate or demolish the building or structure as the Inspector deems to be appropriate under the existing conditions.

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 Polk 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 owner of the building or structure at the time of filing in accordance with Section 160A-428 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.

§ 155.43 ORDER TO TAKE CORRECTIVE ACTION; CONTENTS; ISSUANCE

If, upon a hearing held pursuant to the notice prescribed in Section 155.42, the Inspector

shall find that the building or structure is in an unsafe condition which constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the Inspector shall issue an order in writing directed to the owner or owners of such building or structure, directing the owner or owners to remedy the defective condition by repairing, closing, vacating or demolishing the building or structure or taking other necessary steps within such a period as the Inspector may prescribe, which period may not be less than sixty (60) days from the service of the order; PROVIDED THAT, where the Inspector finds that there is imminent danger to life, health, or other property, the order may require that corrective action be taken in such lesser period as may be feasible.

§ 155.44 SERVICE OF WRITTEN NOTICE OF ORDER OF INSPECTOR

In any case where this Chapter requires service of a written notice or order by the Inspector, such notice or order shall be made in the following manner:

- (1) The written notice or order shall be served upon each owner by mailing the same by certified or registered mail, return receipt requested, to the owner's last known address or by personal service of the notice or order upon each owner.
- (2) If the name or whereabouts of an owner are unknown and cannot after due diligence be discovered, the notice or order shall be considered properly and adequately served upon such owner if a copy thereof is posted on the outside of the building or structure in question at least ten (10) days prior to the hearing, if a hearing is required, and a notice of the hearing published in a newspaper having general circulation in the jurisdiction at least once not later than one week prior to the hearing.

§ 155.45 APPEAL OF ORDER OF INSPECTOR; FINALITY IF NOT APPEALED

Any owner who has received an order under Section 155.43 may appeal from the order to the Town Council by giving notice of appeal in writing to the Inspector and to the Town Clerk within ten (10) days following issuance of the order. In the absence of an appeal to the Town Council within the prescribed time, the order of the Inspector shall be final. The Town Council shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify and affirm or revoke the order.

§ 155.46 FAILURE TO COMPLY WITH ORDER OF INSPECTOR

It shall be unlawful for the owner of a building or structure to fail to comply with an order issued pursuant to Section 155.43 from which no appeal has been taken or fail to comply with an order of the Town Council following an appeal, unless the owner shall, within ten (10) days following issuance of the order by the Town Council, appeal from that order as by law provided.

§ 155.47 REMEDIES; LIEN FOR COST OF DEMOLITION AND REMOVAL

In the event of such failure to comply, in addition to the penalties, remedies and enforcement procedures contained in Section 10.99 of the Code of Ordinances and Section 155.64 of this Chapter, the Inspector may cause such building and premises to be repaired, closed, vacated, or demolished as appears appropriate.

The Inspector, however, shall not take such action until the Town Council shall have by ordinance ordered the Inspector to proceed with such action with respect to the particular property or properties which the Inspector shall have found to be unsafe or not in compliance with all standards of non-residential building and premises fitness and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a building until the owner has first been given a reasonable opportunity to bring it into conformity with this Chapter. The ordinance adopted pursuant to this Section shall be recorded in the Office of the Register of Deeds of Polk County and shall be indexed in the name of the property owner or owners in the grantor index.

The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filled, have the same priority, and be collected as a lien for special assessments provided in Article 10 of Chapter 160A of the General Statutes of North Carolina. If the building is removed or demolished by the Inspector, he shall sell the materials of the building, and the personal property, fixtures or appurtenances found in or attached to the building, 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 Inspector, 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.

§ 155.48 FAILURE OF OCCUPANT TO COMPLY WITH ORDER TO VACATE

If any occupant fails to comply with an order to vacate a building, the Inspector may file a civil action in the name of the Town to remove such occupant. The action to vacate the building shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying such building. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten (10) days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in GS 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Inspector produces a certified copy of an ordinance adopted by the Town Council pursuant to this Section authorizing the Inspector to proceed to vacate the occupied building, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgement for summary ejectment entered under GS 42-30. An appeal from any judgement entered hereunder by the magistrate may be taken as provided in GS 7A-228,

and the execution of such judgement may be stayed as provided in GS 7A-227. An action to remove an occupant of a building who is a tenant of the owner may not be in the nature of a summary ejection proceeding pursuant to this paragraph unless such occupant was served with notice at least thirty (30) days before the filing of the summary ejection proceeding that the Town Council has ordered the Inspector to proceed to exercise his duties under this Section to vacate and close or remove and demolish the building.

§ 155.49 DEMOLITION OF NON-RESIDENTIAL BUILDINGS BY OWNER

Where a non-residential building is under the jurisdiction of this Chapter, the building may be demolished by the owner provided that the following requirements are met:

- 1) The owner obtain a demolition permit from the Inspections Department of Polk County.
- 2) All sewer, gas, water and similar taps or connections be properly closed and disconnected.
- 3) All debris from the building be removed from the site. This requirement is for the removal of all debris that is above the street level of the building.
- 4) The lot be graded to a smooth, even, finished grade, free from building material, debris, holes, and/or depressions. Where building debris remains on the site below street level, the owner must back fill the lot with twelve (12) inches of clean fill which shall be graded to a smooth, even finished grade.
- 5) Where walls of adjacent buildings become exposed as a result of the demolition, said walls must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of the adjacent property and weatherproofed if necessary to prevent deterioration of the wall.

ADMINISTRATION

§ 155.60 OFFICE OF NON-RESIDENTIAL BUILDING MAINTENANCE STANDARDS INSPECTOR CREATED; POWERS AND DUTIES

- A. For the purposes of administering and enforcing the provisions of this Chapter the office of Non-Residential Building Maintenance Standards Inspector, (herein called "Inspector"), is hereby created.
- B. The Inspector shall be appointed by the Town Manager, shall take and subscribe to the oath of office administered by the Town Clerk, and shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and

- (1) To investigate the non-residential building conditions in the jurisdiction in order to determine which buildings therein are unsafe, being guided in such examination of buildings by the requirements set forth in this Chapter and for the purpose of carrying out the objectives of this Chapter with respect to such non-residential buildings.
- (2) To administer oaths and affirmations and to examine witnesses and receive evidence.
- (3) To enter upon and within premises and buildings for the purpose of making examinations and investigations; provided, that such entries shall be made at reasonable hours in such a manner as to cause the least possible inconvenience to the persons in possession.
- (4) To delegate any of his functions and powers under this Chapter to such officers and agents as he may designate.

§ 155.61 INSPECTIONS

- A. For the purpose of carrying out the intent of this Chapter, the Inspector is hereby authorized to enter, examine and survey at all reasonable times all non-residential buildings and premises, including abandoned structures. The owner or occupant of every non-residential building or person in charge thereof, shall give the Inspector free access to such building and its premises, at all reasonable times for the purposes of such inspection, examination and survey. Every occupant of a non-residential building shall give the owner thereof, or his agent or employee, access to any part of such building and its premises, at all reasonable times for the purpose of making such repairs or alterations, as are necessary to effect compliance with the provisions of this Chapter or with any lawful order issued pursuant to the provisions of this Chapter.
- B. The Inspector shall make periodic inspections for unsafe, unsanitary or otherwise hazardous and unlawful conditions in non-residential structures within the jurisdiction. In addition, he shall make inspections when he has reason to believe that such conditions may exist in a particular structure or premises.

§ 155.62 DEFECTS IN BUILDINGS TO BE CORRECTED

When the Inspector finds any defects in a non-residential building, or finds that the building has not been constructed in accordance with the applicable state and Town laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions or violations of law in the property he owns. Failure to do so shall constitute a violation of this Chapter. Each day any violation of this Chapter shall continue shall constitute a separate offense.

§ 155.63 VIOLATIONS

In addition to the conditions, acts or failure to act that constitute violations specified in this Chapter, it shall be unlawful for the owner of any building and premises 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 Inspector duly made and served as herein provided, within the time specified in such order. It shall be unlawful for the owner of any building, with respect to which an order has been issued pursuant to Sec. 155.43, 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.

§ 155.64 PENALTIES FOR VIOLATIONS; ALTERNATIVE REMEDIES

Violation of this Chapter shall constitute either a misdemeanor punishable by fine or imprisonment as provided by North Carolina General Statutes, Section 14-4, as amended or at the election of the Town, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the Town of Tryon within fifteen (15) days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Said civil penalties shall be in the amount of \$50.00 for each violation and each day any single violation continues shall be a separate violation.

If any non-residential building or premises is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Chapter or of any valid order or decision of the Inspector or Town Council made pursuant to any ordinance adopted under authority of this Chapter, the Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or occupancy, to restrain, correct or abate the violation, to prevent the occupancy of the building or to prevent any illegal act, conduct or use in or about the premises of the non-residential building.

Nothing in this Chapter nor any of its provisions shall be constructed 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 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 civil penalties set out above, any provision of this Chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such 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.

In addition to the civil penalties set out above, any provisions of this Chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. 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.

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 abandoned or junked vehicles be removed; 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. 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. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of mechanic's and materialman's lien. 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. 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. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction there with.

The provisions of this Chapter may be enforced by one, all or a combination of the remedies authorized and prescribed by this Section.

Upon determination of a violation of any section of this Chapter, the penalty for which is a civil penalty, the Inspector shall proceed to issue a warning citation and, if necessary, a penalty citation. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.

An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation to the Board of Adjustments. The Board of Adjustments in considering appeals of a warning citation shall have power only in the manner of administrative review and interpretation where it is alleged that the official has made an error in the application of this Chapter, in the factual situation as it relates to the application of the Chapter, or both.

Where the Inspector determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or based upon a schedule agreed upon with the violator for abatement, the official may amend the warning citation to provide for additional time. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the Inspector 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. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to pay the citation penalty to the Town Manager or his designee within fifteen (15) days of the date of the citation. 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.

Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

If the violator fails to respond to a citation within fifteen (15) days of its issuance, and pay the penalty prescribed therein, the Town of Tryon may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

(Ord. 1996-____; passed 07-29-96)