

## PART II. NONRESIDENTIAL BUILDINGS OR STRUCTURES

### §150.70: Purpose

In order to protect the health, safety and welfare of the Town and its citizens, it is the purpose of this section pertaining to nonresidential structures to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by NCGS 160D-1129. This section provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

### §150.71: Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section and shall apply in the interpretation and enforcement of nonresidential maintenance:

- (A) Basic structural elements. The parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.
- (B) Building. Any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels or property of any kind or any part of such structure, shelter or property.
- (C) Code Enforcement Officer. A Code Enforcement Officer of the Town or any agent of the Code Enforcement Officer who is authorized by the Administrator to enforce the provisions of this section, including a consultant or County Building Inspection staff. The Code Enforcement Officer shall report to the Administrator.
- (D) Current value. The value of a building or structure as provided by the present tax value or as determined by a certified appraisal report.
- (E) Inspector. The building inspector of the Town or that hired through any agreement or any authorized agent of the inspector, including Code Enforcement Officer.
- (F) Nonresidential. Any building or structure or portion of a building or structure occupied or intended to be occupied for a use other than a dwelling, home, residing place, living space or sleeping space for one (1) or more human beings, either permanently or transiently. For the purposes of this ordinance, mixed use structures with the presence of a dwelling shall be considered a nonresidential structure.
- (G) Occupant. Any person who is a tenant or has actual possession of a nonresidential building or structure or part thereof.
- (H) Operator. Any person who has charge, care, or control of a nonresidential building or structure, or part thereof.
- (I) Owner. Any person who alone, or jointly, or severally with others:

- (1) Shall have title in fee simple to any nonresidential building or structure, with or without accompanying actual possession thereof; or
  - (2) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this section and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.
- (J) Parties in interest. All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.
  - (K) Premises. Any lot or parcel of land inclusive of any building or improvements located thereon.
  - (L) Safe. A condition which is not likely to do harm to humans or to real or personal property.
  - (M) Structure. Anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.
  - (N) Structurally sound. Substantially free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.
  - (O) Unsafe. A condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.
  - (P) Vacant manufacturing facility. Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.
  - (Q) Vacant industrial warehouse. Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

#### **§150.72: Applicability and Compliance**

- (A) The provisions of this section shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the planning jurisdiction of the Town.
- (B) Every nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this ordinance, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this ordinance, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This ordinance establishes minimum standards for all nonresidential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein.

### **§150.73: Maintenance Standards for Nonresidential Buildings and Structures**

- (A) All nonresidential buildings and structures shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this ordinance:
- (1) Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe, that are rotted, deteriorated or damaged, and that have holes or cracks which might admit rodents.
  - (2) Exterior walls that are not structurally sound, free from defects and damages, and capable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall.
  - (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. Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs shall be kept structurally sound and shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building.
  - (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 and safety of the occupants or members of the general public.
  - (6) 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 members of the general public.
  - (7) Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
  - (8) Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
  - (9) Buildings and structures including their environs that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas which are accessible to and generally used by persons on or around the premises.

- (10) Buildings and structures that have 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 and repaired or replaced with like or similar material according to its original use, except that damaged windows or glass shall be replaced with new windows and/or glass.
- (11) Buildings and structures that have objects and elements protruding from building walls or roofs, 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.
- (12) Chimneys, flues, and vent attachments thereto which are not 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.
- (13) Exterior porches, landings, balconies, stairs, or fire escapes which are not structurally sound. 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 sound, in good repair, and free of defects.
- (14) Cornices which are not structurally sound. Rotten or weakened portions shall be repaired and/or replaced. All exposed wood shall be treated or painted.
- (15) Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property.
- (16) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public.
- (17) All exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces shall be painted or sealed in order to protect the underlying surface from deterioration. All exterior surfaces that have been painted shall be maintained generally free of peeling and flaking. Where fifty (50) percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire surface shall be repainted in order to prevent further deterioration.
- (18) Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- (19) All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a non-secure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building and

the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds. Damaged windows or glass shall be replaced with new windows and/or glass in lieu of boarding or alternative materials where possible.

- (20) Any combination of conditions which in the judgment of the Code Enforcement Officer renders any building or structure dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

#### **§150.74: Duties of the Enforcement Officer**

- (A) The Code Enforcement Officer is hereby designated as the public officer to enforce the provisions of this ordinance and to exercise the duties and powers herein prescribed. It shall be the duty of the Code Enforcement Officer:
  - (1) To investigate the conditions of nonresidential buildings and structures in the Town and to inspect nonresidential buildings and structures located in the Town in order to determine which nonresidential buildings and structures are not being maintained so that the health and safety of its occupants or members of the general public are jeopardized and for the purpose of carrying out the objectives of this section with respect to such nonresidential buildings and structures;
  - (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect the repair or demolition of nonresidential buildings and structures which have not been properly maintained in compliance with minimum standards established by this section;
  - (3) To keep a record of the results of inspections made under this ordinance and an inventory of those non-residential buildings and structures which have not been properly maintained in compliance with the minimum standards established by this ordinance; and
  - (4) To perform such other duties as may be herein prescribed.

#### **§150.75: Powers of the Enforcement Officer**

- (A) The Code Enforcement Officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this ordinance, including the following powers in addition to others herein granted:
  - (1) To investigate nonresidential buildings and structures in the Town to determine whether they have been properly maintained in compliance with the minimum standards established by this ordinance so that the safety or health of the occupants or members of the general public are not jeopardized;
  - (2) To administer oaths and affirmations, examine witnesses and receive evidence;
  - (3) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and

- (4) To appoint and fix duties of such officers, agents, and employees as the Code Enforcement Officer deems necessary to carry out the purposes of this ordinance.

#### **§150.76: Inspections**

For the purpose of making inspections, the Code Enforcement Officer is hereby authorized to enter, examine, and survey at all reasonable times, nonresidential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with NCGS 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

#### **§150.77: Procedure for Enforcement.**

- (A) *Preliminary investigation.* Whenever it appears to the Code Enforcement Officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this ordinance, the Code Enforcement Officer shall undertake a preliminary investigation.
- (B) *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this ordinance, the Code Enforcement Officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the Code Enforcement Officer at a place therein fixed, not less than ten (10) days nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Code Enforcement Officer.
- (C) *Procedure after hearing.*
  - (1) If, after notice and hearing, the Code Enforcement Officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this ordinance, the Code Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination.
  - (2) If, after notice and hearing, the Code Enforcement Officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this section, the Code Enforcement Officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of subsection (C)(3) and (C)(4) of this section and subject to the limitations set forth in Sections §150-78 and §150-79.

- (3) If the Code Enforcement Officer determines that the cost of repair, alteration, or improvement of the building or structure would not exceed fifty (50) percent of its then current value, then the Code Enforcement Officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
    - (a) Repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this ordinance or
    - (b) Vacate and close the nonresidential building or structure for any use.
  - (4) If the Code Enforcement Officer determines that the cost of repair, alteration, or improvement of the building or structure would exceed fifty (50) percent (50%) of its then current value, then the Code Enforcement Officer shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
    - (a) Remove or demolish the nonresidential building or structure; or
    - (b) Repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this ordinance.
- (D) *Failure to comply with order and ordinances.*
- (1) If the owner fails to comply with an order to either:
    - (a) Repair, alter, or improve the nonresidential building or structure; or
    - (b) Vacate and close the nonresidential building or structure,
    - (c) the Code Enforcement Officer shall submit to the Board of Aldermen an ordinance ordering the Code Enforcement Officer to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this ordinance or to be vacated and closed for any use. The property shall be described in the Ordinance. If Board of Aldermen adopts the Ordinance, the Code Enforcement Officer shall cause the building or structure to be vacated and closed for any use.
  - (2) If the owner fails to comply with an order to either:
    - (a) Remove or demolish the nonresidential building or structure; or
    - (b) Repair, alter, or improve the nonresidential building or structure,
    - (c) the Code Enforcement Officer shall submit to the Board of Aldermen an ordinance ordering the Code Enforcement Officer to cause such nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given 90 days to bring it into conformity with the minimum standards established by the Board of Aldermen. The property shall be described in the

Ordinance. If Board of Aldermen adopts the Ordinance, the Code Enforcement Officer shall cause the building or structure to be removed or demolished.

**§150.78: Limitations on Orders and Ordinances—Historic Landmark**

Notwithstanding any other provision of this ordinance, if the nonresidential building or structure is designated as a local historic landmark or listed in the National Register of Historic Places and the Board of Aldermen determines, after a public hearing, that the nonresidential building or structure is of individual significance, and the nonresidential building or structure has not been condemned as unsafe, an order issued by the Code Enforcement Officer pursuant to Section §150-77 (D) and an Ordinance approved by Board of Aldermen pursuant to Section §150-77 (D) may only require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this ordinance.

**§150.79: Limitations on Orders and Ordinances—Vacant Manufacturing Facility or Vacant Industrial Warehouse**

Notwithstanding any other provision of this ordinance, an order issued by the Code Enforcement Officer pursuant to Section §150-77 (D) and an Ordinance approved by Board of Aldermen pursuant to Section §150-77 (D) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and Ordinance may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

**§150.80: Vacated and Closed Nonresidential Buildings or Structures**

(A) If the Board of Aldermen has adopted an Ordinance or the Code Enforcement Officer has issued an order requiring the building or structure to be repaired, altered, or improved or vacated and closed and the building or structure has been vacated and closed for a period of two (2) years pursuant to the Ordinance or order, then if the Board of Aldermen finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the Town in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then Board of Aldermen may, after the expiration of the two-year period, adopt an Ordinance and serve such Ordinance on the owner, setting forth the following:

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

current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days..

- (3) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or Ordinance for a period of five (5) years before Board of Aldermen may take action under this section.
- (4) If the owner fails to comply with the requirements of the Ordinance within 90 days, the Code Enforcement Officer shall demolish and remove the nonresidential building or structure.

#### **§150.81: Methods of Service of Complaints and Orders**

- (A) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular mail is not returned by the post office within 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 public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the local government at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

#### **§150.82: Interim Action by the Code Enforcement Officer**

After failure of an owner of a nonresidential building or structure to comply with an order of the Code Enforcement Officer issued pursuant to the provisions of this ordinance and upon adoption by the Board of Aldermen of an Ordinance authorizing and directing the owner to do so, as provided by NCGS 160D-1129 and Section §150-77 (D) of this ordinance, the Code Enforcement Officer shall proceed to cause such nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this ordinance, or to be vacated and closed or to be removed or demolished, as directed by the Ordinance of the Board of Aldermen. The Code Enforcement Officer may cause to be posted on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be subject to the penalties outlined herein.

### **§150.83: Costs, a Lien on Premises**

- (A) As provided by NCGS 160D-1129(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the Code Enforcement Officer pursuant to Section §150-77 (D) or Section §150-80 shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by NCGS art. 10, ch. 160A. The amount of the costs shall also be a lien on any other real property of the owner located within the Town limits except for the owner's primary residence. The additional lien provided in this section is inferior to all prior liens and shall be collected as a money judgment.
- (B) If the nonresidential building or structure is removed or demolished by the Code Enforcement Officer, the Code Enforcement Officer shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the Superior Court by the Code Enforcement 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 or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

### **§150.84: Ejectment.**

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the Code Enforcement Officer may file a civil action in the name of the Town to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. 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 NCGS 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 Code Enforcement Officer produces a certified copy of an Ordinance adopted by the Board of Aldermen pursuant to NCGS 160D-1129(j) and Section §150-77 (D) to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under NCGS 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in NCGS 7A-228, and the execution of the judgment may be stayed as provided in NCGS 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least thirty (30) days before the filing of the summary ejectment proceeding, that the Board of Aldermen has ordered the Code Enforcement Officer to proceed to exercise his duties

under NCGS 160D-1129(j) and Section §150-77 (D) to vacate and close or remove and demolish the nonresidential building or structure.

**§150.85: Filing of Ordinances**

An Ordinance adopted by Board of Aldermen pursuant to Section §150-77 (D) or Section §150-80 of this ordinance shall be recorded in the office of the register of deeds of the county and shall be indexed in the name of the property owner in the grantor index.

**§150.86: Alternative Remedies**

Neither this ordinance 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 ordinance by any remedy provided herein or other Ordinances or laws.

**§150.87: Board of Adjustment to Hear Appeals**

- 1) All appeals which may be taken from decisions or orders of the Code Enforcement Officer pursuant to this ordinance shall be heard and determined by the Board of Adjustment.
- 2) Appeals shall be subject to the following:
  - a) An appeal from any decision or order of the Code Enforcement Officer may be taken by any person aggrieved thereby. Any appeal from the Code Enforcement Officer shall be made within ten (10) days from the rendering of the decision or service of the order, and shall be made by filing with the Code Enforcement Officer and with the Board of Adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Code Enforcement Officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When the appeal is from a decision of the Code Enforcement Officer refusing to allow the person aggrieved thereby to do any act, the Code Enforcement Officer's 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, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant) a suspension of the requirement would cause imminent peril to life or property, in which 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 (1) day's written notice to the Code Enforcement Officer, by the board, or by a court of record upon petition made pursuant to NCGS 160D-1208.
  - b) The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Code Enforcement Officer, but the concurring vote of 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, in any case when practical

difficulties or unnecessary hardships would result from carrying out the strict letter of this ordinance, 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.

- c) Every decision of the Board of Alderman and the Board of Adjustment shall be subject to review by the Superior Court by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.

#### **§150.88: Temporary Injunction Remedy for Aggrieved Person**

Any person aggrieved by an order issued by the Code Enforcement Officer or a decision rendered by the Board of Adjustment shall have the right within thirty (30) days after issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction restraining the Code Enforcement Officer pending a final disposition of the cause, as provided by NCGS 160D-1208(d).

#### **§150.89: Conflict with Other Provisions**

In the event any provision standard or requirement of this ordinance is found to be in conflict with any other Ordinance or code of the Town, the provisions which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the Town shall prevail.

#### **§150.90: Violations; Penalty**

- 1) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the Code Enforcement Officer duly made and served in accordance with the provisions of this ordinance, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building or structure, with respect to which an order has been issued pursuant to Section §150-77 (D) of this ordinance, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- 2) In addition to the remedies provided for herein, an act constituting a violation of the provisions of this division or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100.00, which includes administrative fees. Each day any single violation continues shall be a separate violation. Unless expressly stated otherwise, a violation of this section shall not constitute a misdemeanor pursuant to NCGS 14-4. If the offender fails to correct this violation by the prescribed deadline after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt. In the event a civil action is filed by the Town in the nature of a debt, for an injunction, order of abatement, enforcement of a lien right, or other equitable remedy, or any combination thereof, the Town also shall be entitled to recover its court costs and attorney fees.