

CHAPTER 95: Commercial Maintenance Code

95.001 PURPOSE AND SCOPE

(A) **Purpose:** It is the purpose of the provisions of this Code to provide a just, equitable and practical method, whereby commercial buildings or structures which from any cause, endanger the life, limb, health, property, safety, or welfare of the general public or their occupants, diminish property values or detract excessively from the appropriate appearance of the commercial area, may be required to be repaired, vacated or demolished. It is the further purpose of this Code to preserve the character and integrity of the community and to promote the comfort, happiness and safety of community residents, and minimize discordant, unsightly and offensive surroundings while preserving beauty as well as the usefulness of the environment. The provisions of this Code are cumulative with and in addition to any other remedy provided by law including the current editions of standard codes adopted by the City of Albemarle and Stanly County.

Special emphasis shall be placed on **Volume IX-Existing Buildings of the N.C. State Building Code** (or any Code that may replace this volume) regarding repair standards and requirements for life-safety. The objective of the Existing Buildings Code is "...to promote the safe continued use and re-use of existing buildings."

(B) **Scope:** The provisions of this Code shall apply to all commercial buildings or other non-residential structures which are now in existence or which may be built or amended. Residential structures will fall under enforcement of the Minimum Housing Code for the City of Albemarle. For combination structures, both Codes would apply.

95.002 DEFINITION OF TERMS

(A) General Definitions and Interpretations:

Unless specifically defined in Section 95.002 (B), words used in the Commercial Maintenance Code 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 "**Zoning Map**" shall always indicate the **OFFICIAL ZONING MAP** of the City of Albemarle, North Carolina.

The "**Board of Adjustment or BOA**" shall always indicate the **City of Albemarle Zoning Board of Adjustment**.

(B) Special Definitions

The following special definitions apply to this Commercial Maintenance Code and its amendments plus any and all ordinances made a part of this Commercial Maintenance Code by reference thereto. Amendments to these definitions shall apply only when all procedural requirements are met.

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 building 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 of Historical Value: A building within the City of Albemarle which is listed on the National Register, located in the City of Albemarle Local Historic District, or constituting special significance to the general citizenry of the City of Albemarle due to age, history, architectural design, human occurrence, culture and possessing integrity of design, setting, materials, feeling and association.

Building Code: The North Carolina State Building Code.

Code Enforcement Officer: The person delegated as such by the City of Albemarle.

Commercial Business: Any business or enterprise which produces and/or offers for sale products and/or services which, in any manner, conducts commerce, within the City limits of the City of Albemarle.

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 Hazard: (see also **Nuisance**) Anything 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 commercial business 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.

Involuntary Vacancy: An unoccupied nonresidential building structurally damaged as a result of fire, wind or other perils, through no fault of the owner, for which an insurance claim has been filed; provided that said vacancy shall not exceed one hundred eighty (180) days from the date that such damage occurred, after which said structure will be deemed an abandoned building as defined herein.

Mixed Occupancy: Any building that is used for two or more occupancies classified by different occupancy use groups.

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 City of Albemarle; 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.

Operator: Any person who has charge, care or control of 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 premises are actually occupied or not.

Parties in Interest: All individuals, associations and corporations that have interests of record in a building or any that are in possession thereof; or shall have charge, care or control of any building, as owner or agent of the owner, operator, or as executor, executrix, administrator, 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 Code, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

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 land including the buildings or structures thereon, under control by the same owner or operator, devoted to or zoned for non-residential use, together with all adjacent land.

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

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

Story: That portion of a building between the surface of any interior floor and the ceiling next above. A basement is considered a story only when its ceiling is over six (6) feet above the average level of the finished ground surface adjacent to the exterior walls of the front entrance and/or side street entrance of the building.

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.)

Structure, Abandoned: Any structure whether designed and intended for commercial or other uses, which is vacant or not in active use, regardless of purpose or reason, for the past two- year period and which is determined by the Code Enforcement Officer to be unfit for occupancy based upon the standards as set forth in this Code.

Washrooms: Enclosed spaces containing one or more bathtubs, showers, or both, and which also shall include toilets, lavatories, or fixtures serving similar purposes.

Water Closet Compartment: Enclosed space containing one or more toilets, which may also contain one or more lavatories, urinals, and other, plumbing fixtures.

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

95.003 APPLICABILITY AND COMPLIANCE

(A) Applicability and Compliance

Every commercial building or structure and the premises on which it is situated, used or intended to be used for commercial business occupancy shall comply with the provisions of this Code, whether or not such building shall have been constructed, altered, or repaired before or after the enactment of this Code, and irrespective of any permits or licenses which shall have been issued for the use or occupancy of the building, or for the installment or repair of equipment or facilities prior to the effective date of this Code. This Code establishes minimum standards for the initial and continual occupancy and use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building, equipment or facilities contained therein except as provided in Section 92.003(B) herein. Where there is mixed occupancy, any commercial business use therein shall be nevertheless regulated by and subject to the provisions of this Code.

(B) Higher Standards to Prevail in Case of Conflict

In any case where the provisions of this Code impose a higher or lower standard than that set forth in any other ordinance of the City or under the laws of the State of North Carolina, then the higher standard shall prevail.

(C) Duty to Comply

It shall be the duty of each and every owner, operator or other party in interest of a commercial building or premises within the City of Albemarle, where applicable, to comply with the regulations and requirements set forth in this Code. No formal authorization for occupancy from the City shall be issued unless and until all applicable sections of this Code have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this Code.

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96.004 RESPONSIBILITIES OF THE PARTY IN INTEREST

It shall be the duty and responsibility of the party in interest of commercial premises to see that said commercial premises under the control of the party in interest are maintained to ensure that:

- A The premises are free of all nuisances and any hazards to the safety of the occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby, specifically including, but not limited to, the following conditions in such building:
1. Interior walls or vertical studs which list, lean or buckle to such an extent as to render the building unsafe.
 2. Supporting member or members which show thirty-three (33) per cent or more damage or deterioration, or non-supporting, enclosing or outside walls or coverings which show twenty-five (25) per cent 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. Roofs that leak or fail to be weather tight. Unkempt roofs may lead to dangerous mold and loss of structural integrity.
 5. Such damage by fire, wind or other causes as to render the building unsafe.
 6. Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or general welfare of the occupants or other people in the City.
 7. Inadequate or obstructed facilities for egress in case of fire or panic.
 8. Defects significantly increasing the hazards of fire, accident or other calamities.
 9. 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 City.
 10. Lack of proper electrical, heating or plumbing facilities required by this Code which constitutes a health or a definite safety hazard.
 11. Violation of the City Fire Code or other conditions constituting a fire hazard in such building or on the premises such as, by way of example and not limitation, the accumulation of garbage, rubbish or other combustible material.

12. Garbage, trash or rubbish in or near the structure or on the premises which is likely to attract vermin rodents or insects or become a breeding place for vermin rodents or insects.
- B) The premises are free of loose and overhanging objects, which, by reason of location above ground level, constitute a danger of falling on persons on the premises or in the vicinity thereof. (N.C. State Building Code reference - Sec. 105.12 Unsafe Buildings.)
 - C) The premises are free of holes, excavations, breaks, projections, or obstructions on walks, driveways, parking lots and parking areas, and other parts of the premises which are accessible to and used by persons on the premises. All such holes and excavations shall be filled and repaired, walks and steps replaced and other conditions removed where necessary to eliminate hazards or unsafe conditions with reasonable dispatch by the owner upon their discovery.
 - D) The exterior of the premises and structure is in good repair and free from deterioration so as not to constitute a nuisance.
 - E) All surfaces shall be maintained free 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. (N.C. State Building Code - Section 105.12 Unsafe Buildings.)
 - F) All floors, interior walls and ceilings of every structure shall be structurally sound and shall be maintained in a good condition compatible with its business use, and where open to the public shall be maintained in a condition so as not to constitute a hazard to the public.
 - G) Structures attached or unattached to the principal commercial structure, which are found by the Code Enforcement Officer to be structurally deficient, shall be properly repaired or demolished.
 - H) All existing objects and elements on and protruding from building walls and roofs and surrounding premises, such as empty electrical or other conduits, unused sign brackets or other protrusions shall be removed, or otherwise made safe.
 - I) All awnings must not have more than 30% of the area that is torn, tattered, or missing for a period longer than 60 days.

J) WALLS

- 1) All foundation walls shall be kept structurally sound, and capable of bearing imposed loads safely. (N.C. State Building Code reference Sec. 1302.3 - Concrete Footings and Sec. 1302.5 - Foundation Walls.)

- 2) 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 secured with material of the type comprising the wall. No protrusions or loose material constituting a hazard to persons upon the premises 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 to prevent deterioration of the wall.

(K) WINDOWS

- 1) All windows must be tight fitting and have sashes of proper size and design. Sashes with rotten wood, broken joints, or broken or loose mullions shall be replaced. All broken and missing windows shall be replaced with glass or plexiglass. All windows in the Local Historic District shall meet design guidelines for that district, which require glass. All exposed wood shall be repaired.
- 2) All windows shall be maintained free of broken glass. Where a window glass larger than four (4) square feet becomes cracked to an extent that the largest single portion of the window free of a crack is less than 80% of the total surface area of the window glass, the window glass shall be repaired or replaced by a pane free of cracks.
- 3) All openings originally designed as windows shall be maintained as windows, complete with sills, lintels, frame and glass, unless specifically approved by the Fire Chief for enclosure. Where the Fire Chief approves the enclosure of a window, it must be so enclosed by either bricking the opening, blocking the opening with concrete blocks and stuccoing the exterior to prevent water intrusion and painted or stained to properly conform with the other exterior portions of the building.

(L) PAINTING

- 1) All exterior surfaces, which require paint or sealing in order to protect the underlying surface from deterioration shall be so painted or sealed.
- 2) All exterior surfaces, which have been painted, shall be maintained free of peeling and flaking paint or stucco. Where 33% or more of the aggregate of any painted or stuccoed wall shall have peeling or flaking paint or stucco worn away, the entire wall shall be scraped and repainted or recovered with stucco.

(M) SIGNS & AWNINGS

- 1) All advertising structures and awnings and their accompanying supporting members shall be maintained in good repair and shall not constitute a nuisance or safety hazard. In the event awnings or marquee are made of cloth, plastic or of a similar material, awnings or marquee shall be maintained so as not to show

evidence of tearing, ripping, or other holes which diminish their function and cause unsightly conditions. Whenever an awning is removed all supporting members shall be removed within 90 days, unless it is replaced. Nothing herein shall be construed to authorize any encroachments on streets, sidewalks, or other parts of the public domain by signs.

(N) WASHROOMS

- 1) All washrooms and water closet compartment floors shall be surfaced with water-resistant material and shall be kept in a dry and sanitary condition at all times.
- 2) All washrooms shall be provided with permanently installed artificial lighting fixtures with a switch and wall plate so located and maintained that there is no danger of short circuiting from water, from other bathroom facilities or from splashing water. (National Electric Code reference - Sec. 300-6 Protection Against Corrosion and Sec. 380-4 Switches.)

(O) GARBAGE AND MATERIALS

- 1) There shall not be stored or allowed to accumulate flammable or combustible liquids or other materials on the premises unless they are of a type approved for storage by the regulations of the National Fire Protection Association, and then only in such quantities as may be prescribed by the regulations. (Fire Protection Code reference - Sec. 1.5 Order to Eliminate Injurious or Hazardous Conditions and N.C. State Building Code Sec. 407.4.)
- 2) No garbage or solid waste shall be stored or allowed to accumulate on the premises unless contained in trash receptacles which are in accordance with the regulations of the City of Albemarle.

(P) APPURTENANCES

- 1) All chimneys, flues and vent attachments thereto 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. (N.C. State Building Code reference - Chimneys, Fireplace Stoves, Fireplaces and Venting Systems.)
- 2) 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. (N.C. State Building Code reference - Sec. 1108 Outside Stairs and Exterior Balconies and Sec. 1007.4 Fire Escapes.)

- 3) All cornices shall be made structurally sound. Rotten or weakened portions shall be removed and/or replaced to match as closely as possible the original patterns. All exposed wood shall be painted. (N.C. State Building Code reference - 710.)
- 4) Gutters and downspouts shall be replaced or repaired as necessary, securely installed, and appropriately located so as not to cause a hazard to pedestrian or vehicular traffic.
- 5) Where a parking lot is constructed as part of a commercial business or as a business itself and covered by an impermeable surface, the parking lot and all curbing, surfacing, sidewalks, and other parts thereof shall be maintained free of broken/cracked surfaces, holes or other similar conditions. All commercial parking lots so described herein, shall be repaired or replaced with like material.
- 6) Where landscaping has been incorporated in the development plan of a commercial business (or where landscaping has been required by the City as part of a development plan including parking plan) the landscaped areas shall be maintained in a manner to equal and reflect the original landscaping approved for the development plan.
- 7) Where curb cuts are abandoned due to new construction, change of access or general discontinuation of use, said curb cut shall be closed and replaced with a standard sidewalk and curb and gutter arrangement in accordance with City regulations and policies.

95.005 Regulations of Duties and Responsibilities to Occupancy

The provisions of this Code that apply to the exterior or exterior components of a structure or building shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by any party of interest to prevent the entry of unauthorized persons or the occurrences of conditions not permitted by law.

95.006 Duties and Responsibilities of the Parties in Interest

It shall be the duty and responsibility of the parties in interest to ensure that:

- A) All parts of the premises under the control of the parties in interest shall be kept in a safe and sanitary condition consistent with the business use and the parties in interest shall refrain from performing any acts which would render any parts of the premises unsafe or unsanitary or which would obstruct, interfere with or prevent adjacent parties in interest from performing any duty required, or from maintaining their premises in a safe and sanitary condition.
- B) Every party in interest shall be responsible for the elimination of infestation in and on the premises.

- C) Every party in interest shall maintain all plumbing fixtures in a safe and sanitary condition.
- D) No garbage or solid waste shall be stored or allowed to accumulate on the premises for a period greater than seven (7) days unless contained in a trash receptacle(s) which is in accordance with the Municipal code of The City of Albemarle
- E) 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 City when such damage is caused by vehicles making deliveries to the business under the control or direction of the parties in interest.
- F) Where the owner would not otherwise know of a defect of any building, portion of building or of any facility, utility or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the party in interest affected thereby shall, upon learning of such defect, immediately provide notice to the owner.

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95.007 DEMOLITION OF COMMERCIAL BUILDINGS

Where a building is under the jurisdiction of the Code, the building may be demolished by the owner provided that the following requirements are met:

- (A) If the property is in the Local Historic District obtain a Certificate of Appropriateness

- to demolish from the Albemarle Historic Resources Commission;
- (B)** Obtain a City Coordination Form;
- (C)** Obtain a Demolition Permit from the County Building Inspection Department;
- (D)** Obtain Asbestos Permit from the County Building Inspection Department;
- (E)** Obtain an asbestos inspection from a licensed asbestos services company;
- (F)** Remove and properly dispose of all asbestos containing materials (ACM's) by a licensed asbestos removal company;
- (G)** Properly close off and disconnect all sewer, gas, water and similar taps or connections;
- (H)** Grade the lot 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 no less than twelve (12) inches of clean fill which shall be graded to a smooth, even finished grade over any remaining debris;
- (I)** 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 by such building's owner so as not to detract from the aesthetics and value of the adjacent property and weatherproofed if necessary to prevent deterioration of the wall;

95.008 UNSAFE BUILDINGS, CONDEMNED SENATE BILL 1152)

(A) Scope

This section authorizes the demolition and removal of nonresidential buildings and structures as enacted by the General Assembly of North Carolina.

(B) Findings (Unsafe Buildings Condemned)

Pursuant to G.S. 160A-426 (Unsafe Buildings Condemned) every building which shall appear to the Code Enforcement Officer to be dangerous to life because of its propensity for fire or because of defective condition of walls, roof systems, floor systems, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be deemed or ruled to be unsafe and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.

1. Nonresidential Building or Structure

The Code Enforcement Officer may declare a nonresidential building or structure within a “Community Development Target Area” to be unsafe if it meets both of the following conditions:

- a. It appears to the inspector to be vacant or abandoned;
- b. It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which should constitute a public nuisance.

If the Code Enforcement Officer declares a nonresidential building or structure to be unsafe, the Code Enforcement Officer must affix a notice of the unsafe character of the structure (condemnation) to a conspicuous place on the exterior wall of the building.

For the purposes of this subsection, the term “Community Development Target Area” means a “nonresidential development area” under G.S. 160A-503(10).

(C) Action In Event of Failure To Take Corrective Action

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the Code Enforcement Officer shall give the owner written notice, by certified or registered mail to his last known address or by personal service,

1. That the building or structure is in a condition that appears to meet one or more of the following conditions:
 - a. Constitutes a fire or safety hazard;
 - b. Is dangerous to life health or other property;
 - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children;
 - d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance;
2. That a hearing will be held before the Code Enforcement Officer at a designated place and time, not less than ten (10) days or more than thirty (30) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by representative and to present arguments and evidence pertaining to the matter; and
3. That following the hearing, the Code Enforcement Officer may issue such order to repair, close, vacate or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice

shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least ten (10) days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the City at least once not later than one week prior to the hearing.

(D) G.S. 160A-432. Civil and Equitable Enforcement

1. Civil Enforcement

Whenever any violation is denominated a misdemeanor under the provisions of this Part, the City, either in addition to, or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct or abate the violation or to prevent the occupancy of the building or structure involved.

2. Equitable Enforcement

In the case of a nonresidential building or structure declared unsafe under G.S. 160A-426(b), the City of Albemarle may in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The costs incurred by the City of Albemarle in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in section 92.011. If the building or structure is removed or demolished by the City of Albemarle, the City, may in its sole discretion, reasonably exercise its right to sell the usable materials of the building and any usable property, fixtures or appurtenances found in or attached to the building. The City of Albemarle shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the Clerk of Superior Court for Stanly County, and shall be disbursed by the Court to the person found to be entitled thereto by final order or decree of the court.

3. Non-Limiting Power of Declaration

Nothing in this section shall be construed to impair or limit the power of the City of Albemarle to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

4. Bond For Repair or Demolition

A performance bond or letter of credit may be required by the Code Enforcement Officer to insure completion of the required repairs or to cover the cost of securing and demolition of a structure. The amount of the bond or credit will be a minimum of one and one-half times (1.5) the estimated cost of the required repairs or demolition. The bond or letter of credit must be drawn from an institution licensed to do business in North Carolina.

(E) G.S. 160A-430. Appeal; Finality of Order if Not Appealed;

Any owner who has received an Order under G.S. 160A-429 may appeal from the Order to the Albemarle Board of Adjustment (BOA) by giving notice of appeal in writing to the Code Enforcement Officer. In the absence of an appeal, the order of the Code Enforcement Officer shall be final. The BOA shall hear and render a decision in an appeal within a reasonable time. officer'sThe Board may affirm, modify and affirm, or revoke the Order.

95.009 BUILDINGS AND PREMISES DAMAGED

(A) Buildings and Premises Damaged

Any building or premises damaged by fire, storm, collapse, or an act of nature must be repaired in a manner that complies in all respects with all codes and ordinances of the City of Albemarle. Prior to repair or renovation the building shall be secured to prevent unauthorized entry.

(B) Order

If, after a notice and hearing under the division, the Code Enforcement Officer determines that the building under consideration has been damaged to the extent of the standards herein set forth, he shall state in writing his findings of facts in support of such determination, stating whether said building has been damaged to the extent set forth in this Article and shall issue and cause to be served upon the owner thereof an Order requiring that:

- 1) If the repair, alteration or improvement of said building, bringing it up to the standards described herein, can be made at a cost less than fifty (50) per cent of the present value of the building, the Order shall require the owner, within a specified period of time, to repair, alter or improve such building so as to render it fit for occupancy. Such Order may also direct and require the owner to vacate and close the building until the repairs, alterations and improvements have been made and/or the unsafe and dangerous character of such building has been corrected.
- 2) If the repair, alteration or improvement of said building bringing it up to the standards described herein cannot be made at a cost of less than fifty (50) per cent of the present value of the building, the Order shall require the owner, within a specified period of time, to either repair, alter or improve such building so as to bring it into compliance with the standards described herein, or to demolish and remove such building. Any building or premises damaged by fire, storm, collapse, an act of nature, wear and tear, or natural deterioration to such an extent that it constitutes an imminent or immediate threat to the safety and/or health of its occupants or to the safety of the general citizenry shall be removed immediately. Said finding of imminent or immediate threat shall be by the Fire MarshalChief or by the Code Enforcement Officer and shall be based on the structural integrity of the building or premises.

Nothing in this section shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

Buildings of historical value may be granted exemption from this section by the Board of Adjustment(BOA). In granting an exemption the Board must make a finding that the building is a building of historical value to the City, that the owner will repair the damage on a timely basis, with commencement not to exceed one (1) year, and that the building will be reconstructed and/or repaired in such a way as to keep the historical character of the building.

95.010

CODE ENFORCEMENT OFFICER

(A) Code Enforcement Officer Appointment and Duties

The Code Enforcement Officer is hereby established and shall be the person delegated as such by the Albemarle City Council. It shall be the duty and responsibility of the Code Enforcement Officer to enforce the Commercial Maintenance Code and to legally proceed against each and every person found in violation of the requirements of this Code.

All inspections, regulations and enforcement of violations of the provisions of this Ordinance, unless expressly stated to the contrary, shall be under the direction and supervision of the Code Enforcement Officer

All buildings and premises as set forth in this Code are subject to inspections by the Code Enforcement Officer or his designated representatives. Upon presentation of proper identification and credentials to the owner, agent or occupant in charge of the property and/or premises, and securing his oral or written permission, the Code Enforcement Officer and/or his representative may enter and make such inspections as necessary and permitted by law.

If permission for entry for the purpose of inspections is denied, and no emergency exists, the Code Enforcement Officer shall, after presentation of probable cause, procure a Court Order or other writ for entry.

In cases of emergency where immediate and significant hazards are known to exist which may involve potential loss of life or significant property damage, the above limitations will not apply. The Code Enforcement Officer shall have such powers as may be necessary to carry out and effectuate the purposes and provisions of this Code, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

- 1) **Investigations.** To investigate building conditions in the City in order to determine which buildings fail to meet the standards set forth herein.
- 2) **Oaths, witnesses, evidence.** To administer oaths and affirmations and to examine witnesses and receive evidence.
- 3) **Right of entry.** To enter upon and within buildings and their premises for the

purpose of making examinations and investigations; provided, that such entries shall be made in such a manner as not cause significant inconvenience to the persons in possession.

- 4) **Delegation of functions.** To delegate any of his functions and powers under this Code to such officers and agents as he may designate.

92.011 HEARING AND NOTICE OF VIOLATION

(A) Hearing and Notice of Violation

Whenever it appears to the Code Enforcement Officer that a building is in violation of a provision of this Code, he shall issue and cause to be served on the owner of and parties in interest in such building, including lien holders, if any, as shown by the records of the Register of Deeds of Stanly County, 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 City therein fixed not less than ten (10) days or more than thirty (30) days after the serving of such complaint; that the owner and parties in interest shall be given a 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. Following such hearing, the Code Enforcement Officer shall dismiss the complaint; or order compliance setting forth up to a maximum of 180 days within which to correct the violations and containing an outline of remedial action which, if taken, will effect compliance with the provisions of this Code. Extensions of this time requirement may (such is discretionary) be issued by the Code Enforcement Officer agreement or by Board of Adjustment upon application by the property owner.

(B) Content of Notice

Such notice shall be in writing; specify in detail the violation or violations, together with the respective sections of this Code being violated and contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Code.

(C) Service of Notice and Orders

Service of Notice and Orders shall be as follows: 1) by delivery personally to one or more of the following: the owner, operator or other party in interest of the property, or the person responsible, or 2) by leaving the notice at the usual place of abode or business of the owner, operator, other party in interest or his agent; or 3) by depositing the Notice in the United States Post Office addressed to the owner, operator, party in interest or his agent or persons responsible at his last known address (based on the tax listing information as furnished to Stanly County) with postage prepaid thereon, and certified or registered; or 4) in the event service of notice cannot be obtained in any of the above methods, by posting and keeping posted for twenty-four (24) hours a copy of the Notice in a conspicuous place on the premises where the violation has occurred and published once a week for three (3) weeks in a newspaper of general circulation in the City such information as is necessary to inform an owner, operator, or other party in interest of the location of the premises and type of offense. No person shall deface or remove such notice without the consent of the Code Enforcement Officer.

92.012 VIOLATIONS AND PENALTIES

(A) Violations and Penalties

Any person, firm, corporation or agent who shall violate the provisions of this Code, or after due notice shall fail to comply with orders issued by the Code Enforcement Officer under the terms and provisions of the Code shall be subject to penalties pursuant to the civil penal provisions and/or criminal penalty provisions of the Code of Ordinances of the City of Albemarle. Each day of any violation of this Code shall constitute a separate violation punishable as separate violations of this Code.

(B) Failure to Comply with Orders

- 1) If the owner or other party in interest fails to comply with an Order to repair the building or structure, the Code Enforcement Officer may:
 - a. Cause such structure to be repaired, and pending such repairs, may order such building vacated and closed.
 - b. Cause to be posted on the main entrance of any structure so closed, a placard entitled "Notice of Condemnation" with the following words: "Notice is hereby given that this building is in an unsafe and dangerous condition; may constitute a fire hazard by reason of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally; or may be dangerously infested with vermin rodents or insects. Said building has been condemned under the building laws of the State of North Carolina and the City of Albemarle."
- 2) If the owner or other party in interest fails to comply with an Order to remove or demolish the building, the Code Enforcement Officer may:
 - a. Cause such structure to be remove or demolished.
 - b. Cause to be posted, pending removal or demolition, on the main entrance of any structure a placard entitled "Notice of Condemnation" with the following words: "Notice is hereby given that this building is in an unsafe and hazardous condition; may constitute a fire hazard by reasons of structural defects and general state of decay, deterioration and disrepair; may be hazardous or dangerous to children or members of the public generally; or may be dangerously infested with vermin rodents or insects. Said building has been condemned under the building laws of the State of North Carolina and the City of Albemarle."
- 3) The duties of the Code Enforcement Officer set forth in subsections 1) and 2) shall not be exercised until the City Council, by Ordinance for each violation,

shall have ordered the Code Enforcement Officer to proceed to effectuate the purpose of this Article with respect to the particular structure which the officer shall have found to be in violation of this Code. No such Order shall be adopted to require demolition of a structure until the owner or other party in interest has first been given a reasonable opportunity (see **Section 10:1**) to bring it into conformity with this article. Such Order shall be recorded in the Office of the Register of Deeds where the building is located and shall be indexed in the name of the property owner in the grantor index.

- 4) The amount of the cost of such repairs, alterations or improvements or vacating and closing, or demolition and removal by the Code Enforcement Officer shall be a lien against the real property upon which such cost was incurred; which lien shall be filed, have the same priority and be collected as provided by section 92.011, section 160A-216 et seq., G.S. Chapter 160A. If the structure is demolished and removed by the City, the City of Albemarle may sell the marketable materials of such structure and shall credit the proceeds of such sale against the cost of the demolition and removal and any balance remaining shall be deposited in the Superior Court by the City, and shall be secured in such manner as may be directed by such Court, and shall be disbursed by such Court to the persons found to be entitled thereto by final order or decree of such Court (in a special proceeding brought before the Clerk of Superior Court for said purpose).
- 5) Nothing in this section shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of the other remedies provided herein.
- 6) Nothing in this section shall be construed to impair or limit in any way the power of the Code Enforcement Officer in the proper enforcement of the duties of his office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of other remedies provided or cited herein.
- 7) It shall be unlawful for the owner or other party in interest of any structure to fail, neglect or refuse to repair or to vacate and close and demolish and remove the same, upon Order of the Code Enforcement Officer duly made and served as herein provided, within the time specified in such Order.

95.013 APPEALS PROCESS

(A) Establishment of Appeals Process

There is hereby established an “Appeals Process”. All Commercial Maintenance Code Appeals shall be heard by the City of Albemarle Board of Adjustment (BOA).

(B) Membership

The Board of Adjustment shall be responsible for hearing all appeals to decisions reached by the Code Enforcement Officer concerning the Commercial Maintenance Code of the City of Albemarle.

(C) Procedures

Procedures, rules and processes established by the Board of Adjustment shall apply.

(D) Duties

The duties of the Board of Adjustment shall be:

- 1) To consider and determine appeals whenever it is claimed that the true intent and meaning of this Code or any of the regulations thereunder have been misconstrued or wrongly interpreted or applied by the Code Enforcement Officer or his representative.
- 2) To consider the granting, in cases where the application of the requirement of this Code in the allowance of the stated time for the performance of any action required hereunder would appear to cause undue hardship on an owner or other party in interest, reasonable extensions of time not to exceed twelve (12) months from date of such Order. No subsequent appeal shall be considered where an appeal has been previously decided involving the same building or premises and the same citation, unless appellant can demonstrate to the satisfaction of the BOA change in circumstances sufficient to justify re-opening the appeal.

(E) Decisions

All decisions of the BOA which vary the application of any provision of this Code or modified an Order of the Code Enforcement Officer shall specify in the manner in which such variance or modification is to be made, the conditions under which it may be made and the reasons therefor. Every decision shall be in writing and a copy of all decisions shall be promptly filed in the office of the Code Enforcement Officer and it shall be open to public inspection.

95.014- APPEALS

(A) Appeals

Within thirty (30) days following receipt of an Order from the Code Enforcement Officer any person receiving such Order, believing that the literal application of this Code will cause undue hardship or has been misconstrued, wrongly interpreted or applied, may appeal in writing to the City of Albemarle Board of Adjustment (BOA) for such relief as may be granted, after investigation of the grounds thereof, by way of a reasonable extension of time or a variation from strict compliance with the provisions of this Code. The circumstances justifying such findings

related to hardship are:

- 1) Inability to comply within the time period provided in this Code due to clearly documented severe financial distress; or
- 2) The clear and significant non-availability of services or equipment with which to comply, without fault of the applicant; or
- 3) Other extenuating circumstances showing a good faith intention on the part of the applicant or another to comply when able to do so.

Such appeal shall be addressed to the office of the Code Enforcement Officer where proper forms will be prepared and forwarded to the Chairman of the BOA who will set the date and time of hearing and so notify the applicant. This section shall not be construed to apply to any situation regarded by the enforcement authority as a real and immediate threat to public safety and health. Any person aggrieved by the decision of said BOA may petition any court of competent jurisdiction. Any such appeal must be filed with said Court within thirty (30) days from the date of the Board's decision or it shall be considered abandoned.

(B) Fee for Appeal

To defray the cost of processing an appeal to the BOA a fee (as set by the City Council) shall be required. All fees are payable to the City of Albemarle and must be paid prior to processing the appeal.

95.015 AMENDMENTS, MISC.

(A) Amendments

The City and its officials may initiate amendments to this Code. Amendments or changes to this Code must be submitted for review and recommendation to the City of Albemarle Planning Board.

The City of Albemarle City Council must hold a public hearing with a minimum of ten-(10) day notice in the newspaper prior to authorizing any change.

(B) Severability

If any section, subsection, sentence, clause, or phrase of this Code is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Code.

(C) Conflict

In the event of conflict within this Code, or of conflict with other codes of the City of Albemarle, then the more restrictive shall apply. Interpretation hereof shall be the duty of the Code Enforcement Officer.

ADOPTED this the ___ day of _____, 2014.

Mayor

City Clerk

SEAL

DRAFT