

**ORDINANCE NUMBER 23-228**

**AN ORDINANCE CONCERNING NON-RESIDENTIAL BUILDINGS  
OR STRUCTURES STANDARDS; CHAPTER 152A  
THE CODE OF ORDINANCES OF THE TOWN OF FAIRMONT**

**WHEREAS**, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general police power; and

**WHEREAS**, Article 11 of the North Carolina General Statutes, N.C.G.S. 160D-1129, authorizes municipalities to provide for the repair, closing or demolition of Non-Residential buildings or structures; and

**WHEREAS**, N.C.G.S. 160A-193 authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

**WHEREAS**, the Town of Fairmont Board of Commissioners finds that it is in the public interest to amend the Town's Code of Ordinances to provide more specificity as to the requirements for regulating Non-Residential Buildings or Structures; and

**WHEREAS**, the Town of Fairmont Board of Commissioners, after due notice, conducted a public hearing on the 21st day of March 2023, upon the question of amending the Town Code in this respect.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, THE TOWN OF FAIRMONT, NORTH CAROLINA:**

**PART ONE.** That Chapter 152A, Sections 152A.075 through 152A.097, NON-RESIDENTIAL MAINTENANCE AND SAFETY are hereby amended, Sections 152A.098 through 152A.100 are added, and Sections 152A.101 through 152A.105 are amended and added herein and Sections 152A.106 through 152A.115 are hereby repealed and reserved. The Code of Ordinances, Town of Fairmont, North Carolina, is therefore amended to read as follows:

**"CHAPTER 152A, NON-RESIDENTIAL BUILDINGS OR STRUCTURES STANDARDS**

**152A.075 TITLE.**

This Chapter shall be known as the "Non-Residential Buildings or Structures Standards" for the Town of Fairmont, and may be cited as such, and will be referred to hereinafter as "this Chapter."

**152A.076 PURPOSE.**

It is the purpose of the provisions of this Chapter to provide a just, equitable and practicable method to evaluate whether non-residential buildings or structures fail to meet minimum standards of maintenance, sanitation, and safety established by the Town. The minimum standards address

conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. 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 Fairmont.

#### **152A.077 FINDINGS; AUTHORITY.**

Pursuant to Chapter 160D-1129 of the General Statutes of North Carolina, it is hereby found and declared that there exist in the Town, and its planning and development regulation jurisdiction, non-residential buildings or structures 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 and other causes.

In addition, it is hereby found and declared, that there exist in the Town, and its planning and development regulation jurisdiction, non-residential buildings or structures 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 or structures 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 or structures which render them unsafe and especially dangerous to life.

#### **152A.078 SCOPE; JURISDICTION.**

The provisions of this Chapter shall apply to all existing non-residential buildings or structures and to all non-residential buildings or structures hereafter constructed within the corporate Town limits and its planning and development regulation jurisdiction, as now or hereafter established.

#### **152A.080 GENERAL DEFINITIONS AND INTERPRETATIONS.**

Unless specifically defined in Section 152A.080, words used in the Non-Residential Buildings or Structures 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 Adjustment" shall always indicate the BOARD OF ADJUSTMENT OF THE TOWN OF FAIRMONT, NORTH CAROLINA as created and appointed by the Board of Commissioners of the Town of Fairmont.

The term "Board of Commissioners" shall always indicate the BOARD OF COMMISSIONERS OF THE TOWN OF FAIRMONT, NORTH CAROLINA.

#### **152A.081 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 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 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 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.

**Infestation:** The haunting or overrunning by rats, snakes, birds, insects or other destructive vermin or animals that endanger the public health and safety.

**Landowner or owner:** The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

**Non-Residential Buildings or Structures Standards Inspector:** The person delegated as such by the Board of Commissioners of the Town of Fairmont. (Hereinafter referred to as "the Inspector".)

**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 Fairmont; 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 or structure 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 or structure is actually occupied or not.

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

**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.

**Physical Valuation:** The estimated cost to replace a 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 baths, 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 occupant, devoted to or zoned for non-residential use.

**Public Sanitary Sewer:** Any sanitary sewer owned, operated and maintained by the County or the Town of Fairmont 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, glass crockery and dust.

**Sewage:** Waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture, 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. (Refer to the definition of "building" herein.)

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

**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.

**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.

#### **152A.082 OFFICE OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES STANDARDS INSPECTOR CREATED; POWERS AND DUTIES.**

(a) For the purposes of administering and enforcing the provisions of this Chapter the office of Non-Residential Buildings or Structures Standards Inspector, (herein called "Inspector"), is hereby created.

(b) The Inspector shall be appointed by the Board of Commissioners and shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provision of this Ordinance, including without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(1) To investigate the non-residential building conditions in the jurisdiction in order to determine which buildings therein are unsafe, being guided in such examinations 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 or structures.

(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.

#### **152A.083 DUTIES AND RESPONSIBILITIES OF THE OWNER.**

It shall be the duty and responsibility of the owner to maintain all non-residential buildings or structures in accordance with all standards for non-residential buildings or structures fitness as stated in this Chapter.

#### **152A.084 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 part of the building or premises unsafe or unsanitary or which would obstruct any adjacent owner/occupant from performing any duty required, or from maintaining his building or premises in a safe and sanitary condition.
- 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 Ordinances of the Town of Fairmont.
- 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.

**152A.085 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.

**152A.086 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 Board of Commissioners hereby declares that it would have passed this Ordinance and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses or phrases be declared invalid.

**152A.087 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 Ordinance.

**152A.088 AMENDMENTS.**

The Board of Commissioners 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 Board of Commissioners.

**152A.089 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 Fairmont which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Board of Commissioners has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety, and welfare of the citizens of Fairmont, 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 people of the jurisdiction.
- (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 or structure 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 fences, walls, walks, driveways, parking lots and other areas which are accessible to and generally used by persons on the premises.
- (5) Building and premise 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 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.
- (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 a hazard to pedestrians, vehicular traffic, or property.

(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 or 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 and exterior 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 an adjacent building said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall unless such doors, windows, vents or other similar openings are to be maintained in accordance with the provisions of this Chapter. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed, or bricked and weatherproofed if necessary 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 clear for such purposes.
- (22) 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.
- (23) All windows shall be maintained free of broken glass that could be dangerous to the public, invitees or third parties ordinarily expected to use the premises, from falling or shattering.
- (24) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure. All broken and missing windows shall be replaced with glass, Plexiglass or similar material approved by the Non-Residential Buildings or Structures Standards Inspector and the North Carolina Building Code.

## DRAINAGE

- (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.

### **152A.090 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 or structure fails to fully comply with one or more but less than five of the standards of non-residential buildings or structures fitness set forth in 152A.089 (C), such building or structure 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 of Section 152A.104. In such case the Inspector shall not be required to notify the owner as provided for in Section 152A.092.

### **152A.091 INVESTIGATION.**

Whenever it appears to the Inspector 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 the Board of Commissioners, the Inspector shall undertake a preliminary investigation. 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 G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

### **152A.092 COMPLAINT AND NOTICE OF HEARING.**

If the preliminary investigation discloses evidence of a violation of the minimum standards, the Inspector 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 Inspector (or his or her designated agent) at a place within the Town, scheduled not less than 10 days nor more than 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 Inspector.

### **152A.093 ORDER TO TAKE CORRECTIVE ACTION; CONTENTS; ISSUANCE.**

If, after notice and hearing, the Inspector 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 as established by the Board of Commissioners, the Inspector shall state in writing the findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

(A) An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the Board of Commissioners or to vacate and close the nonresidential building or structure for any use.

(B) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the Board of Commissioners determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may 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.

(C) An order **may not** require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order 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.

#### **152A.094 SERVICE OF COMPLAINTS AND ORDERS OF INSPECTOR.**

Complaints or orders issued by the Inspector pursuant to this ordinance 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. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Inspector in the exercise of reasonable diligence, and the Inspector 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 Town 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.

#### **152A.095 APPEAL OF ORDER OF INSPECTOR; FINALITY IF NOT APPEALED.**

Any owner who has received an order under Section 152A.093 may appeal from the order to the Town Board of Adjustment 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 Board of Adjustment within the prescribed time, the order of the Inspector shall be final. The Board of Adjustment shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify and affirm or revoke the order. Any person aggrieved by a decision or order of the Inspector shall have the remedies provided in G.S. 160D-1208.

#### **152A.096 FAILURE TO COMPLY WITH ORDER OF INSPECTOR.**

(A) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the Board of Commissioners may adopt an ordinance ordering the Inspector to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Inspector found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the Inspector may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The Inspector may cause to be posted on the main entrance of any nonresidential building or structure so 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 guilty of a misdemeanor.

(B) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the Board of Commissioners may adopt an ordinance ordering the Inspector to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Inspector found to be jeopardizing the health or safety of its occupants or members of the general

public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the Board of Commissioners. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the Inspector may cause the building or structure to be removed or demolished.

#### **152A.097 REMEDIES; LIEN FOR COST OF DEMOLITION AND REMOVAL.**

(A) 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 filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(B) The amount of the costs is also 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 subdivision is inferior to all prior liens and shall be collected as a money judgment.

(C) If the nonresidential building or structure is removed or demolished by the Inspector, he or she 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 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 or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Board of Commissioners to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

#### **152A.098 FAILURE OF OCCUPANT TO COMPLY WITH ORDER TO VACATE.**

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the Inspector 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 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 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 Board of Commissioners pursuant to Section 152A.096 of this Chapter 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 G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be

taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 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 30 days before the filing of the summary ejectment proceeding, that the governing body has ordered the Inspector to proceed to exercise his duties under Section 152A.096 of this Chapter to vacate and close or remove and demolish the nonresidential building or structure.

**152A.099 ACTION BY BOARD OF COMMISSIONERS UPON ABANDONMENT OF INTENT TO REPAIR.**

(A) If the Board of Commissioners has adopted an ordinance or the Inspector has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of **two years** pursuant to the ordinance or order, the Board of Commissioners may make findings 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 municipality 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. Upon such findings, the Board of Commissioners may, after the expiration of the **two-year** period, enact 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; or

(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.

(B) In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of **five years** before the Board of Commissioners may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the Inspector shall effectuate the purpose of the ordinance.

**152A.100 DEMOLITION OF NON-RESIDENTIAL BUILDINGS OR STRUCTURES BY OWNER.**

Where a non-residential building or structure 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 shall obtain a demolition permit from the Building Inspections Department.
- (2) All sewer, gas, water and similar taps or connections shall be properly closed and disconnected.
- (3) All debris from the building shall 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 shall 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, unless such doors, windows, vents, or other similar openings are to be maintained in accordance with the provisions of this Chapter. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed, or bricked and weatherproofed if necessary to prevent deterioration of the wall.

**152A.101 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 the 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 may make periodic inspections for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in non-residential structures within the jurisdiction. In addition, he may make inspections when he has reason to believe that such conditions may exist in a particular structure or premises.



### **152A.102 DEFECTS IN BUILDINGS TO BE CORRECTED.**

When the Inspector finds any defects in a non-residential building or finds that a building has not been constructed in accordance with 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.

### **152A.103 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 or structure 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 Section 152A.093, 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.

### **152A.104 GENERAL PENALTIES.**

1. An act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of ONE HUNDRED DOLLARS (\$100.00), which includes administrative fees. Each day any single violation continues shall be a separate violation. A violation of this ordinance shall not constitute a misdemeanor pursuant to N.C.G.S. 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.
2. In addition to the civil penalties set out above, any provision of this ordinance 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.
3. In addition to the civil penalties set out above, the provisions of this ordinance may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of these provisions 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.

4. Upon failure of the violator to obey the Notice of Violation/Warning Citation, a Notice of Civil Citation may be issued by the enforcement official, 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 County or obtained from the violator at the time of issuance of the Notice of Violation/Warning Citation. The violator shall be deemed to have been served upon the mailing of said Notice of Civil Citation. The Notice of Civil Citation shall direct the violator to appear in person at the Town Hall to pay the penalty within (15) fifteen days of the date of the Civil Citation, or alternatively to pay the citation by mail. The violation for which the penalty is issued must have been corrected by the time the penalty is paid, otherwise further penalties shall accrue. Penalties accrue from the date initially imposed in the Notice of Civil Citation and will continue without further notice, for each day the offense continues, until the prohibited activity is corrected, ceased, or abated. The Town may institute a civil action in the North Carolina General Court of Justice for the collection of the penalty, attorney fees, interest, court costs, and other such relief as permitted by law.

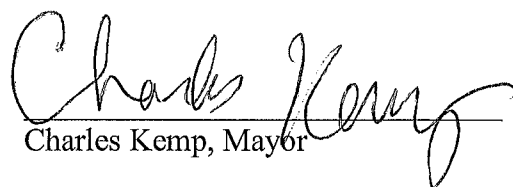
**152A.105 PROCEDURE IS ALTERNATIVE**

Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their abatement by summary action or otherwise, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinance or laws.”

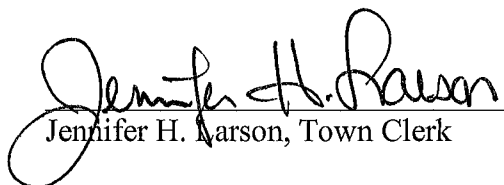
**PART TWO.** That all ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**PART THREE.** That this Ordinance shall become effective upon its adoption by the Board of Commissioners of the Town of Fairmont, North Carolina.

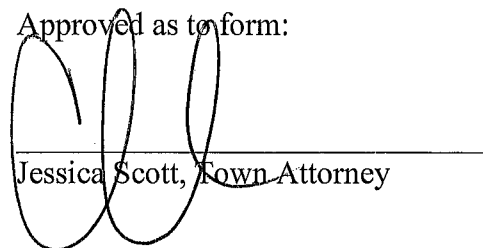
Adopted this 21st day of March 2023.

  
Charles Kemp, Mayor

ATTEST:

  
Jennifer H. Larson, Town Clerk

Approved as to form:

  
Jessica Scott, Town Attorney

