

**Fairmont Board of Commissioners  
Regular Meeting Agenda**

Date: February 21, 2023

Time: 6:00 p.m.

Place: Fairmont-South Robeson Heritage Center

**CALL TO ORDER**

**Invocation** by Bishop Jerrod Moultrie, Pastor of Oak Grove Baptist Church in Fairmont.

**Pledge of Allegiance**

**Mayor's Presentations**

- a. Recognition of Director James Jones and TZK Thunder Zone Karate.
- b. Introduction of new Police Officers – Mason Locklear, Carlie Sanderson and Denzel Burney.

**I. Approval of Agenda**

- II. Public Comment Period/Citizens Appearance** - Anyone wishing to come before the board must place their name and topic of discussion on the list before the meeting begins. Public Comment period is thirty minutes, and each speaker will be given five minutes to speak. There will be no discussion with the board.

**III. Consent Agenda** – These items will be adopted with one vote.

- a. Approval of Minutes – Regular Meeting, January 17, 2023, and Issue Forum, January 24, 2023
- b. Ordinance 23-223 – Budget Amendment #6 - \$6,000
- c. Ordinance 23-224 – Project Budget North Carolina Youth Violence Prevention Grant

**IV. Old Business**

- a. None

**V. New Business**

- a. Comprehensive Plan Vision Statement adoption
- b. Strategic Plan adoption
- c. StRAP Debris Removal Bid approval
- d. Resolution 23-02 Grant Submission Approval
- e. Discuss Draft Code Enforcement ordinances and set date for Public Hearing:
  - Ordinance 23-225 Chapter 91: Public Nuisances
  - Ordinance 23-226 Chapter 91.20: Abandoned, Junked, and Nuisance Vehicles
  - Ordinance 23-227 Chapter 152: Minimum Housing Standards
  - Ordinance 23-228 Chapter 152A: Non-Residential Buildings or Structures Standards

**VI. Comments**

- a. Board of Commissioners and Mayor
- b. Town Manager

**VII. Adjournment**

**VIII. Community Announcements**

- a. Saturday, March 18 – Senior Bingo, 12:00 noon to 2:00 p.m., Fairmont-South Robeson Heritage Center.
- b. Tuesday, March 21 - Regular Town Board meeting, 6:00 p.m., Fairmont-South Robeson Heritage Center
- c. Wednesday, March 29 – Town Employees luncheon, 12:30 p.m., Fire Hall.

Respectfully submitted,

*Jerome Chestnut*  
Jerome Chestnut, Town Manager

**Regular Meeting – January 17, 2023**

The Fairmont Board of Commissioners held their regular meeting on Tuesday, January 17, 2023, at 6:00 p.m. in the Fairmont-South Robeson Heritage Center with Mayor Charles Kemp presiding. Commissioners present were J.J. McCree, Terry Evans, Melvin Ellison, Jan Tedder-Rogers, and Clarence McNeill, Jr. Commissioner Heather Seibles was absent. Staff present included Town Manager Jerome Chestnut, Town Clerk Jenny Larson, Town Attorney Jessica Scott, Public Works Director Ronnie Seals, and Police Chief Jonathan Edwards. Several citizens were also present including Rev. Harold Salmon, D'Miyah Jackson, Kadajah Hunt, and Gabriel Washington

**Call to Order and Invocation**

Mayor Charles Kemp called the meeting to order at 6:00 p.m. Rev. Harold Salmon, Pastor of Olivet Methodist Church gave the invocation, which was followed by the Pledge of Allegiance.

**Mayor's Presentations**

Recognition of three students from area schools who have displayed unity.

Mayor Kemp presented certificates to three students from local schools who have been chosen as the 2023 Dr. Martin Luther King Unity Award winners. They are D'Miyah Jackson, 4<sup>th</sup> grader at Rosenwald Elementary School, Khadiyah Hunt, 8<sup>th</sup> grader at Fairmont Middle School, and Gabriel Washington, 11<sup>th</sup> grader at Fairmont High School.

**Approval of Agenda**

Commissioner Evans made a motion to approve the agenda. Commissioner Ellison seconded the motion and it passed unanimously.

**Public Comment Period/Citizens Appearance**

Nate Thompson

Mr. Nate Thompson questioned how the board responds to citizens during a board meeting.

**Consent Agenda**

Upon motion by Commissioner Evans and seconded by Commissioner Ellison, it was unanimously voted to adopt the following consent agenda items:

- a. Approval of Minutes – Regular Meeting, December 20, 2022.
- b. Ordinance 23-222 – Budget Amendment #5
- c. FPIC LGC response letter

A signed copy of the ordinance and letter and hereby incorporated by reference and made a part of these minutes.

**Old Business**

There was no old business this month.

**New Business**

**Resolution 23-01 – Accepting offer and authorizing the sale of the vacant lot on 401 South Main Street (former location of Lumbee River EMC).**

Town Manager Jerome Chestnut informed the board that Melecio's Restaurant has offered \$5,000 for the vacant lot located at 401 South Main Street (former location of Lumbee River EMC). They plan to use the lot for parking. The property was properly advertised, and no upset bids were received. Commissioner Evans made a motion to adopt Resolution 23-01 – Accepting offer and authorizing the sale of the vacant lot on 401 South Main Street (former location of Lumbee River EMC). Commissioner Ellison seconded the motion and it passed unanimously. A signed copy of this resolution is hereby incorporated by reference and made a part of these minutes.

**Engineering Agreement – StRAP Drainage Improvements Project No. 22-080-4033.**

Town Manager Jerome Chestnut asked the board to approve the professional engineering agreement with LKC Engineering, PLLC, for the \$250,000 StRAP Drainage Improvement Project No. 22-080-4033. Commissioner Evans made a motion to approve the engineering agreement with LKC Engineering, PLLC, for the StRAP Drainage Improvement Project No. 22-080-4033 in the amount of \$37,500.00. Commissioner Ellison seconded the motion and it passed unanimously. A signed copy of the agreement is hereby incorporated by reference and made a part of these minutes.

**Commissioner and Mayor Comments**

The commissioners thanked the citizens for coming to the meeting and voicing their concerns.

Commissioner Evans would like the town's current curfew ordinance to be strengthened.

Mayor Kemp thanked the Stop the Violence organization for hosting the Dr. Martin Luther King ceremony. There were 165 people in attendance at the program.

Mayor Kemp announced that Kammeron Polverari will be having a book signing for her historical novel "From the Fires Scattered There" on Friday, February 10 from 7:00 to 9:00 p.m. at The Stage on Thompson Street.

Mayor Kemp announced that the Pride in Fairmont Ceremony will be held on Tuesday, February 7 at 7:00 p.m. in the Fairmont-South Robeson Heritage Center. He will recognize 141 citizens who gave their time, money and effort to make Fairmont a better place in 2022.

**Town Manager Comments**

Town Manager Jerome Chestnut said 2023 was off to a great start with economic development and flood mitigation.

**Announcements**

Tuesday, January 24 - Quarterly Issue Forum, 6:00 p.m., Fairmont-South Robeson Heritage Center.

Tuesday, February 7 – Pride in Fairmont Ceremony, 7:00 p.m., Fairmont-South Robeson Heritage Center

Saturday, February 11 – Senior Bingo, 12:00 noon to 2:00 p.m., Fairmont-South Robeson Heritage Center.

Tuesday, February 21 - Regular Town Board meeting, 6:00 p.m., Fairmont-South Robeson Heritage Center

**Adjournment**

Commissioner Evans made a motion to adjourn the meeting at 6:32 p.m. Commissioner Tedder-Rogers seconded the motion and it passed unanimously.

\_\_\_\_\_  
Jennifer H. Larson  
Town Clerk

## Citizen Issue Forum Meeting -- January 24, 2023

Mayor Charles Kemp hosted a Quarterly Issue Forum meeting on Tuesday, January 24, 2023, at 6:00 p.m. at the Fairmont-South Robeson Heritage Center. Mayor Charles Kemp, Commissioners Clarence McNeill, Jr., and J.J. McCree were present. Commissioners Terry Evans, Heather Seibles, Melvin Ellison, and Jan Tedder-Rogers were absent. Town staff present were Town Manager Jerome Chestnut, Town Clerk Jenny Larson, Police Chief Jon Edwards, and Public Works Director Ronnie Seals. Two citizens were also in attendance, Doreen McNeill, and Pam Smith.

Mayor Kemp called the meeting to order at 6:05 p.m.

Town Manager Jerome Chestnut presented updates on the following topics:

Crime: Crime is trending down. The town has hired three new police officers and purchased three 2022 Ford F150 trucks to help increase patrols.

Animal Control: There has been an increase in complaints about animals running loose and chasing people. The town plans to work with the county on animal control.

Code Enforcement: An updated code enforcement ordinance that complies with North Carolina Chapter 160D will be presented to the board in February with final approval in March. Code enforcement will begin with the focus being on downtown and the avenues coming into town.

Flooding/Drainage: The town received four bids for canal debris removal as part of the StRAP grant. The board will approve the lowest bidder that meets all requirements at the February board meeting with work to start March 1. Phase 1 of the project will start downstream and then move upstream. The town is also working on a stormwater grant application.

The forum adjourned at 6:38 p.m.

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Jennifer H. Larson  
Town Clerk

TOWN OF FAIRMONT  
 2022-2023 BUDGET ORDINANCE  
 AMENDMENT #6  
 23-223

WHEREAS, the Board of Commissioners of the Town of Fairmont, previously approved the Annual Budget Ordinance 22-211; and

WHEREAS, it is necessary to make amendments to the budget to reflect additional revenue and expenditures for Fiscal Year 2022-2023.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Fairmont, North Carolina that:

SECTION I. RBEG Economic Development Fund Revenue is hereby increased \$6,000 from \$13,000 to \$19,000 as shown as follows:

RBEG Fund Balance	\$ 6,000
TOTAL REVENUES	\$ 6,000

SECTION II. RBEG Economic Development Fund Expenditures are hereby increased \$6,000 from \$13,000 to \$19,000 as shown as follows:

USDA RDBG Grant Writing Fee	\$ 6,000
TOTAL EXPENDITURES	\$ 6,000

SECTION III. General Fund Expenditures transfers in the amount of \$10,280 are shown as follows:

Description/Object of Expenditure	Decrease	Increase
ADMINISTRATION GROUP INSURANCE	\$ 7,710.00	\$ -
CLERK TRAINING	\$ 70.00	\$ -
CLERK DUES	\$ -	\$ 70.00
FINANCE TRAINING	\$ 500.00	\$ -
FINANCE PROFESSIONAL SERVICES	\$ -	\$ 710.00
POLICE TRAINING	\$ -	\$ 750.00
POLICE POSTAGE/TELEPHONE	\$ -	\$ 6,500.00
FIRE TRAINING	\$ -	\$ 250.00
SANITATION M/R EQUIPMENT	\$ 2,000.00	\$ -
SANITATION M/R VEHICLES	\$ -	\$ 2,000.00
	\$ 10,280.00	\$ 10,280.00

SECTION IV. Water/Sewer Fund Expenditures transfers in the amount of \$5,000 are shown as follows:

Description/Object of Expenditure	Decrease	Increase
SEWER TREATMENT SALARIES	\$ 5,000.00	\$ -
WATER MAINTENANCE DEPT SUPPLIES	\$ -	\$ 5,000.00
	\$ 5,000.00	\$ 5,000.00

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SECTION V. Revenues and Expenditures of the Ordinance Amendment have increased \$6,000 from \$4,002,211.00 to \$4,008,211.00 as follows:

SUMMARY

GENERAL FUND	\$2,353,730.00
POWELL BILL FUND	\$111,117.00
WATER & SEWER FUND	\$1,497,471.00
FEDERAL DRUG FUND	\$3,350.00
STATE DRUG FUND	\$4,450.00
RBEG ECONOMIC DEVELOPMENT FUND	\$19,000.00
CEMETERY FUND	\$18,993.00
TOTAL	<u>\$4,008,211.00</u>

Adopted this 21st day of February 2023.

\_\_\_\_\_  
Charles Kemp, Mayor

Attest:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

**Ordinance 23-224**

**Grant Project Ordinance for the Town of Fairmont  
North Carolina Youth Violence Prevention Grant**

BE IT ORDAINED by the town council of the Town of Fairmont, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** This ordinance is to establish a budget for a project to be funded by the North Carolina Youth Violence Prevention Center. The Town of Fairmont will receive \$24,000 from the North Carolina Youth Violence Prevention Center. These funds will be used to overtime for police officers for special assignments.

**Section 2:** The following amounts are appropriated for the project and authorized for expenditure:

NC Youth Violence Prevention Police Overtime	\$24,000
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**Section 3:** The following revenues are anticipated to be available to complete the project:

North Carolina Youth Violence Prevention Grant	\$24,000
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**Section 4:** The Finance Officer is hereby directed to maintain sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreements.

**Section 5:** The Finance Officer is hereby directed to report the financial status of the project to the governing board on a monthly basis.

**Section 6:** Copies of this grant project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to Town Council.

**Section 7:** This grant project ordinance expires on September 30, 2025, or when all the NCYVP funds have been obligated and expended by the town, whichever occurs sooner.

Adopted this 21st day of February 2023.

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Charles Kemp, Mayor

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Jennifer H. Larson, NCCMC, Town Clerk





## Memorandum for Record

**TO:** Mayor and Commissioners, Town of Fairmont

**FROM:** Jerome Chestnut, Town Manager  
Jean Crews-Klein, Regional Planner, Lumber River Council of Governments  
Randi C. Dagenhart, Regional Planner, Lumber River Council of Governments

**DATE:** February 15, 2023

**REF:** Adoption of the Comprehensive Plan Vision Statement (*Tab 5-A*)

### Background

The Lumber River Council of Governments has been assisting the Town of Fairmont with crafting an updated Vision Statement to align with the town's comprehensive and strategic plan. As we move towards a brighter future, the Vision Statement will be our guide in all planning and investment work undertaken by the Town of Fairmont.

The statement is as follows:

*"The Town of Fairmont will be an inclusive community that spurs economic opportunity through development aligned with family values, innovation, heritage, and stewardship."*

### Recommendation (Motion Required)

Staff is requesting that the Board of Commissioners adopt the Comprehensive Plan Vision Statement.



## Memorandum for Record

**TO:** Mayor and Commissioners, Town of Fairmont

**FROM:** Jerome Chestnut, Town Manager  
David Richardson, Executive Director, Lumber River Council of Governments

**DATE:** February 15, 2023

**REF:** Adoption of the Strategic Plan (*Tab 5-B*)

### Background

The Lumber River Council of Governments has been assisting the Town of Fairmont with updating of the Strategic Plan. It is our (Board of Commissioners, Staff, and the Planning Board) hope - that this plan will help guide the strategic work of the Fairmont Town Commissioners and Staff for the next six years (2023-2028). This plan will be reviewed annually, and feedback presented to the Commissioners on progress.

The Strategic Plan is included as an insert to the Commissioners' Agenda Packet.

### Recommendation (Motion Required)

Staff is requesting that the Board of Commissioners adopt the Strategic Plan.



Engineering  
Landscape Architecture  
Surveying

February 13, 2023

Jerome Chestnut, Town Manager  
Town of Fairmont  
421 South Main Street  
Fairmont, NC 28340

Re: Recommendation of Award  
NCAGR StRAP Program Streamflow Rehabilitation  
Town of Fairmont, Robeson County, North Carolina

Dear Mr. Chestnut:

Bids for the Town's above referenced project for the NCAGR StRAP Program Streamflow Rehabilitation were received on Tuesday, January 24, 2023 at the Fairmont Town Hall. The project included a base bid for work along Old Field Swamp and two additive alternates for additional work in areas on the west side of Town. Four (4) bids were received ranging from a low of \$39,664.00 to a high of \$306,000.00. The low bid of \$39,664.00 from Millers Tree & Debris Removal Service was considered a non-responsive bid and rejected due to their bid price not including costs for appropriate removal and disposal of debris as indicated in the bid documents. Therefore, the lowest responsive bid of \$134,000.00 was submitted by Stocks Landscaping of Tabor City, NC. A copy of the Bid Summary is attached for your review.

The lowest responsive bidder, Stocks Landscaping, has completed several successful projects within the area and is acceptable as a contractor for the project. Therefore, as the low base bid is within the budgeted amount and adequate funding is available, it is our recommendation to award the base bid project scope and both additive alternates to Stocks Landscaping for their low bid amount of \$160,500.00.

Upon concurrence and approval of the Town Board, we will begin the contracting process with the low bidder.

If you should have any questions or comments, please do not hesitate in contacting this office.

Sincerely,  
LKC ENGINEERING, PLLC

A handwritten signature in blue ink, appearing to read 'MLC'.


Mark Lacy, P.E.

## SUMMARY OF BID OPENING

Bid Opening - January 24, 2023 at 2:00 P.M.  
Town of Fairmont NCAGR STRAP Program Streamflow Rehabilitation

LKC Project No: Fair-22.02

CONTRACTOR	ADDRESS	BASE BID AMOUNT	BID ALT #1 AMOUNT	BID ALT #2 AMOUNT	TOTAL BASE BID & ALTERNATES
Millers Tree & Debris Removal Service	2389 Princess Ann Rd. Orrum, NC 28369	\$39,664.00	\$13,736.00	\$2,976.00	\$56,376.00
Stocks Landscaping	3473 Will Inman Rd. Tabor City, NC 28463	\$134,000.00	\$19,000.00	\$7,500.00	\$160,500.00
Alliance Integrated Solutions, Inc.	3557 Lackey St. Lumberton, NC 28360	\$138,642.23	\$51,078.72	\$10,215.74	\$199,936.69
Grahams Constructions, Inc.	27278 Andrew Jackson Hwy E Suite D Delco, NC 28436-9197	\$306,000.00	\$45,000.00	\$35,000.00	\$386,000.00

  
 Reviewed and Certified as Presented Above  
 2/13/23



# LKC

**Resolution #23-02**

**GRANT SUBMISSION APPROVAL**

**WHEREAS** the Board of Commissioners of the Town of Fairmont, North Carolina, recognizes the need to promote business development and revitalization of the downtown area as an important step in the mission for economic development within the Town of Fairmont; and

**WHEREAS** the Board of Commissioners recognizes the necessity of obtaining grant funding from various funding organizations to give these efforts maximum support; and

**NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners for the Town of Fairmont that: the Town Manager of Fairmont is authorized to prepare, sign, and submit grant applications to any grant funding organization on behalf of the Board of Commissioners, including but not limited to USDA, Golden LEAF Foundation, NC Land and Water Fund, etc., to include any supporting information and documentation and to administer a resultant grant contract including requisite general administration and project management contracts and agreements pursuant to regulations of the applicable funder.

Adopted this 21st day of February 2023.

\_\_\_\_\_  
Charles Kemp, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk



## Memorandum for Record

**TO:** Mayor and Commissioners, Town of Fairmont

**FROM:** Jerome Chestnut, Town Manager  
John E. Ganus, CZO, CHCO, N-Focus, Inc.

**DATE:** February 15, 2023

**REF:** Review of Draft Code Enforcement Ordinances (*Tab 5-E*)

### Background

The following Ordinances have been updated to reflect changes mandated by Chapter 160A of the North Carolina General Statutes:

- Chapter 91: Public Nuisances
- Chapter 91.20: Abandoned, Junked, and Nuisance Vehicles
- Chapter 152: Minimum Housing Standards
- Chapter 152A: Non-Residential Buildings or Structures Standards

These ordinances have been updated by an outside consultant (N-focus, Inc) and has been reviewed by our Town Attorney, Police Chief, and local Magistrate.

These ordinances were emailed to the Mayor and Commissioners on February 15, 2023. These drafts will be published on our website and copies be available at Town Hall for Citizens.

### Recommendation (Motion Required)

Staff is requesting that the Board of Commissioners review these ordinances and set a Public Hearing and tentative Adoption Date for March 21, 2023, with enforcement of these ordinances set to begin on April 2, 2023.

**ORDINANCE 23-225**

**AN ORDINANCE AMENDING THE REGULATION OF PUBLIC NUISANCES  
IN 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 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-193, authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

**WHEREAS**, the Board of Commissioners of the Town of Fairmont finds that it is in the public interest to amend the Public Nuisances Ordinance as it pertains to regulating Public Nuisance conditions in the Town; and

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

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

**PART ONE.** That an Ordinance entitled "Chapter 91: Nuisances, Sections 91.01 through 91-08", of the Code of Ordinances of the Town of Fairmont, North Carolina, is hereby amended in its entirety to read as follows:

**"CHAPTER 91: PUBLIC NUISANCES**

**91.01 DECLARATION OF PUBLIC NUISANCE.**

The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town and are found, deemed, and declared to be public nuisances wherever the conditions may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful:

1. Any weeds or other vegetation having an overall height of more than eleven (11) inches above the surrounding ground provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing and producing vegetable plants. It shall be the duty of every person occupying, owning, or having control of property abutting on a street or highway that utilizes a portion of the unused street or highway right-of-way as a yard or any other use to maintain said right-of-way in the same character and manner as the abutting use.

2. Any accumulation of trash and/or garbage which is the result of the absence or of overflowing or improperly closed trash or garbage containers, that attracts or is likely to attract mice and rats, flies and mosquitoes or other pests.
3. An open or unsecured storage or collection place for chemicals, acids, oils, gasoline, flammable, or combustible materials or flammable or combustible liquids, poisonous materials or other similar harmful or dangerous substances, gasses, or vapors.
4. An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature;
5. Any accumulation of garbage, rubbish, trash, or junk causing or threatening to cause a fire hazard or causing or threatening to cause the accumulation of stagnant water or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes, or vermin prejudicial to the public health.
6. Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.
7. The open storage of any discarded icebox, furniture refrigerator, stove, glass, building materials, building rubbish or similar items. The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the street as a storage or collection place for boxes, appliances, furniture (not typical outdoor or yard furniture), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods or other similar condition that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or, create an unattractive condition or visually blighted property.
8. Any building or other structure which has been burned, partially burned, or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Board of Commissioners or their designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.
9. A collection place for lumber, bricks, blocks, old and broken concrete materials, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and air conditioning supplies or materials or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit.
10. The placement, storage or use of upholstered sofas, couches, chairs or other indoor type furniture, appliances, seats removed from motor vehicles or other furniture not intended for outdoor use by the manufacturer, use on any open porch, carport, stoop, deck, veranda, terrace, patio, or other outdoor area that is visible from nearby streets and sidewalks.
11. A collection place, pool, or pond of stagnant or foul water or persistent dampness caused by overflowing septic tanks, manmade dams, open ditches, overflowing pipes, foundation trenches or other impoundments of any kind.



12. Barns or farm animal pens, pastures or enclosures for farm animals which are not kept sanitary and clean or otherwise become a collection place for animal waste and which because of the conditions associated therewith attract rats, mice, flies or other pests or emit foul odors that can be detected or noticed on adjacent properties or are otherwise not kept in a sanitary condition.
13. Dog lots, pens, pet enclosures of all kinds, outdoor areas where dogs or other pets are chained or kept or areas where dogs and cats are permitted to roam which become a collection place for dog, cat or pet waste and excrement and which attract flies or other pests, emit foul odors which can be detected or noticed on adjacent property or are not kept in a sanitary condition.
14. A collection place for sewage and sewage drainage or the seepage from septic tanks, broken or malfunctioning plumbing and sewer pipes or any other seepage of dangerous, hazardous, or poisonous liquids.
15. A collection place for tree limbs, dried brush, dead vegetation, stumps or other decayed wood and materials or other similar rubbish.
16. Any discharge into or polluting of any public well or cistern, stream, creek, river or other body of water or the discharge of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so that it is likely that such streams, creeks, rivers or other bodies of water will become polluted or adversely affected in any manner.
17. Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water.
18. Any conditions or use of property, which results in the emission of pollutants and particles into the atmosphere or causes noxious odors, vapors, and stenches to be discharged into the air.
19. Nuisance vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:
  - (a) A breeding ground or harbor for mosquitoes, other insects, rats, or other pests; or
  - (b) A point of heavy growth of weeds or other noxious vegetation which exceeds eight (8) inches in height; or
  - (c) In a condition allowing the collection of pools or ponds of water; or
  - (d) A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
  - (e) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods; or
  - (f) So situated or located that there is a danger of it falling or turning over; or
  - (g) A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind; or
  - (h) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass;
  - (i) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Board of Commissioners.

20. Any condition detrimental to the public health which violates the rules and regulations of the County Health Departments.

### **91.02 COMPLAINT; INVESTIGATION OF PUBLIC NUISANCE.**

1. When any condition in violation of this ordinance is found to exist, the Code Administrator or such persons as may be designated by the Town Board of Commissioners shall give notice to the owner of the premises to abate or remove such conditions. Such notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected prior to a specified date, (no sooner than 10 calendar days after the notice is mailed and/or affixed to the property), the Town may proceed to correct the same as authorized by this ordinance. Service of such notice shall be by any one of the following methods.

(a) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of sixteen (16) years and a member of the family of the owner.

(b) By depositing the notice in the United States Post Office addressed to the owner at his last known address with regular mail postage prepaid thereon.

(c) By posting and keeping posted, for ten (10) days, a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by method (a) and (b).

2. Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

### **91.03 CHRONIC VIOLATOR**

The town may notify a chronic violator of the town's public nuisance ordinance that, if the violator's property is found to be in violation of this chapter, the town shall, without further notice in the calendar year in which notice is given, take action to remedy the violation. The expense of such action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. A chronic violator is a person who owns property whereupon, in the previous calendar year, the town gave notice of violation at least three times under any provision of the public nuisance ordinance.

#### **91.04 APPEAL FROM A WARNING/NOTICE OF VIOLATION.**

An appeal from a warning citation shall be taken within ten (10) days from the date of issue of said warning citation by filing with the Town Clerk and with the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. The Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of this ordinance, in the factual situation as it relates to the application of an ordinance or both.

#### **91.05 ABATEMENT PROCEDURE.**

If the owner of any property fails to comply with a notice given pursuant to this section, within ten (10) days after the service of such notice, he shall be subject to prosecution for violation of this ordinance in accordance with law and each day that such failure continues shall be a separate offense. In addition, the Town Board of Commissioners may have the condition described in the notice abated, removed, or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

#### **91.06 ABATEMENT BY TOWN.**

1. If any person who has been ordered to abate a nuisance pursuant to this chapter, fails, neglects or refuses to abate or remove the condition constituting the nuisance within time allowed in the notice, the Town Manager shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor designated by the Town Manager go upon the premises and remove or otherwise abate the nuisance under the supervision of the enforcement official designated by the Town Manager.
2. Any person who has been ordered to abate a nuisance may within the time allowed by this chapter request the town in writing to remove the condition, the cost of which shall be paid by the person making the request.
3. The actual cost incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land and it shall be the duty of the tax collector or other appropriate town official to mail a statement of the charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from receipt of the statement.
4. If charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in subsection 3, the charges shall become a lien on the land or premises where the nuisance occurred and shall have the same priority and be collected as unpaid ad valorem taxes, as provided in G.S. § 160A-193(a).

5. If charges for the removal or abatement of a public nuisance are not paid within 30 days after the receipt of a statement of charges as provided for in subsection section 3, the expense of the action is also a lien on any other real property owned by the person in default within the town limits or within one mile of the town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another, as provided in G.S. § 160A-193(b).

#### **91.07 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 FIFTY DOLLARS (\$50.00), 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.

**91.08 PROCEDURE IS ALTERNATIVE**

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances.”

**PART TWO.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**PART THREE.** If any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**PART FOUR.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

**PART FIVE.** This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 21st day of March 2023.

\_\_\_\_\_  
Charles Kemp, Mayor

ATTEST:

Approved as to form:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

\_\_\_\_\_  
Jessica Scott, Town Attorney

**ORDINANCE 23-226**

**AN ORDINANCE AMENDING THE REGULATION OF PUBLIC NUISANCES  
IN 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 15 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-303, et seq., authorizes municipalities to regulate, remove and dispose of Abandoned and Junked Vehicles; and

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

**WHEREAS**, the Board of Commissioners of the Town of Fairmont finds that it is in the public interest to amend the Abandoned Nuisance Vehicles Ordinance as it pertains to regulating Abandoned, Junked and Nuisance vehicles; in the Town; and

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

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

**PART ONE.** That an Ordinance entitled Chapter 91: Nuisances, Sections 91.20 through 91.32, are hereby amended and adding Sections 91.33 through 91.37 of the Code of Ordinances of the Town of Fairmont, North Carolina, is hereby rewritten in its entirety to read as follows:

**"CHAPTER 91. ABANDONED, JUNKED AND NUISANCE VEHICLES**

**91.20 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONED MOTOR VEHICLE.** A motor vehicle that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left on a public street or highway for longer than seven days; or is determined by Law Enforcement to be a hazard to the motoring public;
- (3) Is left on property owned or operated by the town for longer than 24 hours; or
- (4) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours.

**AUTHORIZING OFFICIAL.** The supervisory employee of the Police Department or the Code Administrator, respectively, designated to authorize the removal of vehicles under this chapter.

**JUNK MOTOR VEHICLE.** Authorized and defined in G.S. § 160A-303.2, a vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and appears to be worth less than \$500.00

**MOTOR VEHICLE OR VEHICLE.** All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

**NUISANCE VEHICLE.** A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful, including a vehicle found to be any one or more of the following:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods and the like;
- (6) So situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste or other rotten matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; and/or
- (9) Any other vehicle specifically declared a health and safety hazard and public nuisance by the Town Council

## **91.21 ADMINISTRATION.**

(A) The Police Department and the Code Administrator shall be responsible for the administration and enforcement of this chapter. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the town and on property owned by the town. The Code Administrator shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property within the town. The town may contract with private tow operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws.

- (B) Nothing in this chapter shall be construed to limit the legal authority or powers of the officers of the Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

#### **91.22 EXCEPTIONS.**

Nothing in this chapter shall apply to any vehicle:

- (A) Which is located in a bona fide automobile graveyard or junkyard, as defined in G.S. § 136-143, in accordance with the Junkyard Control Act, G.S. §§ 136-141 et seq.;
- (B) Which is in an enclosed building;
- (C) Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; and
- (D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

#### **91.23 ABANDONMENT UNLAWFUL; REMOVAL AUTHORIZED.**

- (A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow the vehicle to be abandoned.
- (B) Upon investigation, proper authorizing officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

#### **91.24 NUISANCE UNLAWFUL; REMOVAL AUTHORIZED.**

- (A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located, to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (B) Upon investigation, the town's Code Administrator may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, as defined above, and order the vehicle removed.

#### **91.25 REGULATIONS; REMOVAL; CONCEALMENT.**

- (A) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located, to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- (B) It shall be unlawful to have more than one junked motor vehicle on the premises of public or private property. A single permitted junked motor vehicle must strictly comply with the location and concealment requirements of this chapter.
- (C) It shall be unlawful for any owner, persons entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located, to fail to comply with the locational requirements or concealment requirements of this chapter.



- (D) Subject to the provisions of division (C) above, upon investigation, the town's Code Administrator may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The findings shall be based on the balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance. The following among other relevant factors may be considered:
- (1) Protection of property values;
  - (2) Promotion of tourism and other economic development opportunities;
  - (3) Indirect protecting of public health and safety;
  - (4) Preservation of the character and integrity of the community; and
  - (5) Promotion of the comfort, happiness, and emotional stability of area residents.
- (E) The permitted concealment or enclosure of a junked motor vehicle shall be as follows:
- (1) One junked motor vehicle, in its entirety, can be located in the rear yard, as defined in the Zoning Ordinance, if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.
  - (2) Any junked motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a lawful structure erected pursuant to the lawful issuance of a building permit, and which has been constructed in accordance with all zoning and building code regulations.
- (F) The town's Code Administrator has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate. The covering or enclosure must be compatible with the preamble hereof and the zoning ordinance.

#### **91.26 REMOVAL; PRE-TOWING NOTICE REQUIREMENTS.**

- (A) (1) Except as set forth in subsection 91.27, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to possession of the vehicle or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained with reasonable diligence, the notice shall be given by first class mail. The person who mails the notice shall retain a written record to show the names and addresses to which mailed and the date mailed.

- (2) If the names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specified date no sooner than seven days from the date the notice is affixed.
  - (3) The notice shall state that the vehicle will be removed by the town on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.
- (B) With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle, but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, the appeal shall be made to the Board of Adjustment, in writing, heard at the next regularly scheduled meeting, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

#### **91.27 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.**

- (A) The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. The findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include vehicles abandoned on the streets. For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of such vehicles may be warranted when they are:
- (1) Obstructing traffic;
  - (2) Parked in violation of an ordinance prohibiting or restricting parking;
  - (3) Parked in a no stopping or standing zone;
  - (4) Parked in loading zones;
  - (5) Parked in bus zones; or
  - (6) Parked in violation of temporary parking restrictions imposed under code sections.
- (B) With respect to abandoned or nuisance vehicles left on town-owned property other than the streets and highways and on private property, the vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, the circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard and vehicles causing damage to public or private property.

## **91.28 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.**

- (A) Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the town. Whenever such a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, the notice to include the following:
- (1) The description of the removed vehicle;
  - (2) The location where the vehicle is stored;
  - (3) The violation with which the owner is charged, if any;
  - (4) The procedure the owner must follow to redeem the vehicle; and
  - (5) The procedure the owner must follow to request a probable cause hearing on the removal.
- (B) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in divisions (A)(1) through (5) above, shall also be mailed to the registered owner's last known address unless this notice is waived, in writing, by the vehicle owner or his or her agent.
- (C) If the vehicle is registered in the state, notice shall be given within 24 hours from the removal of the vehicle. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.
- (D) Whenever an abandoned, nuisance or junked motor vehicle is removed and the vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in divisions (A)(1) through (5) above.

## **91.29 APPEAL FROM A WARNING/NOTICE OF VIOLATION.**

An appeal from a warning citation shall be taken within ten (10) days from the date of issue of said warning citation by filing with the Town Clerk and with the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. The Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of this ordinance, in the factual situation as it relates to the application of an ordinance or both.

### **91.30 PROBABLE CAUSE HEARING BEFORE SALE OR DISPOSITION.**

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive the hearing requests. The magistrate will set the hearing within 72 hours of receipt of the request and the hearing will be conducted in accordance with the provisions of G.S. § 20-219.11.

### **91.31 REDEMPTION OF VEHICLE DURING PROCEEDINGS.**

- (A) At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of the fees and charges to the tow truck operator or towing business having custody of the removed vehicle.
- (B) Upon regaining possession of a vehicles, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this chapter.

### **91.32 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.**

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the town and in accordance with G.S. § 44A-1 et seq.

### **91.33 CONDITIONS ON REMOVAL FROM PRIVATE PROPERTY.**

- (A) As a general policy, the town will not remove a vehicle from private property if the owner, occupant, or lessee of the property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the town from private property without a written request of the owner, occupant, or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Code Administrator.
- (B) The town may require any persons requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expenses or liability incurred because of the removal, storage, or sale thereof.

### **91.34 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.**

- (A) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle, for disposing of the vehicle, as provided in this chapter.
- (B) Any person who removes a vehicle, pursuant to this chapter, shall not be held liable for damages for removal of the vehicle to the owner, lienholder or other person legally entitled to possession.

### **91.35 UNLAWFUL; REMOVAL OF IMPOUNDED VEHICLE.**

It shall be unlawful for any persons to remove or attempt to remove from any storage facility designated by the town any vehicle which has been impounded pursuant to the provisions of this chapter unless and until all towing and impoundment fees which are due, or bond in lieu of the fees, have been paid.

### **91.36 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 FIFTY DOLLARS (\$50.00), 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.

**91.37 PROCEDURE IS ALTERNATIVE**

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances.”

**PART TWO.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**PART THREE.** If any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**PART FOUR.** The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

**PART FIVE.** This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 21st day of March 2023.

\_\_\_\_\_  
Charles Kemp, Mayor

ATTEST:

Approved as to form:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

\_\_\_\_\_  
Jessica Scott, Town Attorney

**ORDINANCE NUMBER 23-227**

**AN ORDINANCE CONCERNING THE AMENDMENT OF  
CHAPTER 152, MINIMUM HOUSING STANDARDS  
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 12 of Chapter 160D of the North Carolina General Statutes, N.C.G.S. 160D-1201 et seq., authorizes municipalities to provide for the repair, closing or demolition of dwellings, buildings or structures used or intended for human habitation; 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 Ordinances to provide more specificity as to the requirements for regulating dwellings, buildings or structures used or intended for human habitation; 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 enacting a Town Ordinance in this respect.

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

**PART ONE.** That Chapter 152, the Minimum Housing Standards, Generally, Sections 152.01 through 152.17 are hereby amended, and Section 152.18, Sections 152.30 through 152.34, and Sections 152A.051 through 152A.068 are hereby repealed and reserved. The Code of Ordinances of the Town of Fairmont, North Carolina, is hereby amended and written to read as follows:

**"CHAPTER 152, MINIMUM HOUSING STANDARDS**

**152.01 FINDINGS; PURPOSE; AUTHORITY.**

Pursuant to Section 160D-1201, 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 dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe and unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the Town of Fairmont.

In order to protect the health, safety and welfare of the residents of the Town and its planning and development regulation jurisdiction, as authorized by Chapter 160D, Article 12 of the General Statutes of North Carolina, it is the purpose of this Ordinance to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by Section 160D-1201 of the General Statutes of North Carolina.

In addition, it is hereby found and declared, under the authority of North Carolina General Statutes 160A-174, that there exist in the Town dwellings which, although not meeting the classification as unfit for human habitation, fail to fully comply with all the minimum standards for housing 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 dwellings which render them unfit for human habitation.

#### **152.02 SCOPE.**

- (a) This Chapter is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof which are public safety, health and general welfare through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used or intended for use as such.
- (b) The provisions of this Chapter shall apply to all existing housing and to all housing hereafter constructed within the Town and its planning and development regulation jurisdiction as now or hereafter established. Portable, mobile, or demountable buildings or structures, including trailers, manufactured homes and mobile homes when used or intended for use for housing within the jurisdiction, shall be subject to the applicable provisions of this Chapter. This Chapter establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment, or facilities except as provided in this Chapter.
- (c) The provisions of this Chapter shall also apply, as authorized by G.S. § 160D-1201(b), to abandoned structures which are found by the Board of Commissioners to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary conditions.

#### **152.03 DEFINITIONS.**

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

Abandoned Structure. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Housing Inspector to be unfit for human habitation or occupancy based upon the standards as set forth in this Chapter.

Basement. A portion of a building which is located partly underground, having access to light and air from windows located above the level of the adjoining ground.

Cellar. A portion of a building located partly or wholly underground having inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.



Deteriorated Dwelling. A dwelling that is unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this Chapter, *at a cost not in excess of fifty percent of its value*, as determined by finding of the Housing Inspector.

Dilapidated Dwelling. A dwelling that is unfit for human habitation and cannot be repaired, altered, or improved to comply with all of the minimum standards established by this Chapter, *at a cost not in excess of fifty percent of its value*, as determined by finding of the Housing Inspector.

Dwelling. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any accessory buildings and structures and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

Dwelling Unit. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

Extermination. The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the Housing Inspector.

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

Habitable room. A room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets, and storage spaces.

Housing Inspector. The person, Public Officer, or Officers, appointed by the Board of Commissioners to carry out the administration and enforcement of this Chapter.

Infestation. The presence, within or around a dwelling, of any insects, rodents, or other pests in such number as to constitute a menace to the health, safety, or welfare of the occupants or to the public.

Manufactured Home (Mobile Home). A structure as defined in G.S. 143-145(7).

Multiple Dwelling. Any dwelling containing more than two dwelling units.

Occupant. Any person over one year of age living, sleeping, cooking, or eating in, or having actual possession of a dwelling, dwelling unit or rooming unit.

Operator. Any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

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

Parties in Interest. All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

Public Authority. Any housing authority or any officer who is in charge of any department or branch of the government of the Town, County, or State relating to health, fire, building regulations, or other activities concerning dwellings in the Town.

Rooming House. Any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of the owner or operator.

Rooming Unit. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish. Combustible and noncombustible waste materials except garbage and ashes, and the term shall include, but not be limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

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

Tenant. Any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides in, or has a legal right to possess and use an individual rental unit.

Whenever the words "dwelling", "dwelling unit", "rooming house", "rooming unit" or "premises" are used in this Chapter, they shall be construed as though they were followed by the words "or any part thereof"

#### **152.04 OFFICE OF HOUSING INSPECTOR CREATED; POWERS AND DUTIES.**

For the purposes of administering and enforcing the provisions of this Chapter, the office of Housing Inspector is hereby created. The Housing 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 provisions of this Chapter, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(a) Investigations

To investigate the dwelling and building conditions in the Town in order to determine which dwellings therein are unfit for human habitation and dangerous, being guided in such examination of dwellings and buildings by the requirements set forth in this Chapter.

(b) Oaths, witnesses, etc.

To administer oaths and affirmations and to examine witnesses and receive evidence.

(c) Right of Entry

To enter upon and within premises and dwellings for the purpose of making examinations and investigations; provided, that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. 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.

(d) Warrants; Citations, etc.

To swear criminal warrants, issue civil citations and to take such other actions as may be necessary to carry out the enforcement procedures of this Chapter.

(e) Delegation of functions, etc.

To delegate any of his functions and powers under this Chapter to such officers and agents as he may designate.

#### **152.05 INSPECTIONS.**

For the purpose of carrying out the intent of this Chapter, the Housing Inspector, upon proper identification, is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and premises, including abandoned structures. The owners or occupants of every dwelling, dwelling unit, rooming unit, or rooming house, or the person in charge thereof, shall give the Housing Inspector free access to such dwelling, dwelling unit, rooming house or rooming unit, and its premises, at all reasonable times for the purposes of such inspection, examination, and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, 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.

#### **152.06 PRELIMINARY INVESTIGATIONS; NOTICES; HEARINGS.**

Whenever a petition is filed with the Housing Inspector by a public authority or by at least five (5) residents of the Town charging that any dwelling is unfit for human habitation or whenever it appears to the Housing Inspector (on his own motion) that any dwelling is unfit for human habitation, the Housing Inspector shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Inspector (or his designated agent) at a place within the Town therein fixed 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 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; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Housing Inspector.

In accordance with N.C.G.S. 1-120.2, Upon the issuance of a complaint and notice of hearing pursuant to this Section, the Inspector may cause the filing of a notice of Lis Pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of Brunswick County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes 1-117. The Inspector shall cause a copy of the notice of Lis Pendens to be served upon the owners and parties in interest in the dwelling at the time of filing as applicable. From the date and time of indexing, the complaint and notice of hearing or order shall be binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. The notice of Lis Pendens shall remain in full force and effect until cancelled. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of Lis Pendens.

## 152.07 DWELLING UNFIT FOR HUMAN HABITATION.

The Housing Inspector shall determine that a dwelling is unfit for human habitation if he finds that any one of the following conditions exist in such dwelling:

- (A) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the dwelling unsafe.
- (B) 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.
- (C) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used.
- (D) Such damage by fire, wind, or other causes as to render the dwelling unsafe.
- (E) Dilapidation, decay, unsanitary conditions, or disrepair which is dangerous to the health, safety or welfare of the occupants or other people in the Town.
- (F) Inadequate facilities for egress in case of fire or panic.
- (G) Defects significantly increasing the hazards of fire, accident, or other calamities.
- (H) 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 Town.
- (I) Lack of proper electrical, heating, or plumbing facilities required by this Chapter which constitutes a definite health or safety hazard.
- (J) Lack of connection to a potable water supply and/or to the public sewer or other approved sewage disposal system, the lack of either one of which renders a dwelling unfit for human habitation. For the purposes of this standard, a dwelling 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.

In addition to the ten (10) conditions stated above, any one of which renders a dwelling unfit for human habitation, the Housing Inspector shall determine that a dwelling is unfit for human habitation if he finds that a dwelling fails to fully comply with seven (7) or more of the following enumerated standards of dwelling fitness:

## **STRUCTURAL STANDARDS**

### Structural Integrity

- (1) 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.

### Supports

- (2) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

### Foundations

- (3) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

### Steps

- (4) Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.

### Egress

- (5) Adequate facilities for egress in case of fire or panic shall be provided.

### Interior Materials

- (6) Interior walls and ceilings of all rooms, closets and hallways shall be furnished of suitable materials which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

### Weatherization

- (7) The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather and watertight.

### Chimneys

- (8) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

### Floors

- (9) There shall be no use of the ground for floors, or wood floors on the ground.

## **PLUMBING STANDARDS**

### Facilities

- (10) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply. Each dwelling shall be connected to the public sewer or other approved sewage disposal system. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

### Maintenance

- (11) All plumbing fixtures shall meet the standards of the Plumbing Code and shall be maintained in a state of good repair and in good working order.

### Accessible

- (12) All required plumbing fixtures shall be located within the dwelling and be accessible to the occupants of the same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

## **HEATING STANDARDS**

### Generally

- (13) Every dwelling shall have facilities for providing heat in accordance with either paragraph (a) or (b) below. Such facilities shall be maintained in a state of good repair and good working order.
- (a) Central and electrical heating systems. Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling to which it is connected with a minimum temperature of seventy (70) degrees Fahrenheit measured at a point three (3) feet above the floor during average winter conditions.
- (b) Other heating facilities. Where a central or electric heating system is not provided, each dwelling shall be provided with sufficient electrical receptacles, fireplaces, chimneys, flues, or gas vents whereby heating appliances may be connected so as to heat all habitable rooms, bathrooms and water closet compartments with a minimum temperature of seventy (70) degrees Fahrenheit measured three (3) feet above the floor during average winter conditions.

## **ELECTRICAL STANDARDS**

### Wiring

- (14) Every dwelling shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall type electrical convenience receptacles, connected in such manner as determined by the Electrical Code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three floor or wall type electric convenience receptacles.

### Hall Lights

- (15) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural light is not sufficient.

### Maintenance

- (16) All 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 Electrical Code.

## **VENTILATION STANDARDS**

### Generally

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

### Habitable rooms

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

### Bathroom and water closet room

- (19) Every bathroom equipped with more than one water closet compartment shall comply with the light and ventilation requirements for habitable rooms.

## **SPACE, USE AND LOCATION STANDARDS**

### Ceiling Height

- (20) At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches.

### Cellar

- (21) No cellar shall be used for living purposes unless:
- (a) the floor and walls are substantially watertight;
  - (b) the total window area, total openable window area and ceiling height are equal to those required for a habitable room;
  - (c) the required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the windows face a stairwell, window well or access way.

## **SAFE AND SANITARY MAINTENANCE STANDARDS**

### Exterior foundation, walls, and roofs

- (22) Every foundation wall, exterior wall and exterior roof shall be substantially weather tight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.

### Interior floors, walls, and ceilings

- (23) Every floor, interior wall and ceiling shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

### Windows and doors

- (24) Every window, exterior door, basement or cellar door and hatchway shall be substantially weather tight, watertight, and rodent proof; and shall be kept in sound working condition and good repair.

### Stairs, porches, and appurtenances

- (25) Every inside and outside stair, porch and any appurtenances thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair.



### Bathroom and kitchen floors

- (26) Every bathroom and kitchen floor surface and water closet compartment floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in sound condition and good repair.

### Supplied facilities

- (27) Every supplied facility, piece of equipment or utility which is required under this Ordinance shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition. Food preparation surfaces shall be impervious to water and free of defects which could trap food or liquid. Shelving, cabinets, or drawers for the storage of food and cooking and eating utensils, shall be supplied and shall maintained in good repair.

### Drainage

- (28) Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

### Smoke Detector Systems

- (29) Every dwelling shall be equipped with smoke detectors installed to protect occupants in all sleeping areas. Operable smoke alarms shall be either battery-operated or electrical, having an Underwriters' Laboratories, Inc. listing or other equivalent national testing laboratory approval, and installed in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions.
- (30) Every dwelling shall have a minimum of one operable carbon monoxide alarm per rental unit per level, either battery-operated or electrical, that is listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and install the carbon monoxide alarms in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions.
- (31) A carbon monoxide alarm may be combined with smoke alarms if the combined alarm does both of the following:
- (1) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke alarms; and
  - (2) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.
- (32) The requirements in subsections (30) and (31) above apply only to dwelling units having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached garage.

## INSECT, RODENT, AND INFESTATION CONTROL STANDARDS

### Screens

- (33) For protection against mosquitoes, flies, and other insects every dwelling shall have:
- (a) Supplied and installed screens on every door opening leading directly from the dwelling to outdoor space. Except, that sliding doors, doors with self closing devices, doors on mobile homes with self closing devices and doors that open into rooms of living spaces that are artificially ventilated or air conditioned are exempt from this provision.
  - (b) Supplied and installed screens on every window or other device with an opening to outdoor space, except that this requirement shall not apply for any room or rooms of a dwelling that are ventilated year-round with an operable and installed heating and air conditioning system.

### Rodent control

- (34) Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.

### Infestation

- (35) Every dwelling shall be maintained in a manner to be free of any infestations of insects, rodents, or other pests. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

### Rubbish storage and disposal

- (36) Every dwelling shall be supplied with approved containers and covers for storage of rubbish as required by Town ordinances, and the owner, operator, or agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.

### Garbage storage and disposal

- (37) Every dwelling shall be supplied with an approved outside garbage container as required by Town ordinances.

## **ROOMING HOUSE STANDARDS**

All of the provisions of this Chapter, and all of the minimum standards and requirements of this Chapter, shall be applicable to rooming houses, and to every person who operates a rooming house or who occupies or lets to another for occupancy any rooming unit in any rooming house, except as provided in the following Subsections:

### Water closet, hand lavatory and bath facilities

- (38) At least one water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooms within a rooming house wherever such facilities are shared. All such facilities shall be located within the residence building served, shall be directly accessible from a common hall or passageway and shall not be more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

### Sanitary conditions

- (39) The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors, and ceilings, and for the sanitary maintenance of every other part of the rooming house; and shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained, is leased or occupied by the operator.

### Sanitary facilities

- (40) Every water closet, flush urinal, lavatory basin and bathtub or shower required by Subsection (38) of this Section shall be located within the rooming house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other room therein.

[Note: Full compliance with a standard means that if any part of the stated standard is not complied with by a particular dwelling, then that dwelling has failed to fully comply with the enumerated standard. For example, in regard to standard #10, if all standards are met in a dwelling except that a supply of hot water is not provided then the dwelling fails to fully comply with standard #10.]

## **152.08 DWELLINGS NOT IN COMPLIANCE BUT NOT UNFIT FOR HUMAN HABITATION.**

In any case where the Housing Inspector determines that a dwelling fails to fully comply with one or more but less than seven (7) of the above enumerated standards of dwelling fitness, such dwelling shall not be found to be unfit for human habitation and shall not be subject to the procedures and remedies as provided for in this Chapter for dwellings unfit for human habitation. Each such failure or noncompliance, however, shall constitute a violation of the terms of this Chapter and shall subject the violator to the penalties and enforcement procedures of Section 152.13, General Penalty. In making the determination as described in this Section, the Housing Inspector shall not be required to make notice and hold the hearing as called for in Section

152.06, but the Housing Inspector may do so if the determination of the severity and classification of dwelling fitness is not clear to the Housing Inspector upon preliminary investigation.

#### **152.09 PROCEDURE AFTER HEARING; ORDER.**

If, after notice and hearing, the Housing Inspector determines that the dwelling under consideration is unfit for human habitation in accordance with the standards set forth above, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

- (a) If the repair, alteration or improvement of the dwelling can be made at a cost of less than fifty (50) percent of the value of the dwelling, requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation, based upon the Housing Inspector's standards for closing dwellings;

OR

- (b) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than fifty (50) percent of the value of the dwelling, requiring the owner, within the time specified in the order, to repair, alter or improve the dwelling in order to render it fit for human habitation or to remove or demolish such dwelling.

If, after notice and hearing the Housing Inspector determines that the dwelling under consideration is not unfit for human habitation but is not in full compliance with one or more standards of dwelling fitness as set forth above, he may cause a warning citation to be issued to the owner, either in person or posted in the United States mail service by first class mail addressed to the last known address of the owner as contained in the records of the County. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to bring the dwelling into compliance with this Chapter, providing for a reasonable period of time in which the violation must be corrected.

Whenever a determination is made pursuant to Subsections (a) or (b) of this Section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this Chapter, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of forty-five (45) days from the mailing of such notice shall be given before removal or demolition by action of the Inspector, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Inspector shall certify the mailing of the notices, and the certifications shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the Inspector to wait forty-five (45) days before causing removal or demolition.

## 152.10 FAILURE TO COMPLY WITH ORDER.

- (a) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Housing Inspector may:
- (1) Cause the dwelling to be repaired, altered, or improved or to be vacated and closed.
  - (2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this Chapter.
- (b) If the owner fails to comply with an order to repair, alter or improve or to remove or demolish the dwelling, the Housing Inspector may:
- (1) Cause such dwelling to be vacated and removed or demolished.
  - (2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this Chapter.
- (c) The duties of the Housing Inspector set forth in Subsections (a) and (b) shall not be exercised until the Board of Commissioners shall have by Ordinance ordered the Housing Inspector to proceed to effectuate the purpose of this Chapter with respect to the particular property or properties which the Housing Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the Ordinance. No such Ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Standards. For the purposes of this subsection, a period of ninety (90) days following the date of the Housing Inspector's order shall constitute a reasonable opportunity. 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.
- (d) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the Housing 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 of North Carolina. If the dwelling is removed or demolished by the Housing Inspector, he shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Housing Inspector, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order of the decree of the Court.

- (e) If any occupant fails to comply with an order to vacate a dwelling, the Housing Inspector may file a civil action in the name of the Town to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying such dwelling. 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 Housing Inspector produces the certified copy of an Ordinance adopted by the Board of Commissioners pursuant to Subsection (c) authorizing the Housing Inspector to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgement ordering that the dwelling 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 hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgement may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Board of Commissioners has ordered the Housing Inspector to proceed to exercise his duties under Subsections (a), (b) and (c) of this Section to vacate and close or remove and demolish the dwelling.
- (f) If the Board of Commissioners shall have adopted an Ordinance, or the Housing Inspector shall have issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in Section 152.09, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the Ordinance or order, then if the Board of Commissioners shall find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, moral, and welfare of the Town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in the Town, then in such circumstances, the Board of Commissioners may, after the expiration of such one year period, enact an Ordinance and serve such Ordinance on the owner, setting forth the following:
- (a) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the Ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- (b) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the Ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This 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 as provided by G.S, 160D-1203(4). If the owner fails to comply with this Ordinance, the Housing Inspector shall effect the purpose of the Ordinance.

#### **152.11 SERVICE OF COMPLAINTS AND ORDERS.**

Complaints or Orders issued by the Housing Inspector shall be served upon persons either personally or by certified mail. 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 unclaimed or refused, but the regular mail is not returned by the post office within ten (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, or, if the owners are known but have refused to accept service by certified mail, and the inspector makes an affidavit to that effect, then 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 not later than the time at which personal service would be required under the provisions of this Chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

#### **152.12 APPEALS.**

- (a) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Housing Inspector may be taken. Except where this Chapter provides for different rules or procedures, the Board of Adjustment acting as the Housing Appeals Board shall follow its rules of procedure, which may be amended to provide specifically for this function.
- (b) An appeal from any decision or order of the Housing Inspector may be taken by any person aggrieved thereby or by any officer, board, or commission of the Town. Any appeal from the Housing Inspector shall be taken within ten days from the rendering of the decision or service of the order by filing with the Housing Inspector and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Housing Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Housing Inspector refusing to allow the person aggrieved thereby to do any such act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Housing Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Housing Inspector certifies to the Board after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Housing Inspector, by the Board, or by a court of record upon petition made pursuant to Subsection (e) of this Section.

- (c) The Board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Housing Inspector, but the concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Housing Inspector. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the Ordinance, to adapt the application of the Ordinance to the necessities of the case to the end that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (d) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.
- (e) Any person aggrieved by an order issued by the Housing Inspector, or a decision rendered by the Board may petition the Superior Court for an injunction, restraining the Housing Inspector from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Housing Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Subsection.

### **152.13 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 FIFTY DOLLARS (\$50.00), 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.

#### **152.14 ALTERNATIVE REMEDIES.**

Nothing in 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 removal or abatement by summary proceedings or otherwise nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other Chapters or laws. In addition to the remedies provided for herein, any violation of the terms of this Chapter shall subject the violator to the penalties and remedies, as set forth in the Section 152.13.

No dwelling shall be hereafter erected, altered, moved, or changed in occupancy without a Certificate of Occupancy. In any case where the Housing Inspector, after notice and hearing as required herein, finds that a dwelling or dwelling unit is unfit for human habitation, he shall withhold issuance of a Certificate of Occupancy for such dwelling or dwelling unit until such time that he determines that it is fit for human habitation. In addition, in any case where the Housing Inspector, after preliminary investigation as provided for herein, concludes, based upon that investigation, that a dwelling or dwelling unit is unfit for human habitation and believes that the occupancy of such dwelling or dwelling unit could cause imminent peril to life or property from fire or other hazards, he shall withhold issuance of a Certificate of Occupancy for such dwelling or dwelling unit until such time that he determines that it is fit for human habitation.

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

**152.15 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 Town's jurisdiction shall prevail. The North Carolina 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.

**152.16 VIOLATIONS.**

In addition to the conditions, acts or failures to act that constitute violations specified in this Chapter above, it shall be unlawful for the owner of any dwelling or dwelling unit 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 dwelling, with respect to which an order has been issued pursuant to Section 152.09, 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.

**152.17 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 Chapter and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid."

**PART TWO.** That all ordinances in conflict with the provisions of this Chapter 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

Approved as to form:

ATTEST:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

\_\_\_\_\_  
Jessica Scott, Town Attorney

**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 ejection proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejection 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.

ATTEST:

\_\_\_\_\_  
Jennifer H. Larson, Town Clerk

\_\_\_\_\_  
Charles Kemp, Mayor

Approved as to form:

\_\_\_\_\_  
Jessica Scott, Town Attorney