

**ORDINANCE NO: 2017-11**  
**ORDINANCE TO AMEND CHAPTER 151: Minimum Housing Code**  
**OF THE TOWN OF PILOT MOUNTAIN CODE OF ORDINANCES**

**WHEREAS**, N.C.G.S. 160A-441 gives the Town of Pilot Mountain the authority to regulate the minimum standards for dwelling units in the Town; and

**WHEREAS**, The Board of Commissioners has an ordinance governing the minimum standards for dwelling units in the Town; and

**WHEREAS**, the Board of Commissioners finds that it would be in the best interest of the citizens of the Town of Pilot Mountain to revise the existing standards to give the power to administer the ordinance to Town staff.

**NOW, THEREFORE**, be it ordained by the Board of Commissioners of Town of Pilot Mountain, that the Code of Ordinances be amended as follows:

That Chapter 151 be repealed and replaced in its entirety with the following:

## **151. MINIMUM HOUSING STANDARDS**

### ***GENERAL PROVISIONS***

#### **151.01 FINDING; PURPOSE.**

- a) Pursuant to G.S. § 160A-441, it is hereby declared that there exist in the town 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 other conditions rendering such dwellings unsafe or unsanitary, dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.
- b) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. §§ 160A-441 through 160A-450, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. § 160A-444.<sup>1</sup>

#### **§ 151.02 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. Whenever the words “dwelling,” “dwelling unit,” “rooming house,” “rooming unit,” or “premises” are used in this chapter they shall be construed as though followed by the words “or part thereof.”

- **BASEMENT.** A portion of a dwelling which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.
- **CELLAR.** A portion of a dwelling which is located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.
- **DETERIORATED.** A dwelling is unfit for human habitation and can be repaired, altered or improved

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<sup>1</sup> Ord. 121, passed 9-23-85

to comply with all of the minimum standards established by this chapter at a cost not in excess of 50% of its value, as determined by finding of the Inspector.

- **DILAPIDATED.** A dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this chapter except at a cost in excess of 50% of its value, as determined by finding of the Inspector.
- **DWELLING.** Any building, structure, or part thereof which is wholly or partly used or intended to be used for living, sleeping or habitation by human occupants, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. Temporary housing, as hereinafter defined, shall not be regarded as a dwelling. The term shall include within its meaning the terms rooming house and rooming unit, as hereinafter defined.
- **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 removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, or trapping; or by any other recognized and legal pest elimination methods approved by the Inspector.
- **GARBAGE.** The organic waste resulting from the handling, preparation, cooking and consumption of food.
- **HABITABLE ROOM.** A room or enclosed floor space used or 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.
- **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 the public.
- **INSPECTOR.** Code Administrator or any other agent of the Town as designated by the Town Manager.
- **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.** Any person who alone, jointly, or severally with others: (1) Shall have title to any dwelling, dwelling unit or rooming unit, with or without accompanying actual possession thereof; or (2) Shall be a mortgagee of record for any dwelling, dwelling unit or rooming unit; or (3) Shall have charge, care or control of any dwelling, dwelling unit or rooming unit, as owner or agent of the actual owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the actual owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.
- **PARTY OR PARTIES IN INTEREST.** All persons who have interests of record in a dwelling, dwelling unit or rooming unit and any persons who are in possession thereof.
- **PLUMBING.** All of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinders), sewage disposal pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents and any other similar supplied fixtures, together with all

connections to water, sewer or gas lines.

- **PUBLIC AUTHORITY.** The Town of Pilot Mountain Housing Authority or any officer who is in charge of any department or branch of the government of the Town of Pilot Mountain or of Surry County or the State of North Carolina relating to health, fire, building regulations or other activities concerning dwellings in the Town of Pilot Mountain.
- **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 or wife, son or daughter, mother or father, 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.** Organic or non-organic waste materials. The term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass and dust including car parts, refrigerators, freezers, junk cars, etc.
- **SUPPLIED.** Paid for, furnished, or provided by, or under the control of, the owner or operator.
- **TEMPORARY HOUSING.** Any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.
- **UNFIT FOR HUMAN HABITATION.** Conditions exist in a dwelling, dwelling unit, rooming house or rooming unit which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this chapter.<sup>2</sup>

#### § 151.03 RESPONSIBILITIES OF OWNERS AND OCCUPANTS.<sup>3</sup>

- a) *Public areas.* Every owner of a dwelling containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.
- b) *Cleanliness.* Every occupant of a dwelling or dwelling unit shall keep in clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.
- c) *Rubbish and garbage.* Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases, the owner shall be responsible for the availability of rubbish and garbage storage facilities.
- d) *Supplied plumbing fixtures.* Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.
- e) *Care of facilities, equipment and structure.* No occupant shall willfully destroy, deface, or injure any of the facilities or equipment, or any part of the structure of a dwelling or dwelling unit.<sup>4</sup>

### **MINIMUM STANDARDS**

#### **§ 151.15 MINIMUM STANDARDS OF FITNESS FOR DWELLINGS AND DWELLING UNITS.**

Every dwelling and dwelling unit used as a human habitation, or held out for use as a human habitation, shall comply with all of the minimum standards of fitness for human habitation and all of the requirements of §§ 151.16 through 151.21 of this chapter.<sup>5</sup>

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<sup>2</sup> Ord. 121, passed 9-23-85

<sup>3</sup> **Editor's note:** The respective responsibilities of landlords and tenants under NCGS Chapter 42, Article 5

<sup>4</sup> Ord. 121, passed 9-23-85

#### **§ 151.16 MINIMUM STANDARDS FOR STRUCTURAL CONDITION.**

The following standards shall constitute the minimum standards for structural condition of a dwelling or dwelling unit:

- a) Walls or partitions or supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, and shall not be rotted, deteriorated, or damaged, and shall not have holes or cracks which might admit rodents.
- b) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- c) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- d) Steps, stairs, landings, porches, or other parts or appurtenances shall be in such condition that they will not fall or collapse.
- e) Adequate facilities for egress in case of fire or panic shall be provided.
- f) Interior walls and ceilings of all rooms, closets and hallways shall be finished 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 privacy between various spaces.
- g) The roof, flashes, exterior walls, basement walls, floors, and all doors and windows exposed to the weather shall be constructed and so as to be weather and watertight.
- h) 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.
- i) There shall be no use of the ground for floors, or wood floors on the ground.<sup>6</sup>

#### **§ 151.17 MINIMUM STANDARDS FOR BASIC PLUMBING, HEATING AND ELECTRICAL EQUIPMENT AND FACILITIES.**

##### **(A) *Plumbing system.***

- 1) Each dwelling unit shall be connected to a potable water supply and to a public sewer or other approved sewage disposal system.
- 2) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and 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.
- 3) All plumbing fixtures shall meet the standards of the state plumbing code and shall be maintained in a state of good repair and in good working order.
- 4) All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

##### **(B) *Heating system.*** Every dwelling and dwelling unit shall have facilities for providing heat in accordance

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<sup>5</sup> Ord. 121, passed 9-23-85

<sup>6</sup> Ord. 121, passed 9-23-85

with the following:

- 1) *Central and electric heating systems.* Every central, solar or electric heating system shall be of sufficient capacity to heat all habitable rooms, bathroom and water closet compartments in every dwelling unit to which it is connected with a minimum temperature of 70° F. measured at a point three feet above the floor during ordinary winter conditions.
- 2) *Other heating facilities.* Where a central, solar, or electric heating system is not provided, each dwelling and dwelling unit shall be provided with sufficient fireplaces, chimneys, flues, gas vents or other facilities to which heating appliances may be connected to heat all habitable rooms with a minimum temperature of 70° F. measured three feet above the floor during ordinary winter conditions.

(C) *Electrical system.*

- 1) Every dwelling or dwelling unit shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall-type electric convenience receptacles, connected in such manner as determined by the state 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.
- 2) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural daylight is not sufficient.
- 3) 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 state electrical code.<sup>7</sup>

**§ 151.18 MINIMUM STANDARDS FOR VENTILATION.**

- a) *General.* 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 10% of the floor area of such room. Whenever walls or other portions of structures face a window or any room and such light-obstructing structures 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 room, the total window area of such skylight shall equal at least 15% of the total floor area of such room.
- b) *Habitable rooms.* 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 operable window area in every habitable room shall be equal to at least 45% of the minimum window area size or minimum skylight type window size as required, or shall have other approved, equivalent ventilation.
- c) *Bathroom and water closet rooms.* Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.<sup>8</sup>

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<sup>7</sup> Ord. 121, passed 9-23-85

### **§ 151.19 MINIMUM STANDARDS FOR SPACE, USE AND LOCATION.**

(A) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the state residential building code.

- 1) Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupants, at least 100 square feet of additional habitable area for each of the next three occupants, and at least 75 square feet of additional habitable floor-area for each additional occupant.
- 2) In every dwelling unit and in every rooming unit, every room, occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping.

(B) *Ceiling height.* 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.

(C) *Floor area calculation.* Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling unit may count for not more than 10% of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as part of the floor area for the purpose of determining maximum permissible occupancy.

(D) *Cellar.* No cellar shall be used for living purposes.

(E) *Basements.* No basement shall be used for living purposes unless:

- 1) The floor and walls are substantially watertight;
- 2) The total window area, total operable window area and ceiling height are equal to those required for habitable rooms;
- 3) The required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the window or windows face a stairwell, window well or accessory.<sup>9</sup>

### **§ 151.20 MINIMUM STANDARDS FOR SAFE AND SANITARY MAINTENANCE.**

- a) *Exterior foundation, walls and roofs.* Every foundation wall, exterior wall and exterior roof shall be substantially watertight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; and shall be safe to use and capable of supporting the load which normal use would 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 purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.
- b) *Interior floors, walls and ceilings.* 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 would cause to be placed thereon.
- c) *Windows and doors.* Every window exterior door, basement or cellar door hatchway shall be substantially watertight, watertight and rodent proof and shall be kept in sound working condition and good repair.

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<sup>8</sup> Ord. 121, passed 9-23-85

<sup>9</sup> Ord. 121, passed 9-23-85

- d) *Stairs, porches and appurtenances.* Every outside and inside stair, porch and any appurtenance thereto shall be safe to use and capable of supporting the load that normal use would cause to be placed thereon and shall be kept in sound condition and good repair.
- e) *Bathroom floors.* Every bathroom floor surface and water closet compartment floor surface shall be constructed and maintained so that it will be reasonably impervious to water and will permit such floor to be easily kept in a clean and sanitary condition.
- f) *Supplied facilities.* Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.
- g) *Drainage.* Every yard shall be properly graded in order to obtain thorough drainage and to prevent the accumulation of stagnant water.
- h) *Noxious weeds.* Every yard and all exterior property areas shall be kept free of species of weeds or plant growth which are noxious or detrimental to health.
- i) *Egress.* Every dwelling unit shall be provided with adequate means of egress as required by the state residential building code.<sup>10</sup>

#### **151.21 MINIMUM STANDARDS FOR CONTROL OF INSECTS, RODENTS AND INFESTATIONS.**

- a) *Screens.* In every dwelling unit, when apparent to the Building Inspector, when danger of mosquitoes, flies and other insects, every door opening directly from a dwelling unit to outdoor space shall be equipped with screens and a self-closing device. Every window or other device with openings to outdoor spaces used or intended to be used for ventilation, shall likewise be equipped with screens.
- b) *Rodent control.* When danger of rodent infestation is present, 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 equipped with screens or such other approved device as will effectively prevent their entrance.
- c) *Infestation.* 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 is caused by failure of the owner to maintain a dwelling in a rodent proof or reasonable insect proof condition, extermination shall be the responsibility of the owner. 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.
- d) *Rubbish storage and disposal.* Every dwelling and every dwelling unit 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.
- e) *Garbage storage and disposal.* Every dwelling and every dwelling unit shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage

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<sup>10</sup> Ord. 121, passed 9-23-85

disposal unit (mechanical sink grinder) in each dwelling unit, or an approved outside garbage can as required by town ordinances.<sup>11</sup>

#### **151.22 MINIMUM STANDARDS APPLICABLE TO ROOMING HOUSES; EXCEPTIONS.**

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 paragraphs:

- a) *Water closet, hand lavatory and bath facilities.* 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 these facilities are shared. All such facilities shall be located within the residence building served and shall be directly accessible from a common hall or passageway and shall be not 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.
- b) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area and every room, occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.
- c) *Sanitary conditions.* 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. He 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.
- d) *Sanitary facilities.* Every water closet, flush urinal, lavatory basin and bathtub or shower required by division (A) of this section shall be located within the rooming house and within a room or rooms which afford privacy, are separate from the habitable rooms, are accessible from a common hall, and are accessible without going outside the rooming house or through any other room therein.<sup>12</sup>

#### **ADMINISTRATION AND ENFORCEMENT**

##### **§ 151.35 POWERS AND DUTIES OF BUILDING INSPECTOR.**

The Code Administrator or his designee is hereby designated as the officer to enforce the provisions of this chapter and to exercise the duties and powers herein prescribed. The Inspector is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this chapter. The Inspector shall have the following powers and duties:

- a) To investigate the dwelling conditions and to inspect dwellings and dwelling units located in the town, in order to determine which dwellings and dwelling units are unfit for human

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<sup>11</sup> Ord. 121, passed 9-23-85

<sup>12</sup> Ord. 121, passed 9-23-85



habitation, and for the purpose of carrying out the objectives of this chapter with respect to the repairs, closing or demolition of such dwellings and dwelling units;

- b) To take such action together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
- c) To keep a record of the results of inspections made under this chapter and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed;
- d) To administer oaths and affirmations, examine witnesses and receive evidence;
- e) To enter upon premises for the purpose of making examinations and inspections; provided, such entries shall be made in accordance with § 151.36 of this chapter and state law, and shall be made in such manner as to cause the least possible inconvenience to the persons in possession;
- f) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to assist in carrying out the purposes of this chapter and to delegate any of his functions and powers to such officers, agents and employees; and
- g) To perform such other duties as may be prescribed herein or by the Town Manager.<sup>13</sup>

#### **§ 151.36 INSPECTIONS; DUTY OF OWNERS AND OCCUPANTS.<sup>14</sup>**

- a) For the purpose of making inspections, the Inspector is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and the premises associated therewith. The owner or occupant of every dwelling, dwelling unit, rooming house or rooming unit or the person in charge thereof shall give the Inspector free access to such dwelling and its premises at all reasonable times for the purposes of such inspection, examination and survey.
- b) Every occupant of a dwelling, dwelling unit, rooming house or rooming 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.<sup>15</sup>

#### **§ 151.37 PROCEDURE FOR ENFORCEMENT.**

(A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the Inspector by a public authority or by at least five residents of the town charging that any dwelling unit is unfit for human habitation, or whenever it appears to the Inspector, upon inspection that any dwelling or dwelling unit is unfit for human habitation he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the Inspector at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give

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<sup>13</sup> Ord. 121, passed 9-23-85

<sup>14</sup> Editor's note: When permission to inspect a dwelling or its premises is denied, the Building Inspector must obtain a warrant to inspect. G.S. § 15-27.2 provides for the issuance of warrants for the conduct of inspections authorized by law. The N. C. Court of Appeals, in In Re Dwelling, 24 N.C. App. 17 1974, has held that the consent of the tenant-occupant who was in actual possession and control of the premises was sufficient to authorize an inspection without a warrant, notwithstanding the fact that the owner had objected to the warrantless search. When faced with a situation where permission to inspect is denied, building inspectors are advised to seek the advice of the town attorney.

<sup>15</sup> Ord. 121, passed 9-23-85

testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such hearing and give evidence relevant in courts of law or equity shall not be controlling in hearings before the Inspector.

(B) *Procedure after hearing.* After such notice and hearing, the Inspector shall state in writing his determination whether the dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated.

- 1) If the Inspector determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this chapter within a specified period of time, not to exceed 90 days. Such order may also direct and require the owner to vacate and close such dwelling or dwelling unit until such repairs, alterations, and improvements have been made.
- 2) If the Inspector determines that the dwelling is dilapidated, he shall state in writing his findings of fact to support such determination, and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner either to repair, alter or improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this chapter, or else to vacate and remove or demolish the same within a specified period of time not to exceed 90 days.

(C) *Failure to comply with order.*

- 1) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the Inspector to repair, alter, or improve or to vacate and close the same within the time specified therein, or if the owner of a dilapidated dwelling or dwelling unit shall fail to comply with an order of the Inspector to repair, alter or improve or to vacate and close and remove or demolish the same within the time specified therein, the Inspector shall submit to the Board of Commissioners at its next regular meeting a resolution directing the Town Attorney to petition the superior court for an order directing such owner to comply with the order of the Inspector, as authorized by G.S. § 160A-446(g).
- 2) *In rem remedy.* After failure of an owner of a deteriorated or dilapidated dwelling or dwelling unit to comply with an order of the Inspector within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in the preceding division (1), the Inspector shall submit to the Board of Commissioners an ordinance ordering the Inspector to cause such dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed or demolished, as provided in the original order of the Inspector, and pending removal or demolition, to place a placard on such dwelling as provided by G.S. § 160A-443 and § 151.39 of this chapter.

(D) *Appeals from orders of Inspector.*

- 1) An appeal from any decision or order of the Inspector may be taken by any person aggrieved thereby. Any appeal from the Inspector shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the Inspector and with the Zoning Board of Adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the 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

Inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When an appeal is from a decision of the 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 Inspector certifies to the Board, after the notice of appeal is filed with him, that by reason of the 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 which case the requirement shall not be suspended except for due cause shown, upon not less than one day's written notice to the Inspector, by the Board, or by a court of record upon petition made pursuant to G. S. § 160A-446(f) and division (E) of this section.

- 2) The Board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all 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 such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Inspector, but the concurring vote of four members of the Board shall be necessary to reverse or modify any decision or order of the Inspector. The Board shall have power also in passing on appeals, in any case where there are practical difficulties or unnecessary hardships in the way of 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.
- 3) 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) *Petition to Superior Court by owner.* Any person aggrieved by an order issued by the Inspector or a decision rendered by the Board shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the Inspector pending a final disposition of the cause, as provided by G.S. § 160A-446(f).<sup>16</sup>

#### **§ 151.38 METHODS OF SERVICE OF COMPLAINTS AND ORDERS.**

Complaints or orders issued by the Inspector shall be served upon persons either personally or by registered or certified mail. If the whereabouts of such persons are unknown and the same cannot be ascertained by the Inspector in the exercise of reasonable diligence, the Inspector shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publishing the same at least once no later than the time at which personal service would be required under the provisions of this chapter in a newspaper having general circulation in the Town of Pilot Mountain. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.<sup>17</sup>

#### **§ 151.39 IN REM ACTION BY INSPECTOR; PLACARDING.**

(A) After failure of an owner of a dwelling or dwelling unit to comply with an order of the Inspector issued pursuant to the provisions of this chapter, and upon adoption by the Board of Commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. § 160A-443(5) and § 151.37(C) of this

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<sup>16</sup> Ord. 121, passed 9-23-85

<sup>17</sup> Ord. 121, passed 9-23-85

chapter, the Inspector shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this chapter, or to be vacated and closed and removed or demolished, as directed by the ordinance of the Board of Commissioners, and shall cause to be posted on the main entrance of such dwelling or dwelling unit 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 misdemeanor.

(B) Each ordinance shall be recorded in the office of the Register of Deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by NCGS § 160A-443(5).<sup>18</sup>

#### **§ 151.40 COSTS A LIEN ON PREMISES.**

As provided by G.S. § 160A-443(6), the cost of any repairs, alterations, or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the Inspector pursuant to § 151.39 of this chapter shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by NCGS §§ 160A-216 through 160A-238.<sup>19</sup>

#### **§ 151.41 ALTERNATIVE REMEDIES.**

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, or to enforce this chapter by criminal process as authorized by G.S. § 14-4 and § 151.99 of this chapter, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.<sup>20</sup>

#### **§ 151.42 ZONING BOARD OF ADJUSTMENT TO HEAR APPEALS.**

- a) All appeals which may be taken from decisions or orders of the Inspector pursuant to § 151.37(D) of this chapter shall be heard and determined by the Zoning Board of Adjustment. As the appeals body, the Board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board shall perform the duties prescribed by § 151.37(D) and shall keep an accurate journal of all its proceedings.
- b) If the Zoning Board of Adjustment consists of more than five members, the chairperson shall designate five members to hear appeals under this chapter.<sup>21</sup>

#### **§ 151.43 CONFLICTS 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 shall prevail.<sup>22</sup>

#### **§ 151.44 VIOLATIONS.**

- a) 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 fail to vacate and close and remove or demolish the same, upon order

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<sup>18</sup> Ord. 121, passed 9-23-85

<sup>19</sup> Ord. 121, passed 9-23-85

<sup>20</sup> Ord. 121, passed 9-23-85

<sup>21</sup> Ord. 121, passed 9-23-85

<sup>22</sup> Ord. 121, passed 9-23-85

of the Inspector duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense.

- b) It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to § 151.37 of this chapter, 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. Each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- c) In addition to the penalty established by § 151.99 and the remedies provided by other provisions of this chapter, this chapter may be enforced by an appropriate equitable remedy issued by a court of competent jurisdiction.<sup>23</sup>

**§ 151.99 PENALTY.**

The violation of any provision of this chapter shall constitute a misdemeanor, as provided in G.S. § 14-4.<sup>24</sup>

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<sup>23</sup> Ord. 121, passed 9-23-85

<sup>24</sup> Ord. 121, passed 9-23-85