

## ARTICLE V - REGULATION OF NONRESIDENTIAL BUILDINGS AND STRUCTURES

### DIVISION 1. - GENERALLY

#### **Sec. 4-101. - Short title.**

The rules and regulations prescribed by this article shall be known and cited as "The Nonresidential Building Code of Gaston County" and may be referred to in this article as "this code" or "the Article."

#### **Sec. 4-102. - Purpose, authority, and findings.**

Pursuant to G.S. 160A-439 and 153A-372.1, it is the purpose of this article to establish minimum standards for the maintenance, sanitation and safety of all nonresidential buildings and structures within the unincorporated areas of Gaston County. This article does not replace or modify requirements or standards otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities, except as provided in this article.

It is also the purpose of the provisions of this article to provide a just, equitable and practical method whereby nonresidential buildings and structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the occupants or other residents of the jurisdiction, diminish property values or detract excessively from the appropriate appearance of the area in which they are located, may be required to be repaired, closed, vacated, or demolished. The provisions of this article are cumulative with and in addition to any other remedy provided by law, including the placement of liens as indicated in G.S. 153A-372(b) and other relevant sections.

It is found and declared that there exists in the unincorporated areas of Gaston County nonresidential buildings and 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 exists in the unincorporated areas of Gaston County nonresidential buildings and structures which, although not meeting the classification of unsafe and especially dangerous to life, fail to fully comply with all the minimum standards for nonresidential buildings and structures fitness as established herein and, therefore, present one or more conditions which are inimical to the public health, safety, and general welfare of the occupants or other residents of the jurisdiction. Such conditions, if not corrected, can lead to deterioration and dilapidation of nonresidential buildings and structures which render them unsafe and especially dangerous to life.

#### **Sec.4-103. - Scope and applicability.**

- (a) The provisions of this article shall apply to all nonresidential buildings or structures which are now in existence or which may be built within the jurisdictional limits of the County.
- (b) Every nonresidential building or structure and the property on which it is situated shall comply with the provisions of this article, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this article, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities.

#### **Sec. 4-104. - Definitions.**

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Alteration**, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities; as enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another; and the term "alter" in its various moods and tenses and its participle refers to the making of an alteration.

**Approved**, as applied to a material, device or mode of construction, means approved by the inspector under this article or by other authority designated by law to give approval in the matter in question.

**Area:**

- (1) As applied to the dimensions of a building, means the maximum horizontal projected area of the building.
- (2) As applied to the dimensions of a room, means the total square footage of floor area between finished walls.

**Basement/Cellar** shall mean a portion of a dwelling which is located at least 50% underground, having direct access to light and air from windows above the level of the adjoining ground.

**Building** means, for the purposes of this article, any structure built for the shelter or enclosure of persons, animals or property of any kind. The term "building" shall be construed as if followed by the phrase "or part thereof."

**County Commissioners or Board of County Commissioners** means the Gaston County Board of County Commissioners.

**Close** means securing the building or structure so that unauthorized persons cannot gain entrance.

**Code enforcement official** means the person who has been designated by the county manager to enforce this article. This person is also known as the Chief Building Inspector and, for minimum housing purposes, as the Housing Inspector.

**Demolish** means the demolition and removal of the entire building or structure, leaving the property free and clear of any debris and without holes or pockets which may retain water.

**Extermination** shall mean 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 method approved by the Housing Inspector.

**Garbage** shall mean the waste resulting from the handling, preparation, cooking and consumption of food.

**Housing Board** shall mean the Gaston County Housing Board as appointed by the Gaston County Board of Commissioners. Members of the Housing Board shall be composed of members of the Gaston County Zoning Board of Adjustment.

**Infestation** shall mean 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 public.

**Inspector** means any person who is authorized by the code enforcement official to conduct inspections for the purpose of this article.

**Nonresidential** means any building or structure that is not a dwelling, lodging establishment, manufactured home or rooming house as those terms are defined in Chapter 4.

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

**Party in interest** means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

**Pier** means masonry or other material support extending from the ground and footing to and supporting the building or portion thereof. Pier sizes and spacing shall conform to the specifications of the state building code.

**Plumbing** means and includes all of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, mechanical sink grinders, waste 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.

**Property** means any lot or parcel of land inclusive of any building, structures or improvements located thereon.

**Public Authority** shall mean any officer who is in charge of any department or branch of the government of Gaston County or the State of North Carolina relating to health, fire, building regulations, or other activities concerning dwellings in Gaston County.

**State building code** means the North Carolina State Building Code or any superseding regulation.

**Vacant** means that a building or structure has not been used for its intended purpose or for any lawful purpose for a period of at least one-hundred and eighty (180) consecutive days.

## DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

### **Sec. 4-105. - Duties and powers of the code enforcement official.**

It shall be the duty of the code enforcement official to:

- (a) Investigate the conditions of and inspect buildings and structures in the County in order to determine whether they have been properly maintained in compliance with the minimum standards established by this article so that the safety or health of the occupants or members of the general public are not jeopardized;
- (b) Enter upon property for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such a manner as to cause the least possible inconvenience to the persons in possession, if any;
- (c) If permission to enter is not granted by the owner, the owner's agent, a tenant, or other person legally in possession of the property, obtain a duly issued administrative search warrant in accordance with G.S. 15-27.2;
- (d) Appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of this article;
- (e) Delegate any of their functions and powers under this article to other officers and agents;
- (f) Take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect compliance of nonresidential buildings or structures which are in an unsafe condition;
- (g) Administer oaths and affirmations, examine witnesses and receive evidence;
- (h) Issue notices of violation and impose civil penalties;
- (i) Keep a record of the results of inspections made under this article; and
- (j) Perform such other duties as may be prescribed in this article.

**Sec. 4-106. - Inspections.**

For the purpose of making inspections, the code enforcement official is hereby authorized to enter, examine and survey, at all reasonable times, all property after sufficiently identifying themselves. The owner or occupant of every property, or the person in charge thereof, shall give the code enforcement official free access to such property, at all reasonable times, for the purpose of such inspection, examination and survey.

**Sec. 4-107. - Relationship of duties and responsibilities to occupancy.**

The provisions of this article that apply to the exterior or interior components of a structure or building or 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.

**Sec. 4-108. - Administrative liability.**

Except as may otherwise be provided by statute, local law, or ordinance, no County officer, agent or employee charged with the enforcement of this article shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of their duties under this article unless they acted with actual malice.

**Sec. 4-109. Substandard conditions, generally.**

- (a) Every vacant nonresidential building or structure which does not comply with all the requirements herein shall be deemed substandard.
- (b) Unless otherwise provided herein in this division, all requirements relating to vacant nonresidential building structures shall be the responsibility of the owner.
- (c) 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 lists, lean or buckle to an extent as to render the building unsafe.
  - (2) Supporting member or members which show thirty-three percent (33%) or more damage or deterioration, non-supporting, enclosing or outside walls or covering which shows fifty percent (50%) or more of deterioration.
  - (3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purposes 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 an 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 article which constitutes a health or 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 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 nonresidential building 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 conditions.
  - (13) Roof flashing that is defective, admits rains, or is leaking.
  - (14) Overhead canopies, signs, awnings, fire escapes, standpipes, exhaust ducts, decks, exterior stairways, porches, and other similar structures that are improperly maintained, and/or improperly anchored in such a way as to endanger the health, safety, or general welfare of nearby people.
- (d) No person shall occupy as owner-occupant, or lease to another or others for occupancy, any nonresidential building or structure which exhibits any of the conditions described in this subsection.
  - (e) The inspector shall determine that a vacant nonresidential building is not appropriate for occupation if they find that any of the conditions contained in in this subsection exist in such building or structure.
  - (f) A vacant nonresidential building or structure that has been inspected and found to be unfit for use or occupation may not be occupied until its owner receives a certificate of fitness from the County

**Sec. 4-110. - Procedure for enforcement.**

- (a) *Preliminary investigation.* Whenever it appears to the code enforcement official 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 is jeopardized for failure of the property to meet the minimum standards established by this article, he/she shall undertake a preliminary investigation.
- (b) *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this article, the code enforcement official shall issue a complaint and cause it to be served upon the owner of and parties in interest in such

nonresidential building or structure. The complaint shall state the charges and contain a notice that a hearing will be held before the code enforcement official at a place therein fixed, not less than ten (10) days or more than thirty (30) days after the serving of such complaint. The owner or any party in interest shall have the right to correct the violation or 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. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in the hearing before the code enforcement official.

(c) Procedure after hearing; issuance of order.

- (1) If, after notice and hearing provided for in subsection (b), the code enforcement official determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established in this article, the code enforcement official shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner an order.
- (2) If the code enforcement official determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would not exceed fifty percent (50%) of its then-current value, then the code enforcement official shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
  - a. Repair, alter or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established in this article; or
  - b. Vacate and close the nonresidential building or structure for any use.
- (3) If the code enforcement official determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would exceed 50 percent (50%) of its then tax value, then the code enforcement official shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within sixty (60) days, to remove or demolish the nonresidential building or structure.

(d) Limitations on orders.

The limitation on orders, as established in G.S. 160A-439(e) shall be applicable.

(e) Action by the Board of County Commissioners upon failure to comply with order.

- (1) If the owner fails to comply with an order to repair, alter, improve or vacate and close the nonresidential building or structure, the Board of County Commissioners may adopt an ordinance ordering the code enforcement official to cause such building or structure to be vacated and closed for any use. 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 code enforcement official may cause the building or structure to be vacated and closed. The code enforcement official 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 Class 3 misdemeanor.
- (2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the Board of County Commissioners may adopt an ordinance ordering the code enforcement official to cause such building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a

nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established in this article. 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 code enforcement official may cause the building or structure to be removed or demolished.

**Sec. 4-111. - Appeals from order of code enforcement official to the housing board.**

- (a) An appeal from any decision of the code enforcement official may be taken by any person aggrieved thereby to the Housing Board described herein. Any appeal from the code enforcement official must be taken within ten (10) days after the rendering of the decision or service of the order by filing with the code enforcement official and with the Housing 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 code enforcement official shall forthwith transmit to the Housing Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the code enforcement official refusing to allow the person aggrieved thereby to do any act, the code enforcement official's decision shall remain in force until modified or reversed. When an appeal is from a decision of the code enforcement official requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing of the Housing Board unless the code enforcement official certifies to the board, after the notice of appeal is made, that by reason of the fact stated in the certificate, a copy of which shall be furnished to the appellant and other parties in interest, a suspension of this requirement would cause imminent peril to life or property. When the code enforcement official issues such a certificate, the requirement shall not be suspended except by a restraining order which may be granted for due cause shown upon not less than one (1) day's written notice to the code enforcement official by the Housing Board or by a court of record upon petition made pursuant to G.S. 160A-446(c) and subsection (c) of this section. The Housing Board shall fix a reasonable time for the hearing of all appeals and cross appeals, shall give due notices to all parties in interest and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney and present evidence. The Housing Board may reverse, affirm, wholly or partly, or 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. All Housing Board meetings shall have a quorum present of at least three (3) members, and the vote of at least two (2) members shall be required for a decision on an appeal or cross appeal. The board shall have the power in passing upon appeals and cross appeals where there are practical difficulties or hardships to adopt the application of this chapter to the necessities of the individual case to the end that the general purposes of the law and justice shall be done.
- (b) Every decision of the Housing Board shall be subject to review by proceedings in the nature of certiorari instituted within fifteen (15) days of the service of the decision of the board on the person who filed the appeal.
- (c) Any person aggrieved by an order issued by the code enforcement official or a decision rendered by the Housing Board shall have the right, within thirty (30) days after issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction restraining the code enforcement official pending a final disposition of the cause, as provided by G.S. 160A-446(f).

**Sec. 4-112. - Methods of service of complaints and orders.**

- (a) Complaints or orders issued by the code enforcement official pursuant to this article shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or

certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is 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 property affected.

- (b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement official in the exercise of reasonable diligence, and the code enforcement official 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 County at least once no later than the time at which personal service would be required under this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the property affected.

#### **Sec. 4-113. - Lis pendens.**

Any complaint and notice of hearing or order issued pursuant to this article may be filed in the notice of lis pendens in the office of the Clerk of the Superior Court. A copy of the complaint containing a notice of hearing or a copy of the order shall be attached to the lis pendens. When the lis pendens is filed with the clerk, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117 and it shall be served on the owners of and parties in interest in the building or structure. From the date and time of indexing the complaint and notice of hearing or order, it shall be binding upon the successors and assigns of the owners of and parties in interest in the building or structure. The code enforcement official may cancel the lis pendens upon their determination that the owner of the building or structure has fully complied with the code enforcement official's order.

#### **Sec. 4-114. - Costs of a lien on the property.**

- (a) As provided by G.S. 160A-439(i), the amount of the cost of vacating and closing, or removal or demolition, caused to be made or done by the code enforcement official pursuant to the provisions of this article, shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. Chapter 160A, Article 10.
- (b) The amount of the cost of vacating and closing, or removal or demolition expended by the code enforcement official is also a lien on any other real property of the owner located within the County except for the owner's primary residence. The additional lien provided in this subsection 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 code enforcement official, they 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. Any balance remaining shall be deposited with the Clerk of Superior Court by the code enforcement official, 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 article shall be construed to impair or limit in any way the power of the Board of County Commissioners to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

#### **Sec. 4-115. - Alternative remedies.**

Enforcement by any remedy provided in this article shall not prevent enforcement by any other remedy provided in this article or in other ordinances or laws.



**Sec. 4-116. - Conflict with other provisions.**

If any provision, standard or requirement of this article is found to be in conflict with any other County ordinance, 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 County shall prevail.

**Sec. 4-117. - Violations; penalty.**

- (a) It shall be unlawful for the owner of any nonresidential building or structure to fail, neglect or refuse to repair, alter or improve the building or structure, or to vacate and close and remove or demolish, or to vacate and close the building or structure upon order of the code enforcement official duly made and served as provided in this article, 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) Any owner who fails to comply with an order of the code enforcement official to repair, alter or improve the building or structure or to vacate and close and remove or demolish the building or structure, or vacate and close the building or structure within the time specified in the order, shall be subject to a civil penalty in the amount of Five Hundred Dollars (\$500.00) for the first day of noncompliance and Fifty Dollars (\$50.00) for each day thereafter until the building or structure is brought into compliance with the order. The civil penalty may be recovered by the County in a civil action in the nature of a debt if the owner does not pay the penalty within thirty (30) days after the initial day of noncompliance.

**Sec. 4-118. - Ejectment.**

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the code enforcement official may file a civil action in the name of the County to remove the occupant. Such action shall be filed in the nature of summary ejectment and conducted in accordance with G.S. 160A-439(j).

**Sec. 4-119. - Severability.**

If any provision of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, independent provision thereof, and to that end, the provisions of this ordinance are hereby declared to be severable.

**Sec. 4-120. - Effective Date.**

This ordinance, as filed with the Clerk to the Board, shall be effective upon adoption by the County Board of Commissioners.

I, Donna Buff, Clerk to the Board of Commissioners of Gaston County, North Carolina, hereby certify that the foregoing is a true and correct copy of the REGULATION OF NONRESIDENTIAL BUILDINGS AND STRUCTURES, adopted by the Board of County Commissioners at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Donna S. Buff, Clerk to the Board

SEAL