

CODE OF ORDINANCES - CITY OF NORTH MYRTLE BEACH

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CHAPTER 12- HEALTH AND SANITATION

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ARTICLE VII – UNFIT DWELLINGS

Sec. 12-91. Definitions. The following terms, whenever used or referred to in this article, shall have the following respective meanings for the purposes of this article, unless a different meaning clearly appears from the context:

Close and secure or closing and securing means compliance with the provisions of this chapter regarding minimum standards for uninhabited or vacant buildings.

Dwelling means any residential or commercial building or structure, or part thereof, having been used or currently being used and occupied, or intended to be used or occupied for human habitation, however slight or transitory, and includes any other structures, outbuilding appurtenances belonging thereto or usually attached to or enjoyed as part of human habitation of the primary premises.

Habitation means the act of inhabiting by a human for any length of time, unrelated to the owners or parties in interest acting to preserve, maintain, repair or inspect the property.

Owner means record fee title owners having a legal or equitable interest in, owning, leasing, occupying, controlling, or possessing in any manner any lot or parcel of real property as reflected in the public records of Horry County.

Parties in interest means record fee title owners, beneficiaries of any trust holding title to any real estate, trustees, conservators, guardians, executors, administrators, individual(s), partnership(s), firm(s) or corporation(s) having a legal or equitable interest in, owning, leasing, occupying, controlling, or possessing in any manner any lot or parcel of real property as reflected in the public records of Horry County, specifically including rights acquired by note, mortgage, lien or other publicly recorded document that provides for the right of entry to preserve an asset.

Public officer means the building official, fire marshal, code officials or other officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by such ordinances and by this article, or any housing authority or any officer who is in charge

of any department or branch of the government of the municipality or state relating to health, fire or building regulations or to other activities concerning dwellings in the municipality.

Sec. 12-92. Responsibilities relating to occupied or unoccupied property.

The owner, occupants or parties in interest shall maintain the dwelling's interior and exterior in compliance with the requirements of the City's applicable codes, as adopted in their most current editions, and shall be responsible for maintaining all vacant dwellings in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

Sec. 12-93. Council's determination of existence of unfit dwellings.

The city council has determined that there exist in the city dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities, or (d) other conditions rendering such dwellings unsafe or unsanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, and that the city should exercise its police powers to cause the owner or parties in interest of record to repair, close or demolish any such dwelling that should not be inhabited in the manner herein provided, and upon failure of the owner to act, to either close and secure, or demolish the dwelling.

Sec. 12-94. Public officer authority.

A public officer is authorized to determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling that are dangerous or injurious to the health, safety or morals of the occupants of such dwelling or the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include, but are not limited to defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; failure to comply with the maintenance and upkeep requirements of the most current applicable codes adopted by the City, or other such state required locally adopted code that shall provide additional standards to guide the public officer, public authority or his agents in determining the fitness of a dwelling for human habitation.

In addition to the above list of conditions, if any or all of the following defects are found to exist in a dwelling, the dwelling may be deemed unfit for human habitation:

a. Any dwelling or building whose walls or vertical members list, lean, or buckle to such an extent that a plumb line suspended from the top edge of such member shall fall outside of a distance from the edge equal to one-third of the thickness of such members;

b. Any dwelling or building which has support member or members which have deteriorated to such an extent as to be unable to safely support the applied loads or which have 40% damage or deterioration of the nonsupporting, enclosed, or outside walls or covering;

c. Any dwelling or building which has improperly distributed loads upon the floors or roofs or in which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used;

d. Any dwelling or building which has been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants;

e. Any dwelling or building which has parts thereof which are so attached that they may fall and injure persons or property;

f. Any dwelling or building which does not have an unobstructed means of egress leading to an open space at ground level;

g. Any dwelling or building which does not have the window area for each habitable room equal to at least 8% of the total floor area of such room;

h. Any dwelling or building which does not have ventilation provided by openable doors, or windows equal to 4% of total floor area of each room, except where there is supplied forced air ventilation complying with all applicable laws and ordinances;

i. Any dwelling or building having rooms with the ceiling height less than seven feet throughout one-half of the area of such room. Any portion of a room having a ceiling height less than five feet high shall not be considered in computing the total floor area of such room;

j. Any dwelling or building which has wiring that is dangerous due to lack of insulation, improper fuses, inadequate grounding, lack of capacity of wires or other dangerous condition;

k. Any dwelling or building which does not have an installed kitchen sink in each dwelling unit properly connected to the hot and cold water supply pipes and the sewer system;

l. Any dwelling or building which does not have an installed tub or shower and lavatory properly connected to hot and cold water supply pipes and sewer system; or

m. Any dwelling or building which does not have a flush type water closet located in a room affording privacy and properly connected to the water supply pipes and sewer system.

Sec. 12-95. Public officer powers.

In order to carry out the duties contained within this chapter, the public officer shall have the power:

- (1) To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations, provided such entries be made in such manner as to cause the least possible inconvenience to the persons in possession; further, to enter any dwelling, store or other building and premises to inspect them, without molestation from anyone; provided however, that a private residential dwelling or premise may not be entered without permission or without an administrative warrant, unless there exists immediately ascertainable probable cause to believe that a violation of provisions respecting fire laws exists creating an imminent danger to persons or property, or there exists imminent danger to the occupant thereof;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the ordinances;
- (5) To delegate any of his functions and powers under the ordinances to such officers and agents as he may designate under authority of the manager; and
- (6) To cause such dwelling to be vacated and closed in its order; and the public officer may cause to be posted on the main entrance of any dwelling so closed, 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," should the safety of the public be in immediate jeopardy.

Sec. 12-96. Public officer's investigation, complaint, public hearing and order.

- (a) *Investigation.* Acting on his inspection and own motion, or whenever a petition is filed with the public officer by at least three residents of the municipality charging that any dwelling is unfit for human habitation, the public officer shall investigate the existence of an unfit dwelling.

- (b) *Complaint and hearing.* If his preliminary investigation discloses a basis for such charges, he shall issue and cause to be served upon the owner of and all parties in interest in such dwelling a complaint stating the charges in that respect, and containing a notice that a public hearing will be held before the public officer or his designated agent at a time and place therein fixed, to be held not less than ten (10) days nor more than thirty (30) days after the date of the complaint. The public hearing will be conducted at the time and place therein fixed, unless the owner or parties in interest request a continuance, provided however, only one continuance may be extended upon good cause shown, and the extension may not exceed fifteen (15) days. A copy of the public officer's complaint shall be filed in the Horry County Register of Deeds by the city attorney. Such filing of the complaint or order shall have the same force and effect as other lis pendens or lien notices provided by law.
- (c) *Answer and public hearing before public officer.* The owner and parties in interest have the right to file an answer to the complaint with the public officer and in like manner in Horry County as the complaint, and to appear in person at the public hearing and give testimony at the place and time fixed. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- (d) *Official's order.* After the hearing, if the public officer determines that no just cause has been shown as to why the dwelling should remain unfit and in disrepair, and further that the dwelling under consideration is unfit for human habitation due to its unfitness and disrepair, he shall state in writing his findings of fact in support of such determination.
- (1) If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
- (2) If the repair, alteration or improvement of such dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

He shall issue and cause to be served upon the owner thereof an order regarding the property. A copy of the public officer's order shall be filed in the Horry County Register of Deeds by the city attorney.

- (e) *Owner's response to the order.* If the owner complies with the order to repair, alter or improve, or to vacate and close and secure the dwelling within the time established,

the complaint and order are satisfied, and the complaint and order filed in the Horry County land records shall be nullified by the city attorney. If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling within the time set forth in the order, the public officer may act to close and secure the property if unsecured, and may post the structure as unfit for human habitation, if the violations rise to the level that human habitation would be injurious, or the public officer may provide notice to the manager of the failure of the owner or parties in interest to comply with the order.

Sec. 12-97. Administrative warrants.

- (a) An administrative search warrant can be obtained if there is a showing that reasonable administrative or legislative standards are in place for the issuance of the administrative warrant and the conduct of the search. For the purposes of establishing reasonable standards, and for securing an administrative search warrant, the requesting official must affirm that:
 - 1. The relevant codes, regulations or statutes are in place pertaining to the property;
 - 2. The requesting official has attempted peaceful entry or has sought permission to enter for the limited purpose of code inspection;
 - 3. Permission has been denied;
 - 4. There exist facts and circumstances that lead the affiant to believe, based upon his education, training or experience, that code violations exist that could impact fire laws, or could pose imminent danger to the occupant;
 - 5. The stated object and purpose of the search must be adequately specific so that the reasonableness of the scope of the search is not expanded past regulatory purposes; and
 - 6. The search warrant shall not be used as a pretext for a criminal search.
- (b) The municipal court judge for the city is hereby authorized to issue administrative search warrants to allow the code enforcement officer, city health officer, or any other appropriate city official to enter any premises within the city under such terms and conditions as are deemed appropriate by the municipal court judge.
- (c) A law enforcement officer must accompany the official to the premises to assist in the safe execution of the administrative search warrant under the provisions of this section.
- (d) It shall be unlawful for any person having control of any premises for which an administrative search warrant has been issued to prohibit the entry onto the premises by the person as authorized.

Sec. 12-98. Nuisance Appeals Board sets rule to show cause hearing date; show cause hearing; board order.

- (a) There is hereby established a Nuisance Appeals Board to consist of three regular members and two alternate members. Regular members shall serve for four-year terms except that for the initial appointment one member shall serve for one year, one member shall serve for two years and one member shall serve for three years.

Alternates shall serve one-year terms. No member shall serve more than two consecutive four-year terms.

- 1) Members shall be chosen at the discretion of the City Manager.
- (b) The Nuisance Appeals Board shall have the power to hear and decide appeals from decisions of the public officer designated by the City Manager.
- (c) The Nuisance Appeals Board shall at its first meeting elect one of its members to serve as chairman. To the maximum extent possible, the proceedings of the board shall be in accordance with the provisions set forth in this ordinance.
- (d) *Nuisance Appeals Board to set show cause hearing date.* Upon notice by the public officer to the city manager of the failure of the person to either repair or demolish as ordered, the city manager shall place the matter on the agenda for the Nuisance Appeals Board to set a date for a show cause hearing. The rule to show cause hearing shall be scheduled not less than ten (10) nor more than thirty (30) days from the date when first presented to the manager. Upon the Nuisance Appeals Board establishing a rule to show cause date, notice shall be provided in the same manner as the complaint.
- (e) *Show cause hearing.* At the show cause hearing, the public officer shall present his case to the Nuisance Appeals Board to issue its order to cause such unrepaired dwelling to be removed or demolished; and the owner or parties in interest shall be given the right to present evidence and testimony to show cause why the property should not be demolished or repaired, or other such facts for the board's consideration. Parties have the right to be provided written notice of this hearing, the right to be represented by counsel, the right to present testimony and evidence and the right to cross-examine witnesses. The proceedings will be recorded. These proceedings will not be conducted under the strict application of the rules of evidence. The board may allow a brief introductory statement by both parties. The person seeking the closing and securing, repair or demolition may then present testimony, exhibits or witnesses, who shall then be subject to cross-examination. The person opposing the closing and securing, repair or demolition may then present testimony, exhibits or witnesses, who shall then be subject to cross-examination. All witnesses are to be sworn by the board. Any exhibits for this body to consider must be marked by the clerk. Objections to testimony and evidence may be made to preserve the record. Testimony and exhibits may be accepted either with no objection or over objection. Individual board members may direct questions to any sworn witness. The board may permit the parties to make brief closing remarks.

Sec. 12-99. The Nuisance Appeals Board standard of review in show cause hearing; order.

- (a) *Decision, no interior work, manager to act.* Acting in its discretion, the Nuisance Appeals Board shall make such decision as it deems fair and just for public health safety and welfare, and of the owner of the property. In a rule to show cause hearing, the board will act in a quasi-judicial capacity to determine if the owner should vacate, close and secure, repair to current code standards or demolish the structure. In light of the legal complications, risks and liabilities arising out of acting as a contractor, the city shall not refurbish, repair or remodel any interior of a structure. The Nuisance Appeals Board will express its decision after public deliberation and through majority vote at the show cause hearing. The Nuisance Appeals Board may authorize the public official to execute a written order within ten (10) days of the public hearing. The order shall be served as prescribed in this division.

- (b) *The Nuisance Appeals Board finding of unfit, but structurally sound, reasonable repair cost in relation to structure value.*
 - (1) If the dwelling is occupied, and the Nuisance Appeals Board should find the dwelling unfit for human habitation, but structurally sound, the board may order the owner or parties in interest to cause the dwelling to be vacated, and then closed and secured, if the potential repairs can be made at a reasonable cost in relation to the structure's assessed value as shown by Horry County public records.

 - (2) If the dwelling is unoccupied, and the Nuisance Appeals Board should find the dwelling unfit for human habitation, but structurally sound, the board may order the owner or parties in interest to cause the dwelling to be closed and secured if the potential repairs can be made at a reasonable cost in relation to the structure's assessed value as shown by Horry County public records.

- (c) *The Nuisance Appeals Board finding of unfit, unreasonable repair cost in relation to structure value.* Whether occupied or unoccupied, if the board finds the dwelling is unfit for human habitation, and the cost of potential repairs cannot be made at a reasonable cost in relationship to the structure's assessed value as shown by Horry County public records, the board may order the owners or parties in interest to cause the dwelling to be vacated if occupied, and the owner or parties in interest to demolish the dwelling within the time set forth in the order.

Sec. 12-100. Owner or parties in interest failure to comply with the Nuisance Appeals Board's order.

- (a) Should the owner or parties in interest fail to comply with the Nuisance Appeals Board's order for vacating, closing and securing or repair, or demolition, the order shall provide that the manager may proceed to abate the nuisance. The cost of closing and securing in abatement shall include an administrative assessment, in addition to any attorney's fees and costs incurred, in addition to the actual cost of labor and materials expended in public abatement. The city will bid the work in conformity with the procurement code applicable to the municipality.
- (b) The amount of the cost of securing property, vacating and closing, or removal or demolition by the city shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes, by way of foreclosure.
- (b) Fees, costs and assessments shall be established by ordinance.

Sec. 12-101. Assessment; appeal of assessment.

- (a) *Assessment, lien, foreclosure.* Within fifteen (15) days of public expenditure to abate the unfit dwelling, the person shall be served with a notice of assessment, in the manner that is prescribed in this division. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served in the same manner as the original complaint, on the person responsible who shall make payment within 30 days of the date of service. Upon the expiration of the 30-day period, if the amount has not been paid in full or contested before the manager as provided herein, the manager may refer the matter to the city attorney. A lien resulting from public expenditures to abate an unfit dwelling, may be collected in like manner as a tax lien, by way of foreclosure instituted by the city attorney on behalf of the city.
- (b) *Appeal of assessment.* When served with the notice of assessment, the owner or parties in interest may make a written demand to the manager for a hearing to review the cost of the abatement. This appeal stays the action for foreclosure of the lien until such time as the matter is heard and decided by the manager, or his designee. The appeal of the assessment must be received by the manager within 15 business days of the date of the notice. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. The decision of the manager is final, and shall be delivered orally and in writing to the appellant on the date of the hearing. Failure to timely appeal the assessment constitutes

a waiver of the right to appeal the assessment of costs. The manager shall have discretion to waive the administrative fee or the public cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the manager finds that justice and equity require such waiver or that any of the following did not conform to the provisions of this article:

- (1) The complaint to repair or demolish;
- (2) The order to repair or demolish;
- (3) The cost or computation of the work done in abatement.

Sec. 12-102. Power of municipality to declare nuisances or unkempt properties not impaired.

Nothing in this division shall be construed to impair or limit in any way the power of the City to require property to be kept clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance as defined, or to declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 12-103. Service of complaints, orders and assessments; posting and filing copies.

Complaints or orders issued by the city pursuant to this division shall be served upon persons either personally or by registered mail to the address in the Horry County public records, but if the return is not made and the whereabouts of such persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, the public officer shall make an affidavit to that effect and then serve the complaint or order by publishing it once each week for two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located, and by posting a copy of such complaint or order in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint, order or assessment shall also be filed with the Clerk of Horry County and such filing of the complaint or order shall have the same force and effect as other lis pendens or lien notices provided by law.

Sec. 12-104. Rights of persons affected by orders.

As set forth in state law, any person affected by an order issued by a public officer may within 60 days after the posting and service of the order, petition the circuit court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. Hearings shall be had by the court on such

petitions within 20 days or as soon thereafter as possible 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. In all such proceedings, the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer or because of compliance by such person with any order of the public officer.

Sec. 10-105. Sale of materials of removed or demolished dwelling.

If a dwelling is removed or demolished by a public officer, he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition and any balance remaining shall be deposited in the circuit court by the public officer, shall be secured in such manner as may be directed by such court, and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court.

Sec. 12-106. Immunity of enforcement personnel from liability.

Except as may otherwise be provided by statute or local law or ordinance, no officer, agent or employee of the municipality charged with the enforcement of this article shall render himself 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 his duties under this article. No person who institutes, or assists in the prosecution of, a criminal proceeding under this article shall be liable for damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any officer, agent, or employee of the municipality, as a result of any act required or permitted in the discharge of his duties under this article, shall be defended by the legal representative of the municipality until the final determination of proceedings therein.

Sec. 12-107. Renting, etc., unfit dwellings to others.

It shall be unlawful for any owner, agent, servant or person having possession or control of property to rent or lease to any other person or allow any other person to use any property unfit for human habitation.

Sec. 12-108. Living in unfit dwellings prohibited.

It shall be unlawful for any person to enter into and live in any dwelling within the city after the building has been declared to be unfit for human habitation and a notice to that effect has been posted thereon.

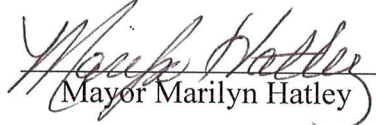
Sec. 12-109. Article provisions are cumulative.

Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, or to prevent or punish violations thereof and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.

Sec. 12-110. Article provisions severable.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

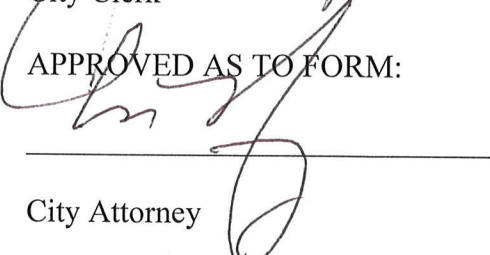
DONE, RATIFIED AND PASSED, THIS 14TH DAY OF OCTOBER, 2014.


Mayor Marilyn Hatley

ATTEST:


City Clerk

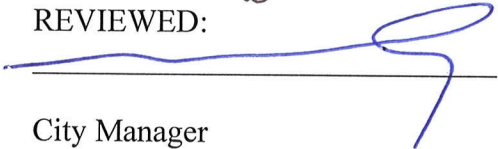
APPROVED AS TO FORM:


City Attorney

FIRST READING: Oct 7, 2013

SECOND READING: Oct 14, 2013

REVIEWED:


City Manager