

ORDINANCE _____

**AN ORDINANCE OF THE TOWN OF NASHVILLE, NORTH CAROLINA
AMENDING CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS, OF
THE NASHVILLE TOWN CODE OF ORDINANCES, BY ADDING ARTICLE IV,
COMMERCIAL PROPERTY MAINTENANCE AND SAFETY**

NOW THEREFORE, be it ordained by the Town Council of the Town of Nashville, North Carolina, as follows

SECTION 1. That Chapter 6, Buildings and Building Regulation, of the Code of Ordinances of the Town of Nashville, is hereby amended to add Article IV, Commercial Property Maintenance and Safety, which shall read as follows:

Article IV. Commercial Property Maintenance and Safety

- Sec. 6-103. Purpose.
- Sec. 6-104. General Interpretations.
- Sec. 6-105. Definitions.
- Sec. 6-106. Applicability and Compliance.
- Sec. 6-107. Duty to Comply.
- Sec. 6-108. Maintenance Standards for Non-Residential Buildings and Structures.
- Sec. 6-109. Demolition and Non-Residential Buildings.
- Sec. 6-110. Duties of Code Enforcement Official.
- Sec. 6-111. Powers of the Code Enforcement Official.
- Sec. 6-112. Inspections.
- Sec. 6-113. Procedure for Enforcement.
- Sec. 6-114. Limitations on Orders and Ordinances - Historic Landmark or Historic District.
- Sec. 6-115. Limitations on Orders and Ordinances -Vacant Manufacturing Facility or Vacant Industrial Warehouse.
- Sec. 6-116. Vacated and Closed Non-Residential Buildings or Structures.
- Sec. 6-117. Methods of Service of Complaints and Orders.
- Sec. 6-118. In Rem Action by the Code Enforcement Official.
- Sec. 6-119. Costs, a Lien on Premises.
- Sec. 6-120. Filing of Ordinances.
- Sec. 6-121. Alternative Remedies.
- Sec. 6-122. Board of Adjustment to Hear Appeals.
- Sec. 6-123. Temporary Injunction Remedy for Aggrieved Person.
- Sec. 6-124. Conflict with Other Provisions.
- Sec. 6-125. Violations; Penalty.

Sec. 6-103. Purpose. In order to protect the health, safety, and welfare of the town and its citizens, this code to established minimum standards of maintenance, sanitation, and safety relating to non-residential buildings or structures, as expressly authorized by North Carolina General Statute §160A-439. This code provides for the repair, closing, or demolition of non-residential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety, and welfare. It is the further purpose of this code to preserve the character and integrity of the community and to promote the comfort, happiness, and safety of community residents.

Sec. 6-104. General Definitions and Interpretations. Unless specifically defined in this Section, words used in this Commercial Property Maintenance and Safety code shall have their respective customary dictionary definitions. For the purpose of these regulations certain words, terms, or phrases used herein are interpreted and defined as follows:

Words used in the *present tense* shall include the *future tense*.

Words used in the *singular* shall include the *plural* and words used in the *plural* shall include the *singular*.

The words "*shall*" and "*will*" always indicate **MANDATORY**. The words "*should*" and "*may*" always indicate **OPTIONAL**. The word "*lot*" includes the words "*plot*" and/or "*parcel*".

The word "*building*" includes the word "*structure*".

The word "*person*" includes a "*firm, association, organization, partnership, trust, company, corporation, and/or individual*".

The word "*use*" includes the terms "*arranged, designed, and/or intended*" for a use, activity, and/or purpose.

The term "*Zoning Map*" shall always indicate the **OFFICIAL ZONING MAP** of the Town of Nashville, North Carolina.

The term "*Town Council*" shall always indicate the **TOWN COUNCIL** for the Town of Nashville, North Carolina.

The "*Board of Adjustment or BOA*" shall always indicate the **NASHVILLE BOARD OF ADJUSTMENT**.

Sec. 6-105. Definitions. The following definitions shall apply in the interpretation and enforcement of this Commercial Property Maintenance and Safety code and its amendments plus any and all ordinances made a part of this code by reference thereto.

- (a) *Basic structural elements* means the parts of a building which provide the principal strength, stability, integrity, shape, and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, sub-flooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry, and all other essential components.
- (b) *Building* means any structure, place, or any other construction built for the shelter or enclosure of persons, animals, chattels, or property of any kind or any part of such structure, shelter, or property.
- (c) *Code enforcement official* shall mean a code enforcement coordinator or officer of the Town of Nashville or any agent of the code enforcement official who is authorized by the code enforcement official to enforce the provisions of this code.
- (d) *Commercial Business* means any business or enterprise which produces and/or

offers for sale products and/or services which, in any manner, conducts commerce within the town limits of the Town of Nashville.

- (e) *Deterioration* means the condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeled or peeling paint, or other evidence of physical decay or loss of structural integrity.
- (f) *Mixed Occupancy* means any building that is used for two or more occupancies classified by different occupancy use groups.
- (g) *Non-residential* means any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing, place, living space, or sleeping space for one (1) or more human beings, either permanently or transiently.
- (h) *Nuisance* means
 - (1) Any public nuisance known as common law or in equity jurisprudence, or as provided by the State of North Carolina, or the ordinances of the Town of Nashville; or
 - (2) Any condition including an attractive nuisance which may prove detrimental to human health or safety whether in a building, on the premises of a building, or part of a building or upon an occupied lot; or
 - (3) Physical conditions dangerous to human life or detrimental to health of persons in, on, or near the premises where the condition exists; or
 - (4) Unsanitary conditions or conditions that are dangerous to public health, well-being, or the general welfare; or
 - (5) Fire hazards or other safety hazards.
- (i) *Occupant* shall mean any person who is a tenant or has actual possession of a non-residential building or structure or part thereof.
- (j) *Operator* shall mean any person who has charge, care, or control of premises or a part thereof, whether with or without the knowledge and consent of the owner, or any person, individually or jointly, entitled to possession regardless of whether the premises are actually occupied or not.
- (k) *Owner* shall mean any person who alone, or jointly, or severally with others:
 - (1) Shall have title in fee simple to any non-residential building or structure, with or without accompanying actual possession thereof; or
 - (2) Shall have charge, care, or control of any non-residential building or structure as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this code and of the rules and regulations adopted pursuant thereto, to the same extent as if he/she were the owner.

- (l) *Parties in Interest* means all individuals, associations, and corporations that have interests of record in a building or any that are in possession thereof; or shall have charge, care, or control of any building, as owner or agent of the owner, operator, or as executor, executrix, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this code, and of the rules and regulations adopted pursuant thereto, to the same extent as if he/she were the owner.
- (m) *Premises* means any lot or parcel of land inclusive of any building, structures, or improvements, located thereon, under control by the same owner or operator.
- (n) *Safe* means a condition which is not likely to do harm to humans or to real or personal property.
- (o) *Story* means that portion of a building between the surface of any interior floor and the ceiling next above. A basement is considered a story only when its ceiling is over six (6) feet above the average level of the finished ground surface adjacent to the exterior walls of the front entrance and/or side street entrance of the building.
- (p) *Structurally sound* means substantially free from flaw, defect, decay or deterioration to the extent that the building or structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.
- (q) *Structure* means anything constructed or placed upon a property which is supported by the ground or which is supported by any other structure, except a currently operable licensed vehicle.
- (r) *Structure, Abandoned* means any structure, whether designed and intended for non-residential or other uses, which is vacant or not in active use, regardless of purpose or reason, for the past two year period and which is determined by the code enforcement official to be unfit for occupancy based upon the standards as set forth in this code.
- (s) *Unsafe* means a condition which is reasonably likely to do harm to humans or to real or personal property if not corrected or stopped.
- (t) *Vacant manufacturing facility* means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.
- (u) *Vacant industrial warehouse* means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.
- (v) *Physical Valuation* means the estimated cost to replace the building in kind.

Sec. 6-106. Applicability and Compliance.

- (a) The provisions of this code shall apply to all non-residential buildings or structures which are now in existence or which may be built within the corporate limits of the town.
- (b) Every non-residential building or structure and the premises on which it is situated shall comply with the provisions of this code, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this code, 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. This code establishes minimum standards for all non-residential buildings and structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure, equipment or facilities contained therein. Where there is mixed occupancy, any non-residential use therein shall be nevertheless regulated by and subject to the provisions of this code.

Sec. 6-107. Duty to Comply. It shall be the duty of each and every owner, operator, or other party in interest of a commercial building or premises within the Town of Nashville, where applicable, to comply with the regulations and requirements set forth in this code. No license, permit, or certification of occupancy shall be issued unless and until all applicable sections of this code have been complied with. No land or building or combination thereof, shall be used in a manner inconsistent with or in conflict with the requirements of this code.

Sec. 6-107. Maintenance Standards for Non-Residential Buildings and Structures.

All non-residential buildings and structures shall be free of all conditions that are dangerous and injurious to the public health, safety, and welfare of occupants or members of the general public. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be dangerous to the public health, safety, and welfare for which a public necessity exists for the repair, closing, or demolition of such building or structure and must be corrected in accordance with the provisions of this code:

- (1) Interior walls, vertical studs, partitions, supporting members, sills, joists, rafters, or other basic structural members that list, lean, or buckle to such an extent as to render the building unsafe, that are rotted, deteriorated, or damaged, and that have holes or cracks which might admit rodents.
- (2) Exterior walls that are not structurally sound, have defects and damages, and are incapable of bearing imposed loads safely. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, such wall must have all doors, windows, vents, or other similar openings closed with material of the type comprising the wall. The exposed wall shall be painted, stuccoed, or bricked and sufficiently weatherproofed to prevent deterioration of the wall.
- (3) Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used. Roofs shall be kept structurally sound and

shall be maintained in such a manner so as to prevent rain or other objects from penetrating into the interior of the building.

- (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 general welfare of the occupants or members of the general public.
- (6) Lack of adequate ventilation, light, heating, or sanitary facilities to such extent as to endanger the health, safety, or general welfare of the occupants or members of the general public.
- (7) Buildings and structures including their environs that have accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary manner.
- (8) Buildings and structures that have loose and insufficiently anchored overhanging objects, which constitute a danger of falling on persons or property.
- (9) Buildings and structures including their environs that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other such dangerous impediments on and around walks, driveways, parking lots, alleyways, and other areas which are accessible to and generally used by persons on or around the premises.
- (10) Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and repaired or replaced with like or similar material according to its original use.
- (11) Buildings and structures that have objects and elements protruding from building walls or roofs, which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.
- (12) Chimneys, flues, and vent attachments thereto which are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight, and capable of withstanding the action of flue gases.
- (13) Exterior porches, landings, balconies, stairs, or fire escapes which are not structurally sound. All exterior porches, landings, balconies, stairs, and fire escapes shall be provided with banisters or railings properly designed and maintained to minimized the hazard of falling, and the same shall be kept sound, in good repair, and free of defects.

- (14) Cornices which are not structurally sound. Rotten or weakened portions shall be repaired and/or replaced. All exposed wood shall be treated or painted.
- (15) Improperly attached gutters or down-spouts that are located so as to cause a hazard to pedestrian, vehicular traffic, or adjacent property.
- (16) Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments and structures that cause a safety hazard to the occupants or members of the general public.
- (17) All exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces shall be painted or sealed in order to protect the underlying surface from deterioration. All exterior surfaces that have been painted shall be maintained generally free of peeling and flaking. Where fifty percent (50%) or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire surface shall be repainted in order to prevent further deterioration.
- (18) Windows containing broken or cracked glass that could be in danger of falling or shattering. All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.
- (19) All openings originally designed as windows, doors, loading docks, or other means of egress or ingress which have been temporarily closed by boarding or other manner in a non-secure manner so as to allow unauthorized admittance. If an opening is temporarily closed by boarding to secure the building or structure, the boarding shall be trim fit, sealed to prevent water intrusion, and painted or stained to properly conform with the other exterior portions of the building and the building or structure shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.
- (20) Any combination of conditions which in the judgment of the code enforcement official renders any building or structure dangerous or injurious to the health, safety, or general welfare of occupants or members of the general public.

Sec. 6-109. Demolition of Non-Residential Buildings. Where a building is under the jurisdiction of this code, the building may be demolished by the owner provided that the following requirements are met:

- (1) Obtain a Certificate of Demolish from the Planning Department;
- (2) Obtain an asbestos inspection from a licensed asbestos services company;
- (3) Remove and properly dispose of all asbestos containing materials (ACM's) by a licensed asbestos removal company;
- (4) Properly close off and disconnect all sewer, gas, water and similar taps or connections;

- (5) Grade the lot to a smooth, even, finished grade, free from building material, debris, holes, and/or depressions. Where building debris remains on the site below street level, the owner must back fill the lot with no less than twelve (12) inches of clean fill which shall be graded to a smooth, even finished grade over any remaining debris;
- (6) Where walls of adjacent buildings become exposed as a result of the demolition, said walls must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed, or bricked by such building's owner so as not to detract from the aesthetics and value for the adjacent property and weatherproofed if necessary to prevent deterioration of the wall;
- (7) Evidence (e.g. copies of trip or weight tickets or receipts) must be submitted to the code enforcement official showing that all demolition debris has been deposited in a regulated landfill equipped to handle demolition or construction debris.

Sec. 6-110. Duties of Code Enforcement Official. The code enforcement official is hereby designated as the public officer to enforce the provisions of this code and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement official:

- (1) To investigate the conditions of non-residential buildings and structures in the town and to inspect non-residential buildings and structures located in the town in order to determine which non-residential buildings and structures are not being maintained so that the health and safety of its occupants or members of the general public are jeopardized and for the purpose of carrying out the objectives of this code with respect to such non-residential buildings and structures;
- (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to affect the repair or demolition of non-residential buildings and structures which have not been properly maintained in compliance with minimum standards established by this code.
- (3) To keep a record of the results of inspections made under this code and an inventory of those non-residential buildings and structures which have not been properly maintained in compliance with the minimum standards established by this code; and
- (4) To perform such other duties as may be herein prescribed.

Sec. 6-111. Powers of the Code Enforcement Official. The code enforcement official shall first take all reasonable non-formal actions to correct a violation of this code prior to exercising any of the powers listed herein. All non-formal attempts of communication shall be documented in detail. The code enforcement official is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this code, including the following powers in addition to others herein granted:

- (1) To investigate non-residential buildings and structures in the town to determine

whether they have been properly maintained in compliance with the minimum standards established by this code so that the safety or health of the occupants or members of the general public are not jeopardized;

- (2) To administer oaths and affirmations, examine witnesses, and receive evidence;
- (3) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession; and
- (4) To appoint and fix duties of such officers, agents, and employees as the code enforcement official deems necessary to carry out the purposes of this code.

Sec. 6-112. Inspections. For the purpose of making inspections, the code enforcement official is hereby authorized to enter, examine, and survey at all reasonable times, non-residential buildings and structures. If entry upon the premises for purposes of investigation is necessary, such entry shall be made with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises or pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2.

Sec. 6-113. Procedure for Enforcement.

- (a) **Preliminary Investigation.** Whenever it appears to the code enforcement official that any non-residential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this code, the code enforcement official 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 code, the code enforcement official shall issue and cause to be served upon the owner of and parties in interest in the non-residential building or structure a complaint. The complaint shall state the code violations 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 nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the code enforcement official.
- (c) **Procedure after Hearing.**
 - (1) If, after notice and hearing, the code enforcement official determines that the non-residential building or structure has been maintained in that the property meets the minimum standards established by this code, 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 thereof a copy of said determination.

- (2) If, after notice and hearing, the code enforcement official determines that the non-residential 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 code, 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 thereof an order in accordance with the provisions of subsection (c)(3) and (c)(4) of this Section and subject to the limitations set forth in Sections 6-114 and 6-115.
 - (3) If the code enforcement official determines that the cost of repair, alteration, or improvement of the 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, not less than fifteen (15) and not more than one-hundred eighty (180) days, without an extension, as specified in the order, to take reasonable precaution in order to protect the safety and well-being of the public and to either (i) repair, alter, or improve the non-residential building or structure in order to bring it into compliance with the minimum standards established by this code or (ii) vacate and close the non-residential building or structure for any use.
 - (4) If the code enforcement official determines that the cost of repair, alteration, or improvement of the building or structure would 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, not less than fifteen (15) and not more than one-hundred eighty (180) days, without an extension, as specified in the order, to take reasonable precaution in order to protect the safety and well-being of the public and to either (i) remove or demolish the non-residential building or structure or (ii) repair, alter or improve the non-residential building or structure to bring it into compliance with the minimum standards established by this code.
- (d) Failure to Comply with Orders and Ordinances.
- (1) If the owner fails to comply with an order to either (i) repair, alter, or improve the non-residential building or structure or (ii) vacate and close the non-residential building or structure, the code enforcement official shall submit to the town council an ordinance ordering the code enforcement official to cause such non-residential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this code or to be vacated and closed for any use. The property shall be described in the ordinance. If town council adopts the ordinance, the code enforcement official shall cause the building or structure to be vacated and closed for any use.
 - (2) If the owner fails to comply with an order to either (i) remove or demolish

the non-residential building or structure or (ii) repair, alter, or improve the non-residential building or structure, the code enforcement official shall submit to the town council an ordinance ordering the code enforcement official to cause such non-residential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a non-residential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the town council. The property shall be described in the ordinance. If town council adopts the ordinance, the code enforcement official shall cause the building or structure to be removed or demolished.

Sec. 6-114. Limitations on Orders and Ordinances - Historic Landmark or Historic District. Notwithstanding any other provision of this code, if the non-residential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the town council determines, after a public hearing, that the non-residential building or structure is of individual significance or contributes to maintaining the character of the district, and the non-residential building or structure has not been condemned as unsafe, an order issued by the code enforcement official pursuant to Section 6-113 and an ordinance approved by town council pursuant to Section 6-113(d) may only require that the non-residential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this code.

Sec. 6-115. Limitations on Orders and Ordinances - Vacant Manufacturing Facility or Vacant Industrial Warehouse. Notwithstanding any other provisions of this code, an order issued by the code enforcement official pursuant to Section 6-113 and an ordinance approved by town council pursuant to Section 6-113(d) may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

Sec. 6-116. Vacated and Closed Non-Residential Buildings or Structures.

- (a) If the town council has adopted an ordinance or the code enforcement official has issued an order requiring the building or structure to be repaired, altered, or improved or vacated and closed and the building or structure has been vacated and closed for a period of two (2) years pursuant to the ordinance or order, then if the town council finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the town in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then town council may, after the expiration of the two (2) year period, adopt an ordinance and serve such ordinance on the owner, setting forth the

following:

- (1) The ordinance shall require that the owner either (i) demolish and remove the non-residential building or structure within ninety (90) days or (ii) repair, alter, or improve the non-residential building or structure to bring it into compliance with the minimum standards established by this code within ninety (90) days.
 - (2) The ordinance shall require that if the owner does not either (i) demolish and remove the non-residential building or structure within ninety (90) days or (ii) repair, alter, or improve the non-residential building or structure to bring it into compliance with the minimum standards established by this code within ninety (90) days, then the code enforcement official shall demolish and remove the non-residential building or structure.
- (b) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five (5) years before town council may take action under this Section.
 - (c) If the owner fails to comply with the requirements of the ordinance within ninety (90) days, the code enforcement official shall demolish and remove the non-residential building or structure.

Sec. 6-117. Methods of Service of Complaints and Orders.

- (a) Complaints or orders issued by the code enforcement official under this code shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When the manner or service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by regular mail shall certify that fact and the date thereof, and such certificate shall be conclusive in the absence of fraud. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.
- (b) If the identities of any owner 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, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the town at least once no later than the time at which personal service would be required under the provisions of this code. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Sec. 6-118. In Rem Action by the Code Enforcement Official. After failure of an owner of a non-residential building or structure to comply with an order of the code enforcement official issued pursuant to the provisions of this code and upon adoption by the town council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 163A-439(f) and Section 6-113(d) of this code, the code enforcement official shall proceed to cause such non-residential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this code, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the town council. The code enforcement official may cause to be posted on the main entrance of any non-residential building or structure which is to be vacated and 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.

Sec. 6-119. Costs, a Lien on Premises.

- (a) The amount of the cost of such repairs, alterations or improvements or vacating and closing, or demolition and removal by the code enforcement official shall be a lien against the real property upon which such cost was incurred which lien shall be filed, have the same priority and be collected as provided by Code 10, Section 160A-216 et seq., G. S. Chapter 160A. If the structure is demolished and removed by the Town, the Town of Nashville may sell the marketable materials of such structure and shall credit the proceeds of such sale against the cost of the demolition and removal and any balance remaining shall be deposited in the Superior Court by the Town, and 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 (in a special proceeding brought before the Clerk of Superior Court for said purpose.)
- (b) If the non-residential building or structure is removed or demolished by the code enforcement official, the code enforcement official shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the 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.
- (c) Nothing in this Section shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of the other remedies provided herein.
- (d) Nothing in this Section shall be construed to impair or limit in any way the power of the code enforcement official in the proper enforcement of the duties of his/her office, as assigned, nor shall the enforcement of one remedy provided herein prevent the enforcement of other remedies provided or cited herein.

Sec. 6-120. Filing of Ordinances. An ordinance adopted by town council pursuant to Sections 6-113(d) or 6-116 of this code shall be recorded in the office of the Register of Deeds of Nash County and shall be indexed in the name of the property owner in the grantor index, as provided by G. S. 160A- 439(t) and (g).

Sec. 6-121. Alternative Remedies. Neither this code nor any of its provisions shall be construed to impair or limit in any way the power of the Town of Nashville to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this code by criminal process as authorized by G. S. 14-4, and Section 6-125 of this code, and the enforcement of any remedy provided herein or in other ordinances or laws.

Sec. 6-122. Board of Adjustment to Hear Appeals.

- (a) All appeals which may be taken from decisions or orders of the code enforcement official pursuant to this code shall be heard and determined by the 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.
- (b) Appeals shall be subject to the following:
 - (1) An appeal from any decision or order of the code enforcement official may be taken by any person aggrieved thereby. Any appeal from the code enforcement official shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the code enforcement official and with the 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 code enforcement official shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When the 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 any 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 by the board, unless the code enforcement official certifies to the board, after the notice of appeal is filed, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant) a suspension of the requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the code enforcement official, by the board, or by a court of record upon petition made pursuant to G. S. 160A-446(t) and this Section.
 - (2) The board shall fix a reasonable time for the hearing of all appeals, shall give 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 code enforcement official, but the concurring vote of four-fifths of the members of the board shall be necessary to reverse or modify any decision or order of the code enforcement official. The board shall have power also in passing upon appeals, in any case when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this code, to adapt the application of the code to the necessities of the case to the end that the spirit of the code shall be observed, public safety and welfare secured, and substantial justice done.

- (3) Every decision of the board shall be subject to review by the Superior Court by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the Board, but not otherwise.

Sec. 6-123. Temporary Injunction Remedy for Aggrieved Person. Any person aggrieved by an order issued by the code enforcement coordinator and officer or a decision rendered by the board of adjustment 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(t).

Sec. 6-124. Conflict with Other Provisions. In the event any provision, standard, or requirement of this code is found to be in conflict with any other ordinance or code of the town, the provisions which establish the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the town shall prevail.

Sec. 6-125. Violations; Penalty.

- (a) It shall be unlawful for the owner of any non-residential building or structure to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the code enforcement coordinator and officer duly made and served in accordance with the provisions of this code, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any non-residential building or structure, with respect to which an order has been issued pursuant to Section 6-113 of this code, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, improvement, or its vacation and closing, and each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
- (b) The violations of any provision of this code shall constitute a misdemeanor, as provided by G. S. 14-4.
- (c) In addition to or in lieu of the other remedies provided by this code, any owner of a non-residential building or structure that fails to comply with an order of the

code enforcement official within the time specified therein, shall be subject to a civil penalty in the amount of fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense in the calendar year, and two hundred fifty dollars (\$250.00) for the third and subsequent offenses in the calendar year. Each subsequent offense after the third will be subject to a civil penalty of \$250.00. Each thirty (30) day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense.

SECTION 2. EFFECTIVE DATE: This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED and APPROVED this _____ day of _____ 2020.

Attest:

Brenda Brown, Mayor

Sarah Tinkham, Town Clerk

PROPOSED