

ORDINANCE NO. 2016-09

**AN ORDINANCE AMENDING BREVARD CITY CODE
PART II - CHAPTER 18 SUBSECTIONS 153 - 173
NONRESIDENTIAL BUILDING OR STRUCTURE CODE**

WHEREAS, Brevard City Council desires to adopt an ordinance granting authority to the Zoning Administrator to cause non-residential building(s) that fail to meet minimum standards of maintenance, sanitation and safety, to be repaired, closed, and/or demolished.

WHEREAS, the City of Brevard Planning Department Staff have recommended that Brevard City Code, Chapter 18, be amended to adopt a nonresidential building or structure code; and,

WHEREAS, Brevard City Council finds that these proposed amendments are consistent with the City of Brevard Comprehensive Plan and other plans and policies of the City of Brevard; and,

WHEREAS, a public hearing was conducted on Monday, May 16, 2016, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 18 be amended as shown in Attachment B.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Brevard City Code, Part II, Chapter 18 is hereby amended to read as shown in Exhibit A.

SECTION 02. As to any conflict between this Ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. The enactment of this Ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

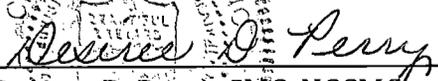
SECTION 08. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 16th day of May, 2016



Jimmy Harris
Mayor

ATTEST



Desiree D. Perry, CMC, NCCMC
City Clerk

APPROVED AS TO FORM:



Michael K. Pratt
City Attorney

Ordinance No. 2016-09

Exhibit A

Article VI - Nonresidential Building or Structure Code

Sec. 18-153. Title

This Article shall be known and may be cited and referred to as the "Nonresidential Building or Structure Code".

Sec. 18-154. Purpose

In order to protect the health, safety and welfare of the City of Brevard and its citizens, it is the purpose of this Article to establish minimum standards of maintenance, sanitation, and safety relating to nonresidential buildings or structures, as expressly authorized by North Carolina General Statute §160A-439. This Article provides for the repair, closing or demolition of nonresidential buildings or structures as a result of a public necessity caused by conditions that are dangerous to the public health, safety and welfare.

Sec. 18-155. Definitions

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

"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.

"Nonresidential" 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 or more human beings, either permanently or transiently.

"Operator" shall mean any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

"Parties 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.

"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 1 year and has not been converted to another use.

"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 1 year and has not been converted to another use.

Sec. 18-156. Applicability and Compliance

A. This Article establishes minimum standards for all nonresidential 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.

B. 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 corporate limits of the City. Every nonresidential building or structure, and the premises 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. 18.157. Maintenance Standards for Nonresidential Buildings and Structures

All nonresidential 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. 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 Article:

A. 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.

B. Exterior walls that are not structurally sound or free from defects and damages or capable 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.

C. Floors or roofs which have improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used. 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.

D. Damage by fire, wind, or other causes rendering the building unsafe.

E. Dilapidation, decay, unsanitary conditions, or disrepair, dangerous to the health and safety of the occupants or members of the general public.

F. 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.

G. Buildings and structures that have loose and insufficiently anchored overhanging objects, posing a danger to persons or property.

H. Buildings and structures including their environs that have insufficiently protected holes, excavations, breaks, projections, obstructions, and other dangerous impediments on or around walks, driveways, parking lots, alleyways, or other areas accessible to and generally used by persons on or around the premises.

I. Buildings and structures that have cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic, 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 shall be repaired or replaced with like or similar material according to its original use.

J. Buildings and structures that have objects or 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, brackets, and similar objects.

K. Chimneys, flues, and vent attachments thereto which are not structurally sound. Chimneys, flues, gas vents, or other draft-producing equipment 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.

L. 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 minimize the hazard of falling, and the same shall be kept sound, in good repair, and free of defects.

M. Cornices which are not structurally sound or are rotten or weakened. Any rotten or weakened areas shall be repaired and/or replaced. All exposed wood shall be treated or painted.

N. Improperly attached gutters or down-spouts located so as to cause a hazard to pedestrian or vehicular traffic, or adjacent property.

O. Advertising sign structures, attached or freestanding awnings, marquees and their supporting members, and other similar attachments or structures that cause a safety hazard to the occupants or members of the general public.

P. All exterior surfaces that may cause unsafe conditions due to a lack of maintenance. Exterior surfaces shall be painted or sealed to protect the underlying surface from deterioration. All exterior surfaces that have been painted shall be maintained generally free of peeling and flaking. Where 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.

Q. Windows containing broken glass 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.

R. 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 shall be maintained in a state that secures the building or structure from any unauthorized admittance from humans, animals, or birds.

S. Any other condition which, by the determination of the code enforcement officer renders any building or structure dangerous or injurious to the health, safety, or general welfare of the occupants or members of the general public.

Sec. 18.158. Duties and Powers of Code Enforcement Officer

A. The code enforcement officer is hereby designated as the public officer to enforce the provisions of this Article and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement officer:

1. To investigate the conditions of nonresidential buildings and structures in the City and to inspect nonresidential buildings and structures located in the City in order to determine which nonresidential 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 Article with respect to such nonresidential buildings and structures;
2. To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect the repair or demolition of nonresidential buildings and structures which have not been properly maintained in compliance with minimum standards established by this Article;
3. To keep a record of the results of inspections made under this Article 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 Article; and

4. To perform such other duties as may be herein prescribed.

B. The code enforcement officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this Article, including the following powers in addition to others herein granted:

1. To investigate nonresidential buildings and structures in the City 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;
2. To administer oaths and affirmations, examine witnesses and receive evidence;
3. To enter upon premises for the purpose of making examinations and inspections in accordance with law; and
4. To appoint and fix duties of such officers, agents, and employees as the code enforcement officer deems necessary to carry out the purposes of this Article.

Sec. 18.159. Inspections

For the purpose of making inspections, the code enforcement officer is hereby authorized to enter, examine, and survey at all reasonable times, nonresidential 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 if permission is not granted, pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2.

Sec. 18.160. Procedure for Enforcement

A. Preliminary Investigation. Whenever it appears to the code enforcement officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this Article, the code enforcement officer shall undertake a preliminary investigation, including, but not limited to, an inspection of the premises and discussion with any witnesses.

B. Complaint and Hearing. If the preliminary investigation discloses evidence of a violation of the minimum standards established by this Article, the code enforcement officer shall issue and serve a complaint upon the owner of and any parties in interest, as may be established by reasonable due diligence, of the nonresidential building or structure. The complaint shall set forth and describe the violation and contain a notice stating that a hearing will be held before the code enforcement officer at a place and time set forth in the notice; that the hearing shall be held not less than 10 days nor more than 30 days after service of the complaint; that the owner and any parties in interest shall be given the right to answer the complaint and to appear in person 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 control in hearings before the code enforcement officer.

C. Procedure after Hearing

1. If after notice and hearing, the code enforcement officer determines that the nonresidential building or structure has been maintained in that the property meets the minimum standards established by this Article, the code enforcement officer 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 officer 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 by this Article, the code enforcement officer 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 paragraphs 3 and 4 below.

3. If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would not exceed 50 percent of its then current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that the owner, within a time specified in the order, either; (i) repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by this Article or; (ii) vacate and close the nonresidential building or structure for any use.

4. If the code enforcement officer determines that the cost of repair, alteration, or improvement of the building or structure would exceed 50 percent of its then current value, then the code enforcement officer shall state in writing the findings of fact in support of such determination and issue an order that the owner, within a time specified in the order, either; (i) remove or demolish the nonresidential building or structure or; (ii) repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this Article.

D. Failure to Comply with Order and Ordinances

1. If the owner fails to comply with an order to either (i) repair, alter, or improve the nonresidential building or structure or (ii) vacate and close the nonresidential building or structure, the code enforcement officer shall submit to the City Council an ordinance ordering the code enforcement officer to cause such nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this Article or to be vacated and closed for any use. The property shall be described in the ordinance. If City Council adopts the ordinance, the code enforcement officer 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 nonresidential building or structure or (ii) repair, alter, or improve the nonresidential building or structure, the code enforcement officer shall submit to the City Council an ordinance ordering the code enforcement officer to cause such nonresidential 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 by the City Council. The property shall be described in the ordinance. If City Council adopts the ordinance, the code enforcement officer shall cause the building or structure to be removed or demolished.

Sec. 18.161. Limitations on Orders and Ordinances—Historic Landmark or Historic District

Notwithstanding any other provision of this Article, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the City Council determines, after a public hearing, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order issued by the code enforcement officer pursuant to Sec. 18.163 and the ordinance approved by City Council may only require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this Article.

Sec. 18.162. Limitations on Orders and Ordinances—Vacant Manufacturing Facility or Vacant Industrial Warehouse

Notwithstanding any other provision of this Article, an order issued by the code enforcement officer pursuant to Sec. 18.163 and the ordinance approved by City Council 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/or 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. 18.163. Vacated and Closed Nonresidential Buildings or Structures

A. If the City Council has adopted an ordinance or the code enforcement officer 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 2 years pursuant to the ordinance or order, then if the City 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 City 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 City Council may, after the expiration of the 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 nonresidential building or structure within 90 days or (ii) repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this Article within 90 days.

2. The ordinance shall require that if the owner does not either (i) demolish and remove the nonresidential building or structure within 90 days or (ii) repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this Article within 90 days, then the code enforcement officer shall demolish and remove the nonresidential 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 5 years before City Council may take action under this section.

C. If the owner fails to comply with the requirements of the ordinance within 90 days; the code enforcement officer shall demolish and remove the nonresidential building or structure.

Sec. 18.164. Methods of Service of Complaints and Orders

A. Complaints or orders issued by the code enforcement officer under this Article shall be served upon persons by personal service or by registered or certified mail, in conjunction with first class mail. When the manner or service is by first class mail in conjunction with registered or certified mail, and the registered or certified mail is unclaimed or refused, but the first class mail is not returned by the post office within 10 days after mailing, service shall be deemed sufficient. The person mailing the complaint or order by first class mail shall certify that fact and the date thereof, and such certificate shall be conclusive in the absence of fraud. If first class mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the subject property.

B. If the identities of any owner or the whereabouts of parties in interest are unknown and cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, and the code enforcement officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owner or other parties in interest may

be made by publication in a newspaper having general circulation in the City at least once no later than the time by which personal service would be required under the provisions of this Article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the subject property.

Sec. 18.165. In Rem Action by the Code Enforcement Officer

After failure of an owner of a nonresidential building or structure to comply with an order of the code enforcement officer issued pursuant to the provisions of this Article and upon adoption by the City Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. 160A-439(f), the code enforcement officer shall proceed to cause the nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this Article, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the City Council. The code enforcement officer shall post on the main entrance of any nonresidential 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. 18.166. Costs, a Lien on Premises

A. As provided by G.S. 160A-439(i), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement officer shall be a lien against the real property upon which such costs were incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10, Chapter 160A of the North Carolina General Statutes. The amount of the costs shall also be a lien on any other real property of the owner located within the City limits except for the owner's primary residence. The additional lien on other real property of the owner, excluding the subject property, as provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

B. If the nonresidential building or structure is removed or demolished by the code enforcement officer, the code enforcement officer shall offer for sale any 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 in the Superior Court by the code enforcement officer, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order or decree of the Court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 18.167. Ejectment

If any occupant fails to comply with an order to vacate a nonresidential building or structure, a civil action may be filed in the name of the City to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as the defendant any person occupying the nonresidential building or structure. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the code enforcement officer produces a certified copy of an ordinance adopted by the City Council pursuant to G.S. 160A-439(f) and this ordinance to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the

premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the City Council has ordered the code enforcement officer to proceed to exercise his duties under G.S. 160A-439(f) and the City's Ordinance to vacate and close or remove and demolish the nonresidential building or structure.

Sec. 18.168. Filing of Ordinances

An ordinance adopted by City Council pursuant to this Article shall be recorded in the office of the Register of Deeds of Transylvania County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-439(f) and (g).

Sec. 18.169. Alternative Remedies

Neither this Article nor any of its provisions shall be construed to impair or limit in any way the power of the City of Brevard to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this Article by criminal process as authorized by G.S. 14-4, and this Article, and the enforcement of any remedy provided herein or in other ordinances or laws.

Sec. 18.170. Board of Adjustment to Hear Appeals

A. All appeals which may be taken from decisions or orders of the code enforcement officer pursuant to this Article 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 officer may be taken by any aggrieved party. Any appeal from the code enforcement officer shall be taken within 10 days from the rendering of the decision or service of the order, and shall be taken by filing with the code enforcement officer, and 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 officer shall transmit to the Board all the papers constituting the record upon which the appealed decision was made. When the appeal is from a decision of the code enforcement officer refusing to allow the aggrieved party to act, the code enforcement officer's decision shall remain in force until modified or reversed. When the appeal is from a decision of the code enforcement officer requiring the aggrieved party to act, the appeal shall have the effect of suspending the requirement until the hearing of the appeal by the Board; however, should the code enforcement officer certify to the Board, after the notice of appeal is filed, that by reason of the facts stated in the certification, 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. The restraining order may be granted for due cause shown upon not less than 1 day's written notice to the code enforcement officer, by the Board or by a court of general jurisdiction upon petition made pursuant to G.S. 160A-446(f) and this ordinance.

2. The Board shall fix a reasonable time for the hearing of all appeals, shall give notice to all 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 appealed or order, and may make such decision and order as ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer. The concurring vote of 4/5 of the members of the Board shall be necessary to reverse or modify any decision or order of the code enforcement officer. In any case when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Article, the Board may adapt the application of the Article to the necessities of the case to the end that the spirit of the Article 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 15 days of the decision of the Board.

Sec. 18.171. Temporary Injunction Remedy for Aggrieved Person

Any party aggrieved by an order issued by the code enforcement officer or a decision rendered by the board of adjustment shall have the right within 30 days after issuance of the order or rendering of the decision, to petition the Superior Court for a temporary injunction pending a final disposition of the cause, as provided by G.S. 160A-446(f).

Sec. 18.172. Conflict with Other Provisions

In the event any provision standard, or requirement of this Article is found to be in conflict with any other ordinance or code of the City, the provisions which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the City shall prevail.

Sec. 18.173. 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 same, or to vacate and close and remove or demolish the same, upon order of the code enforcement officer duly made and served in accordance with the provisions of this Article, within the time specified in the order. 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 nonresidential building or structure, with respect to which an order has been issued, 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. Each day that such occupancy continues shall constitute a separate and distinct offense.

B. The violation of any provision of this Article 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 Article, any owner of a nonresidential building or structure that fails to comply with an order of the code enforcement officer within the time specified therein, shall be subject to a civil penalty in the amount of \$50.00 for the first offense, \$100.00 for the second offense in the calendar year, and \$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 \$500.00. Each 30-day period, or part thereof, in which a violation continues, will constitute a separate and distinct offense.