

Section 3.6-1. Powers and duties of the code enforcement officer.

For purposes of administering and enforcing the provisions of this ordinance, the code enforcement officer (hereinafter referred to as "officer") is hereby designated as the chief administrative and enforcement official. The county manager shall appoint the code enforcement officer on behalf of the Board of Commissioners. The officer shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

- (1) *Investigations.* To investigate the dwelling and building conditions in the county in order to determine which dwellings therein are unfit for human habitation and dangerous, being guided in such examination of dwellings and buildings by the requirements set forth in this article.
- (2) *Action.* To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated.
- (3) *Records.* To keep a record of the results of inspections made under this ordinance and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed.
- (4) *Oaths, witnesses, etc.* To administer oaths and affirmations and to examine witnesses and receive evidence.
- (5) *Right of entry.* To enter upon and within premises and dwellings for the purpose of making examinations and investigations; provided, that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.
- (6) *Delegation of functions, etc.* To appoint and fix the duties of such officers, agents, and employees he deems necessary to assist in carrying out the purposes of this ordinance, and to delegate any of his functions and powers under this article to such officers, agents and employees.
- (7) To perform such other duties as may be prescribed herein or by the board of commissioners.

Section 3.6-2. Inspections—Duty of owners and occupants.

- (a) For the purpose of carrying out the intent of this article, the officer is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units and premises, including abandoned structures. The owner or occupant of every dwelling, dwelling unit or rooming unit, or the person in charge thereof, shall give the officer free access to such dwelling, dwelling unit or rooming unit, and its premises, at all reasonable times for the purposes of such inspection, examination and survey.

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- (b) Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order assigned pursuant to the provisions of this article.

Section 3.6-3. Procedures for enforcement.

- (a) *Preliminary investigations, notices, hearings.* Whenever a petition is filed with the officer by a public authority or by at least five residents of the county charging that any dwelling is unfit for human habitation or whenever it appears to the officer (on his own motion) that any dwelling is unfit for human habitation, the officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the officer (or his designated agent) at a place within the county in which the property is located 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 file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the officer.
- (b) *Orders.* If, after notice and an administrative hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, the officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner one of the following orders, as appropriate:
 - a. 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, to repair, alter, or improve the dwelling in order to render it fit for human habitation. The ordinance may fix a certain percentage of this value as being reasonable. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order.
 - b. If the repair, alteration, or improvement of the 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 the dwelling. The ordinance may fix a certain percentage of this value as being reasonable. However, notwithstanding any other provision of law, if the dwelling is located in a historic district and the Historic District Commission determines, after an administrative hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining

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the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160D- 949.

Section 3.6-4. Failure to comply with order.

- (a) *Repair, closing, and posting.* After failure of an owner of a deteriorated or dilapidated dwelling or dwelling unit to comply with an order of the officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in the preceding paragraph (a), the officer shall submit to the board of commissioners an ordinance ordering the officer to cause such dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed or demolished, as provided in the original order of the officer, and pending removal or demolition, to place a placard on such dwelling as provided by G.S. § 160D-1203(4) and Section 3.6-7 of this article.
- (b) *Civil action.* If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the local government to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as defendant any person occupying such dwelling, as authorized by G.S. § 160D-1203(8).

Section 3.6-5. Appeals from order of the code enforcement officer.

- (a) An appeal from any decision or order of the officer may be taken by any person aggrieved thereby pursuant to G.S. § 160D-405. Any appeal from the officer shall be taken within thirty (30) days from the rendering of the decision or service of the order by filing with the officer 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 officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.
- (b) Any person aggrieved by a decision rendered by the board of adjustment may appeal said decision to the superior court within 30 days of the decision, as provided by G.S. § 160D-1402 and G.S. § 160D-1405.

Section 3.6-6. Service of complaints and orders.

Complaints or orders issued by the officer, shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the officer in the exercise of reasonable diligence, and the officer 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 county at least once no later than the time at which personal service would be required under the provisions of this chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Other owners or parties in interest. Failure on the part of any owner or parties in interest to receive or have served upon them any complaint, notice or order provided for in this section shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.

Section 3.6-7. In rem action by officer; placarding.

- (a) After failure of an owner of a dwelling or dwelling unit to comply with an order of the officer issued pursuant to the provisions of this article, and upon adoption by the board of commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. § 160D-1203(5) and Section 3.6-4 of this article, the officer shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this article, or to be vacated and closed and removed or demolished, as directed by the ordinance of the board of commissioners and shall cause to be posted on the main entrance of such dwelling or dwelling unit a placard with the following words: "THIS BUILDING IS UNFIT FOR HUMAN HABITATION: THE USE OR OCCUPATION OF THIS BUILDING FOR HUMAN HABITATION IS PROHIBITED AND UNLAWFUL." Occupation of a building so posted shall constitute a misdemeanor.
- (b) Each ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. § 160D-1203(4).
- (c) If the dwelling is removed or demolished by the 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 superior court by the officer, shall be secured in such manner as may be directed by such court to the persons found to be entitled thereto by final order or decree of such court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the county to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Section 3.6-8. Cost a lien on premises.

As provided by G.S. § 160D-1203(7), the cost of any repairs, alterations, or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the officer

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pursuant to Section 3.6-7 of this article shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by G.S. Ch. 160A, Art. 10.

Section 3.6-9. Alternative remedies.

Nothing in this article nor any of its provisions shall be construed to impair or limit in any way the power of the county to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, or to enforce this ordinance by criminal process as authorized by G.S. § 14-4 and Section 3.5-52 of the Cleveland County Ordinances, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

Section 3.6-10. Board of adjustment to hear appeals.

All appeals which may be taken from decisions or orders of the officer pursuant to Section 3.6-5 of 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 procedures and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall perform the duties prescribed by section 3.6-5 and shall keep an accurate journal of all its proceedings.

Section 3.6-11. Liability.

Any officer or employee of the county or member of the board of adjustment charged with the enforcement of this article in the discharge of his duties shall not thereby render himself liable personally, and he is hereby relieved from all personal liability from any damage that may accrue to person or property as a result of any act required or permitted in the discharge of his duties. Any suit brought against any such officer or employee because of this article shall be defended by the county until the end of such proceedings.