



TOWN OF MIDLAND

ORDINANCE #2010-92

**MINIMUM HOUSING STANDARDS
THE TOWN OF MIDLAND**

BE IT ORDAINED by the Town Council of the Town of Midland, North Carolina:

Part 1. That the Minimum Housing Standards for the Town of Midland is hereby established and written to read as follows:

"MINIMUM HOUSING STANDARDS

Section 1. Findings; Purpose; Authority.

Pursuant to Section 160A-441, of the General Statutes of North Carolina, it is hereby found and declared that there exist in the Town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe and unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of Midland.

In order to protect the health, safety and welfare of the residents of the Town, as authorized by Part 6 of Article 19, Ordinance 160A of the General Statutes of North Carolina, it is the purpose of this Ordinance to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by Section 160A-444 of the General Statutes of North Carolina.

In addition, it is hereby found and declared, under the authority of North Carolina General Statutes 160A-174, that there exist in the Town dwellings which, although not meeting the classification as unfit for human habitation, fail to fully comply with all the minimum standards for housing fitness as established herein and therefore have present one or more conditions which are inimical to the public health, safety and general welfare. Such conditions, if not corrected can lead to deterioration and dilapidation of dwellings which render them unfit for human habitation.

Section 2. Scope.

- (a) This Ordinance is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof which are public safety, health and general welfare through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used or intended for use as such.

- (b) The provisions of this Ordinance shall apply to all existing housing and to all housing hereafter constructed within the Town. Portable, mobile or demountable buildings or structures, including trailers, manufactured homes and mobile homes when used or intended for use for housing within the jurisdiction, shall be subject to the applicable provisions of this Ordinance. This Ordinance establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this Ordinance.
- (c) The provisions of this Ordinance shall also apply to abandoned structures which are found by the Town Council to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary conditions.

Section 3. Definitions.

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

Abandoned Structure. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Housing Inspector to be unfit for human habitation or occupancy based upon the standards as set forth in this Ordinance.

Basement. A portion of a building which is located partly underground, having access to light and air from windows located above the level of the adjoining ground.

Cellar. A portion of a building located partly or wholly underground having inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Deteriorated Dwelling. A dwelling that is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this Ordinance, *at a cost not in excess of fifty percent of its value*, as determined by finding of the Housing Inspector.

Dilapidated Dwelling. A dwelling that is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this Ordinance, *at a cost not in excess of fifty percent of its value*, as determined by finding of the Housing Inspector.

Dwelling. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any accessory buildings and structures and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

Dwelling Unit. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Extermination. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by

poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the Housing Inspector.

Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room. A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

Housing Inspector. The person appointed by the Town Council to carry out the administration and enforcement of this Ordinance.

Infestation. The presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

Manufactured Home (Mobile Home). A structure as defined in G.S. 143-145(7).

Multiple Dwelling. Any dwelling containing more than two dwelling units.

Occupant. Any person over one year of age living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator. Any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

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

Parties in Interest. All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

Public Authority. Any housing authority or any officer who is in charge of any department or branch of the government of the Town, County, or State relating to health, fire, building regulations, or other activities concerning dwellings in the Town.

Rooming House. Any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of, the owner or operator.

Rooming Unit. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish. Combustible and noncombustible waste materials except garbage and ashes, and the term shall include, but not be limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

Supplied. Paid for, furnished or provided by, or under the control of, the owner or operator.

Whenever the words "dwelling", "dwelling unit", "rooming house", "rooming unit" or "premises" are used in this Article, they shall be construed as though they were followed by the words "or any part thereof".

Section 4. Office of Housing Inspector Created; Powers and Duties.

For the purposes of administering and enforcing the provisions of this Ordinance the office of Housing Inspector is hereby created. The Housing Inspector shall be appointed by the Town Council, and shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this Ordinance, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(a) Investigations

To investigate the dwelling and building conditions in the Town 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 Ordinance.

(b) Oaths, witnesses, etc.

To administer oaths and affirmations and to examine witnesses and receive evidence.

(c) 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.

(d) Warrants; Citations, etc.

To swear criminal warrants, issue civil citations and to take such other actions as may be necessary to carry out the enforcement procedures of this Ordinance.

(e) Delegation of functions, etc.

To delegate any of his functions and powers under this Ordinance to such officers and agents as he may designate.

Section 5. Inspections.

For the purpose of carrying out the intent of this Ordinance, the Housing Inspector, upon proper identification, is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and premises, including abandoned structures. The owners or occupants of every dwelling, dwelling unit, rooming unit, or rooming house, or the person in charge thereof, shall give the Housing Inspector free access to such dwelling, dwelling unit, rooming house or rooming unit, and its premises, at all reasonable times for the purposes of such inspection, examination and survey. 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 Ordinance or with any lawful order issued pursuant to the provisions of this Ordinance.

Section 6. Preliminary Investigations; Notices; Hearings.

Whenever a petition is filed with the Housing Inspector by a public authority or by at least five (5) residents of the Town charging that any dwelling is unfit for human habitation or whenever it appears to the Housing Inspector (on his own motion) that any dwelling is unfit for human habitation, the Housing Inspector 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 Housing Inspector (or his designated agent) at a place within the Town therein fixed not less than 10 days nor more than 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 Housing Inspector.

Upon the issuance of a complaint and notice of hearing pursuant to this Section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of Cabarrus County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with Section 160A-445 of the North Carolina General Statutes, as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.

Section 7. Dwelling Unfit for Human Habitation.

The Housing Inspector shall determine that a dwelling is unfit for human habitation if he finds that any one of the following conditions exist in such dwelling:

- (a) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the dwelling unsafe.
- (b) Supporting member or members which show thirty-three (33) percent or more damage or deterioration, or non-supporting, enclosing or outside walls or covering which shows fifty (50) percent or more of damage or deterioration.
- (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.
- (d) Such damage by fire, wind or other causes as to render the dwelling unsafe.
- (e) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people in the Town.
- (f) Inadequate facilities for egress in case of fire or panic.

- (g) Defects significantly increasing the hazards of fire, accident or other calamities.
- (h) 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 other residents of the Town.
- (i) Lack of proper electrical, heating or plumbing facilities required by this Ordinance which constitutes a definite health or safety hazard.
- (j) Lack of connection to a potable water supply and/or to the public sewer or other approved sewage disposal system, the lack of either one of which renders a dwelling unfit for human habitation. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of nonpayment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

In addition to the ten (10) conditions stated above, any one of which renders a dwelling unfit for human habitation, the Housing Inspector shall determine that a dwelling is unfit for human habitation if he finds that a dwelling fails to fully comply with seven (7) or more of the following enumerated standards of dwelling fitness:

STRUCTURAL STANDARDS

Structural Integrity

- (1) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

Supports

- (2) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

Foundations

- (3) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

Steps

- (4) Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.

Egress

- (5) Adequate facilities for egress in case of fire or panic shall be provided.

Interior Materials

- (6) Interior walls and ceilings of all rooms, closets and hallways shall be furnished of suitable materials which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

Weatherization

- (7) The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather and watertight.

Chimneys

- (8) There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

Floors

- (9) There shall be no use of the ground for floors, or wood floors on the ground.

PLUMBING STANDARDS

Facilities

- (10) Each dwelling unit shall contain not less than a kitchen sink, lavatory, tub or shower, water closet, and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

Maintenance

- (11) All plumbing fixtures shall meet the standards of the Plumbing Code and shall be maintained in a state of good repair and in good working order.

Accessible

- (12) All required plumbing fixtures shall be located within the dwelling and be accessible to the occupants of the same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the user.

HEATING STANDARDS

Generally

- (13) Every dwelling shall have facilities for providing heat in accordance with either paragraph (a) or (b) below. Such facilities shall be maintained in a state of good repair and good working order.
- (a) Central and electrical heating systems. Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling to which it is connected with a minimum temperature of seventy (70) degrees Fahrenheit measured at a point three (3) feet above the floor during average winter conditions.
 - (b) Other heating facilities. Where a central or electric heating system is not provided, each dwelling shall be provided with sufficient electrical receptacles, fireplaces, chimneys, flues or gas vents whereby heating appliances may be connected so as to heat all habitable rooms, bathrooms and water closet compartments with a minimum temperature of seventy (70) degrees Fahrenheit measured three (3) feet above the floor during average winter conditions.

ELECTRICAL STANDARDS

Wiring

- (14) Every dwelling shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least two floor or wall type electrical convenience receptacles, connected in such manner as determined by the Electrical Code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least one supplied ceiling or wall type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least three floor or wall type electric convenience receptacles.

Hall Lights

- (15) Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural light is not sufficient.

Maintenance

- (16) All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the Electrical Code.

VENTILATION STANDARDS

Generally

- (17) Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions

of structures face a window of any such room and such light obstructions are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of such a room, the total window area of such skylight shall equal at least fifteen percent of the total floor area of such room.

Habitable rooms

- (18) Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room, shall be equal to at least forty-five percent of the minimum window area size or minimum skylight type window size as required, or shall have other approved equivalent ventilation.

Bathroom and water closet room

- (19) Every bathroom equipped with more than one water closet compartment shall comply with the light and ventilation requirements for habitable rooms.

SPACE, USE AND LOCATION STANDARDS

Room sizes

- (20) Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the Residential Building Code. (Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling may count for not more than ten percent of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as a part of the floor area in computing the total area of the room to determine maximum permissible occupancy.) Every dwelling unit shall contain at least one hundred fifty (150) square feet of habitable floor area for the first occupant, at least one hundred (100) square feet of additional habitable area for each of the next three (3) occupants, and at least seventy-five (75) square feet of additional habitable floor area for each additional occupant. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least fifty (50) square feet of floor area for each occupant twelve (12) years of age and over, and at least thirty-five (35) square feet of floor area for each occupant under twelve (12) years of age.

Ceiling Height

- (21) At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches.

Cellar

- (22) No cellar shall be used for living purposes unless:
- (a) the floor and walls are substantially watertight;
 - (b) the total window area, total openable window area and ceiling height are equal to those required for a habitable room;
 - (c) the required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the windows face a stairwell, window well or access way.

SAFE AND SANITARY MAINTENANCE STANDARDS

Exterior foundation, walls and roofs

- (23) Every foundation wall, exterior wall and exterior roof shall be substantially weather tight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance or penetration of moisture or the weather.

Interior floors, walls and ceilings

- (24) Every floor, interior wall and ceiling shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

Windows and doors

- (25) Every window, exterior door, basement or cellar door and hatchway shall be substantially weather tight, water tight and rodent proof; and shall be kept in sound working condition and good repair.

Stairs porches and appurtenances

- (26) Every inside and outside stair, porch and any appurtenances thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair.

Bathroom and kitchen floors

- (27) Every bathroom and kitchen floor surface and water closet compartment floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in sound condition and good repair.

Supplied facilities

- (28) Every supplied facility, piece of equipment or utility which is required under this Ordinance shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

Drainage

- (29) Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

INSECT, RODENT AND INFESTATION CONTROL STANDARDS

Screens

- (30) For protection against mosquitoes, flies and other insects every dwelling shall have:
- (a) Supplied and installed screens on every door opening leading directly from the dwelling to outdoor space. Except, that sliding doors, doors with self closing devices, doors on mobile homes with self closing devices and doors that open into rooms of living spaces that are artificially ventilated or air conditioned are exempt from this provision.
 - (b) Supplied and installed screens on every window or other device with an opening to outdoor space, except that this requirement shall not apply for any room or rooms of a dwelling that are ventilated year round with an operable and installed heating and air conditioning system.

Rodent control

- (31) Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.

Infestation

- (32) Every dwelling shall be maintained in a manner to be free of any infestations of insects, rodents or other pests. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

Rubbish storage and disposal

- (33) Every dwelling shall be supplied with approved containers and covers for storage of rubbish as may be required by Town ordinances, and the owner, operator or agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.

Garbage storage and disposal

- (34) Every dwelling shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit or an incinerator unit, to be approved by the Inspector, in the structure for the use of the occupants of each dwelling unit, or an approved outside garbage container as may be required by Town ordinances.

Smoke Detector Systems

- (35) Every dwelling unit shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm. The detector shall be tested in accordance with and meet the requirements of UL 217, Single and Multiple Station Smoke Detectors.

ROOMING HOUSE STANDARDS

All of the provisions of this Ordinance, and all of the minimum standards and requirements of this Article, shall be applicable to rooming houses, and to every person who operates a rooming house or who occupies or lets to another for occupancy any rooming unit in any rooming house, except as provided in the following Subsections:

Water closet, hand lavatory and bath facilities

- (36) At least one water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooms within a rooming house wherever such facilities are shared. All such facilities shall be located within the residence building served, shall be directly accessible from a common hall or passageway and shall not be more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

Minimum floor area for sleeping purposes

- (37) Every room occupied for sleeping purposes by one occupant shall contain at least seventy (70) square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least fifty (50) square feet of floor area for each occupant twelve (12) years of age and over and at least thirty-five (35) square feet of floor area for each occupant under twelve (12) years of age.

Sanitary conditions

- (38) The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the rooming house; and shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.

Sanitary facilities

- (39) Every water closet, flush urinal, lavatory basin and bathtub or shower required by Subsection (36) of this Section shall be located within the rooming house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other room therein.

[Note: Full compliance with a standard means that if any part of the stated standard is not complied with by a particular dwelling then that dwelling has failed to fully comply with the enumerated standard. For example, in regard to standard #10, if all standards are met in a dwelling except that a supply of hot water is not provided then the dwelling fails to fully comply with standard #10.]

Section 8. Dwellings Not in Compliance But Not Unfit for Human Habitation.

In any case where the Housing Inspector determines that a dwelling fails to fully comply with one or more but less than seven (7) of the above enumerated standards of dwelling fitness, such dwelling shall not be found to be unfit for human habitation and shall not be subject to the procedures and remedies as provided for in this Ordinance for dwellings unfit for human habitation. Each such failure or noncompliance, however, shall constitute a violation of the terms of this Ordinance and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of General Penalties Ordinance. In making the determination as described in this Section, the Housing Inspector shall not be required to make notice and hold the hearing as called for in Section 6, but the Housing Inspector may do so if the determination of the severity and classification of dwelling fitness is not clear to the Housing Inspector upon preliminary investigation.

Section 9. Procedure After Hearing; Order.

If, after notice and hearing, the Housing Inspector determines that the dwelling under consideration is unfit for human habitation in accordance with the standards set forth above, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

- (a) If the repair, alteration or improvement of the dwelling can be made at a cost of less than fifty (50) percent of 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 or to vacate and close the dwelling as a human habitation, based upon the Housing Inspector's standards for closing dwellings;

OR

- (b) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than fifty (50) percent of the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

If, after notice and hearing the Housing Inspector determines that the dwelling under consideration is not unfit for human habitation but is not in full compliance with one or more

standards of dwelling fitness as set forth above, he may proceed with the enforcement procedures of the General Penalties Ordinance, civil or criminal or both.

Whenever a determination is made pursuant to Subsections (a) or (b) of this Section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of the Section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of forty-five (45) days from the mailing of such notice shall be given before removal or demolition by action of the Inspector, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Inspector shall certify the mailing of the notices, and the certifications shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the Inspector to wait forty-five (45) days before causing removal or demolition.

Section 10. Failure to Comply with Order.

- (a) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Housing Inspector may:
 - (1) Cause the dwelling to be repaired, altered or improved or to be vacated and closed.
 - (2) Cause to be posted on the main entrance of any such dwelling, 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 violation of this Ordinance.
- (b) If the owner fails to comply with an order to repair, alter or improve or to remove or demolish the dwelling, the Housing Inspector may:
 - (1) Cause such dwelling to be vacated and removed or demolished.
 - (2) Cause to be posted on the main entrance of any such dwelling, 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 violation of this Ordinance.
- (c) The duties of the Housing Inspector set forth in Subsections (a) and (b) shall not be exercised until the Town Council shall have by ordinance ordered the Housing Inspector to proceed to effectuate the purpose of this Ordinance with respect to the particular property or properties which the Housing Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Standards. For the purposes of this subsection, a period of ninety (90) days following the date of the Housing Inspector's order shall constitute a reasonable opportunity. This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or

properties are located and shall be indexed in the name of the property owner in the grantor index.

- (d) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Housing Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Ordinance 160A of the General Statutes of North Carolina. If the dwelling is removed or demolished by the Housing Inspector, he shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Housing Inspector, 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 of the decree of the Court.
- (e) If any occupant fails to comply with an order to vacate a dwelling, the Housing Inspector may file a civil action in the name of the Town 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 parties-defendant any persons occupying such dwelling. 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 Housing Inspector produces the certified copy of an ordinance adopted by the Town Council pursuant to Subsection (c) authorizing the Housing Inspector to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgement ordering that the dwelling 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 hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgement may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Town Council has ordered the Housing Inspector to proceed to exercise his duties under Subsections (a), (b) and (c) of this Section to vacate and close or remove and demolish the dwelling.
- (f) If the Town Council shall have adopted an ordinance, or the Housing Inspector shall have issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in Section 9(a), and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order, then if the Town Council shall find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, moral, and welfare of the Town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a

dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in the Town, then in such circumstances, the Town Council may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- (a) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
- (b) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the Housing Inspector shall effect the purpose of the ordinance.

Section 11. Service of Complaints and Orders.

Complaints or Orders issued by the Housing Inspector shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the town at least not later than the time at which personal service would be required under the provisions of this Ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Section 12. Appeals.

- (a) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Housing Inspector may be taken. Except where this Ordinance provides for different rules or procedures, the Board of Adjustment acting as the Housing Appeals Board shall follow its rules of procedure, which may be amended to provide specifically for this function.
- (b) An appeal from any decision or order of the Housing Inspector may be taken by any person aggrieved thereby or by any officer, board or commission of the Town. Any appeal from

the Housing Inspector shall be taken within ten days from the rendering of the decision or service of the order by filing with the Housing Inspector and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Housing Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Housing Inspector refusing to allow the person aggrieved thereby to do any such act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Housing Inspector 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 Housing Inspector certifies to the Board after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that 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 day's written notice to the Housing Inspector, by the Board, or by a court of record upon petition made pursuant to Subsection (e) of this Section.

- (c) The Board of Adjustment shall fix a reasonable time for hearing appeals, shall give due notice to 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 any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Housing Inspector, 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 Housing Inspector. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the Ordinance, to adapt the application of the Ordinance to the necessities of the case to the end that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (d) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.
- (e) Any person aggrieved by an order issued by the Housing Inspector or a decision rendered by the Board may petition the Superior Court for an injunction, restraining the Housing Inspector from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Housing Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days, and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Subsection.

Section 13. Alternative Remedies.

Nothing in this Ordinance nor any of its provisions 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 any other remedy or remedies provided herein or in other ordinances or laws. In addition to the remedies provided for herein, any violation of the terms of this Ordinance shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in the General Penalties Ordinance of the Town of Midland.

No dwelling shall be hereafter erected, altered, moved, or changed in occupancy without a Certificate of Occupancy. In any case where the Housing Inspector, after notice and hearing as required herein, finds that a dwelling or dwelling unit is unfit for human habitation, he shall withhold issuance of a Certificate of Occupancy for such dwelling or dwelling unit: until such time that he determines that it is fit for human habitation. In addition, in any case where the Housing Inspector, after preliminary investigation as provided for herein, concludes, based upon that investigation, that a dwelling or dwelling unit is unfit for human habitation and believes that the occupancy of such dwelling or dwelling unit could cause imminent peril to life or property from fire or other hazards, he shall withhold issuance of a Certificate of Occupancy for such dwelling or dwelling unit until such time that he determines that it is fit for human habitation.

If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Ordinance or of any valid order or decision of the Housing Inspector or Board made pursuant to any ordinance or code adopted under authority of this Ordinance, the Housing Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or occupancy, to restrain, correct or abate the violation, to prevent the occupancy of the dwellings, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

Section 14. Conflict with Other Provisions.

In the event any provision, standard or requirement of this Ordinance is found to be in conflict with any provision of any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the Town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this Ordinance.

Section 15. Violations.

In addition to the conditions, acts or failures to act that constitute violations specified in this Ordinance above, it shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Inspector duly made and served as herein provided, within the time specified in such order. It shall be unlawful for the owner of any dwelling, with respect to which an order has been issued pursuant to Section 9, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition.

Section 16. Validity.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each

section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid."

Part 2. All ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Part 3. This Ordinance shall become effective upon its adoption by the Town Council of the Town of Midland, North Carolina.

ADOPTED this the 11th day of May, 2010.

ATTEST

SEAL

Mayor of Midland, Kathy Kitts

Town Clerk, Nancy E. Boyden, CMC