



TOWN OF MIDLAND

**ORDINANCE #2010-95**

**NON-RESIDENTIAL BUILDING OR STRUCTURE STANDARDS  
THE TOWN OF MIDLAND**

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

**Part 1.** That the Non-Residential Building and Structure Standards Ordinance for the Town of Midland is hereby established and written to read as follows:

**"NON-RESIDENTIAL BUILDING OR STRUCTURE STANDARDS**

**Section 1. Title.**

This Ordinance shall be known as the "Non-Residential Building or Structure Standards" for the Town of Midland, and may be cited as such, and will be referred to hereinafter as "this Ordinance."

**Section 2. Purpose.**

It is the purpose of the provisions of this Ordinance to provide a just, equitable and practicable method to evaluate whether non-residential buildings or structures fail to meet minimum standards of maintenance, sanitation, and safety established by the Town. The minimum standards address conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The provisions of this Ordinance are cumulative with and in addition to any other remedy provided by law including the current editions of standard codes adopted by the Town of Midland.

**Section 3. Findings; Authority.**

Pursuant to Chapter 160A-439 of the General Statutes of North Carolina, it is hereby found and declared that there exist in the Town non-residential buildings or structures which are unsafe and especially dangerous to life because of liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress and other causes.

In addition, it is hereby found and declared, that there exist in the Town non-residential buildings or structures which, although not meeting the classification of unsafe and especially dangerous to life, fail to fully comply with all the minimum standards for non-residential buildings or structures 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 non-residential buildings or structures which render them unsafe and especially dangerous to life.

#### **Section 4. Scope; Jurisdiction.**

The provisions of this Ordinance shall apply to all existing non-residential buildings or structures and to all non-residential buildings or structures hereafter constructed within the Town corporate limits as now or hereafter established.

#### **Section 5. General Definitions and Interpretations.**

Unless specifically defined in Section 6, words used in the Non-Residential Building or Structure Standards shall have their respective customary dictionary definitions. For the purpose of these regulations certain words, terms or phrases used herein are interpreted and defined as follows:

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

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

The words "shall" and "will" always indicate **MANDATORY**. The words "should" and "may" always indicate **OPTIONAL**.

The word "lot" includes the words "plot" and/or "parcel".

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

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

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

The term "Board of Adjustment" shall always indicate the **BOARD OF ADJUSTMENT OF THE TOWN OF MIDLAND, NORTH CAROLINA** as created and appointed by the Town Council of said Town.

The term "Town Council" shall always indicate the **TOWN COUNCIL OF THE TOWN OF MIDLAND, NORTH CAROLINA**.

#### **Section 6. Special Definitions and Interpretations.**

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

**Building:** Any covered structure intended for shelter, housing or enclosure of persons, animals, facilities, equipment or chattels; the term Building shall be construed to include the term Structure; furthermore, it shall be construed as if followed by the term or part thereof.

**Building, Accessory:** A detached subordinate building located on a lot, parcel or tract whose use is incidental to that of the principal building. A building cannot be considered accessory unless it accompanies a principal building on the same lot, parcel or tract.

**Building, Principal:** A building in which the principal use of the lot, parcel or tract is conducted.

**Building Code:** The North Carolina State Building Code.

**Deterioration:** The condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeling paint or other evidence of physical decay or loss of structural integrity.

**Fire Hazard:** (see also **Nuisance**) Any thing or act which increases, or may cause an increase of, the hazard, likelihood or menace of fire to a greater degree than reasonable for the conduct of the non-residential use on the premises, or which may unreasonably obstruct, delay, or hinder, or may unreasonably become the cause of an obstruction, a delay, a hazard or an unreasonable hindrance to the prevention, suppression or extinguishment of fire.

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

**Infestation:** The haunting or overrunning by rats, snakes, birds, insects or other destructive vermin or animals that endanger the public health and safety.

**Non-Residential Building or Structures Standards Inspector:** The person delegated as such by the Town Council of the Town of Midland. (Hereinafter referred to as "the Inspector".)

**Nuisance:**

- 1) Any public nuisance known as common law or in equity jurisprudence, or as provided by the statutes of the State of North Carolina, or the ordinances of the Town of Midland; or.
- 2) Any condition including an attractive nuisance which may prove detrimental to human health or safety whether in a building, on the premises of a building, or part of a building or upon an occupied lot; or.
- 3) Physical conditions dangerous to human life or detrimental to health of persons in, on or near the premises where the condition exists; or

- 4) Unsanitary conditions or conditions that are dangerous to public health, well-being or the general welfare; or
- 5) Fire hazards or other safety hazards.

**Occupant:** Any person who has charge, care or control of a non-residential building or structure or a part thereof, whether with or without the knowledge and consent of the owner, or any person, individually or jointly, entitled to possession regardless of whether the building or structure is actually occupied or not.

**Owner:** The holder of the title in fee simple and every mortgagee of record of a property.

**Parties In Interest:** All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

**Physical Valuation:** The estimated cost to replace a building in kind.

**Plumbing:** All of the following supplies, facilities and equipment: gas pipes, gas burning equipment, water pipes, water heaters, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, vents and other similar fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with HVAC equipment.

**Premises:** A lot, plot or parcel of land including the buildings or structures thereon, under control by the same owner or occupant, devoted to or zoned for non-residential use.

**Public Sanitary Sewer:** Any sanitary sewer owned, operated and maintained by the Town of Midland and available for public use for the disposal of sewage.

**Rubbish:** Combustible and non-combustible waste materials, except garbage and ashes, including, but not limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

**Sewage:** Waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture, equipment or machine.

**Structurally Sound:** Substantially free from flaw, defect, decay or deterioration to the extent that such structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

**Structure:** Anything constructed or erected which requires location on the ground. (Refer to the definition of "building" herein.)

**Supplied:** Paid for, furnished or provided by, or under control of, the owner or occupant.

**Vacant Industrial Warehouse:** Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

**Vacant Manufacturing Facility:** Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

**Section 7. Office of Non-Residential Building or Structure Standards Inspector Created; Powers and Duties.**

(a) For the purposes of administering and enforcing the provisions of this Ordinance the office of Non-Residential Building or Structures Standards Inspector, (herein called "Inspector"), is hereby created.

(b) The 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 provision of this Ordinance, including without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

- (1) To investigate the non-residential building conditions in the jurisdiction in order to determine which buildings therein are unsafe, being guided in such examinations of buildings by the requirements set forth in this Ordinance and for the purpose of carrying out the objectives of this Ordinance with respect to such non-residential buildings or structures.
- (2) To administer oaths and affirmations and to examine witnesses and receive evidence.
- (3) To enter upon and within premises and buildings for the purpose of making examinations and investigations; provided, that such entries shall be made at reasonable hours in such a manner as to cause the least possible inconvenience to the persons in possession.
- (4) To delegate any of his functions and powers under this Ordinance to such officers and agents as he may designate.

**Section 8. Duties and Responsibilities of the Owner.**

It shall be the duty and responsibility of the owner to maintain all non-residential buildings or structures in accordance with all standards for non-residential buildings or structures fitness as stated in this Ordinance.

## **Section 9. Duties and Responsibilities of the Occupant.**

It shall be the duty and responsibility of the occupant to ensure that:

- 1) All parts of the premises under the control of the occupant shall be kept in a safe, clean and sanitary condition consistent with the non-residential use and the occupant shall refrain from performing any acts which would render any part of the building or premises unsafe or unsanitary or which would obstruct any adjacent owner/occupant from performing any duty required, or from maintaining his building or premises in a safe and sanitary condition.
- 2) Every occupant shall be responsible for the elimination of infestation in and on the premises, subject to his control.
- 3) Every occupant shall maintain all supplied plumbing fixtures in a safe and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.
- 4) No garbage or solid waste shall be stored or allowed by the occupant to accumulate on the premises unless contained in a trash receptacle(s) which is in accordance with the Ordinances of the Town of Midland.
- 5) Damage to public sidewalks and/or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the Town when such damage is caused by vehicles making deliveries to the non-residential use under the control of the occupant.
- 6) Where the owner would not otherwise know of a defect of any facility, utility or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the occupant affected thereby shall, upon learning of such defect, provide notice to the owner.

## **Section 10. Relationship of Duties and Responsibilities to Occupancy.**

The provisions of this Ordinance that apply to the exterior or exterior components of a structure or building or to the premises shall be complied with whether the structure or building or premises is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by their owners to prevent the entry of unauthorized persons or the formation of nuisance conditions such as infestation.

## **Section 11. 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.

**Section 12. 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 jurisdiction shall prevail. The North Carolina State 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 13. Amendments.**

The Town Council may, from time to time amend, supplement, or change the provisions and requirements of this Ordinance. Any such amendment shall be by ordinance of the Town Council.

**Section 14. Unlawful to own unsafe buildings and structures.**

(a) It shall be unlawful for any firm, person or corporation to own a building or a structure situated in the jurisdiction of the Town of Midland which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Midland Town Council has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety and welfare of the citizens of Midland, that such unsafe and especially dangerous buildings and structures shall be condemned, and that the owners of such unsafe and especially dangerous buildings and structures shall immediately remedy the unsafe, dangerous, hazardous or unlawful conditions or demolish such buildings or structures.

(b) A building or structure shall be found to be especially dangerous to life and held unsafe by the Inspector if the Inspector finds that any one (1) of the following conditions exists in such building or structure:

- (1) Interior walls or vertical studs which seriously list, lean or buckle to an extent as to render the building unsafe.
- (2) 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.
- (3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used.
- (4) Such damage by fire, wind or other causes as to render the building unsafe.

- (5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people of the jurisdiction.
- (6) Inadequate facilities for egress in case of fire or panic.
- (7) Defects significantly increasing the hazards of fire, accident or other calamities.
- (8) 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 jurisdiction.
- (9) Lack of proper electrical, heating or plumbing facilities required by this Ordinance which constitutes a health or a definite safety hazard.
- (10) For any building whose occupancy classification requires it, lack of connection to a potable water supply and/or to the public sanitary sewer or other approved sewage disposal system. For the purposes of this standard, a building 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.
- (11) Any violation of the State Fire Prevention Code which constitutes a condition which is unsafe and especially dangerous to life.
- (12) Any abandoned non-residential building or structure which is found to be a health or safety hazard by the Inspector 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 facilities.

(c) In addition to conditions 1-12 enumerated in (b) above, any one of which renders a building or structure unsafe, the Inspector shall determine that a non-residential building or structure is unsafe if he finds that a building or structure fails to fully comply with any five (5) or more of the following enumerated standards of building and premises fitness. Full compliance with a standard means that if any part of the stated standard is not complied with by a particular building and premises, then that building and premises has failed to fully comply with the enumerated standard.

## GENERAL

- (1) Buildings and premises shall be kept clear of accumulations of garbage, trash, or rubbish which create health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way.



- (2) Flammable, combustible, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the State Fire Prevention Code.
- (3) Buildings and premises shall be kept free of loose and insufficiently anchored overhanging objects which constitute a danger of falling on persons or property.
- (4) The premises shall be kept free of insufficiently protected holes, excavations, breaks, projections, obstructions and other such dangerous impediments on and around fences, walls, walks, driveways, parking lots and other areas which are accessible to and generally used by persons on the premises.
- (5) Building and premise surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration.
- (6) Buildings and premises shall be kept free of objects and elements protruding from building walls, roof or premises which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conduits, wires, sign brackets and other brackets, and similar objects.

#### APPURTENANCES

- (7) All chimneys, flues and vent attachments thereto shall be maintained structurally sound. Chimneys, flues, gas vents or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight and capable of withstanding the action of flue gases.
- (8) 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 structurally sound, in good repair, and free of defects.
- (9) All cornices shall be made structurally sound. Rotten or weakened portions shall be removed and/or replaced. All exposed wood shall be treated or painted.
- (10) Gutters and down spouts shall be replaced or repaired as necessary and shall be appropriately located and securely installed so as not to cause a hazard to pedestrians, vehicular traffic or property.
- (11) Attached and unattached accessory structures shall be maintained in a state of good repair.

- (12) Advertising sign structures, attached or freestanding, awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a nuisance or safety hazard.

#### STRUCTURAL

- (13) 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.
- (14) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.
- (15) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.
- (16) Interior and exterior steps, railings, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.
- (17) Where a wall of a building has become exposed as a result of demolition of an adjacent building said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall unless such doors, windows, vents or other similar openings are to be maintained in accordance with the provisions of this Ordinance. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked and weatherproofed if necessary to prevent deterioration of the wall.

#### PLUMBING, ELECTRICAL AND SUPPLIED FACILITIES

- (18) All plumbing fixtures and pipes shall meet the standards of the State Plumbing Code and shall be maintained in a state of good repair and in good working order.
- (19) All electrical 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 State Electric Code.
- (20) Every supplied facility, piece of equipment or utility which is required under this Ordinance or the State Building Code for occupancy or use shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

## EGRESS

- (21) Facilities for egress in case of fire or panic shall be adequate and shall remain clear for such purposes.
- (22) 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.
- (23) All windows shall be maintained free of broken glass that could be dangerous to the public, invitees or third parties ordinarily expected to use the premises, from falling or shattering.
- (24) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure.

## DRAINAGE

- (25) All yards and premises shall be properly graded and maintained so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

### **Section 15. Buildings and Premises Not Declared Unsafe But Which Are Not in Compliance With All Standards.**

In any case where the Inspector determines that a non-residential building or structure fails to fully comply with one or more but less than five of the standards of non-residential buildings or structures fitness set forth in Section 14(c), such building or structure shall not be found to be unsafe and shall not be subject to the procedures and remedies as provided for in this Ordinance for unsafe buildings and premises. Each such failure of non-compliance, 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 Section 29. In such case the Inspector shall notify the owner as provided for in Section 19.

### **Section 16. Investigation.**

Whenever it appears to the Inspector 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 the Town Council, the Inspector shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

### **Section 17. Complaint and Notice of Hearing.**

If the preliminary investigation discloses evidence of a violation of the minimum standards, the Inspector shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the Inspector (or his or her designated agent) at a place within the county scheduled 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 answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Inspector.

### **Section 18. Order to take corrective action; contents; issuance.**

If, after notice and hearing, the Inspector 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 as established by the Town Council, the Inspector shall state in writing the findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

- (1) An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the Town Council or to vacate and close the nonresidential building or structure for any use.
- (2) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then current value. Notwithstanding any other provision of law, 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 Town Council determines, after a public hearing as provided by ordinance, 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 may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this ordinance.
- (3) An order **may not** require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order 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.

**Section 19. Service of Complaints and Orders of Inspector.**

Complaints or orders issued by the Inspector pursuant to this ordinance shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. 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 refused, but the regular mail is not returned by the post office within 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, and the Inspector makes an affidavit to that effect, 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 city at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

**Section 20. Appeal of Order of Inspector; finality if not appealed.**

Any owner who has received an order under Section 18 may appeal from the order to the Town Board of Adjustment by giving notice of appeal in writing to the Inspector and to the Town Clerk within ten (10) days following issuance of the order. In the absence of an appeal to the Board of Adjustment within the prescribed time, the order of the Inspector shall be final. The Board of Adjustment shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify and affirm or revoke the order. Any person aggrieved by a decision or order of the Inspector shall have the remedies provided in G.S. 160A-446.

**Section 21. Failure to comply with Order of Inspector.**

1. If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the Town Council may adopt an ordinance ordering the Inspector to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Inspector found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the Inspector may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The Inspector may cause to be posted on the main entrance of any nonresidential building or structure so 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.

2. If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the Town Council may adopt an ordinance ordering the Inspector to proceed to effectuate the purpose of this section with respect to the particular property or properties that the Inspector found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require 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 Town Council. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Office of the Register of Deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the Inspector may cause the building or structure to be removed or demolished.

## **Section 22. Remedies; lien for cost of demolition and removal.**

The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the 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 Chapter 160A of the General Statutes.

The amount of the costs is also 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 provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

If the nonresidential building or structure is removed or demolished by the Inspector, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the 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 or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Town Council to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

## **Section 23. Failure of occupant to comply with order to vacate.**

If any occupant fails to comply with an order to vacate a nonresidential building or structure, the Inspector may file a civil action in the name of the Town 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 parties-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 Inspector produces a certified copy of an ordinance adopted by the Town Council pursuant to Section 21 of 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 governing body has ordered the Inspector to proceed to exercise his duties under Section 21 of this Ordinance to vacate and close or remove and demolish the nonresidential building or structure.

#### **Section 24. Action by Town Council Upon Abandonment of Intent to Repair.**

If the Town Council has adopted an ordinance or the Inspector has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of **two years** pursuant to the ordinance or order, the Town Council may make findings 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 municipality 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. Upon such findings, the Town Council may, after the expiration of the **two-year** period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- (1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or
- (2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of **five years** before the Town Council may take action under this subsection. The 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 the ordinance, the Inspector shall effectuate the purpose of the ordinance.

### **Section 25. Demolition of Non-Residential Buildings by Owner.**

Where a non-residential building or structure is under the jurisdiction of this Ordinance, the building may be demolished by the owner provided that the following requirements are met:

- (1) The owner shall obtain a demolition permit from the Building Inspections Department of the County.
- (2) All sewer, gas, water and similar taps or connections shall be properly closed and disconnected.
- (3) All debris from the building shall be removed from the site. This requirement is for the removal of all debris that is above the street level of the building.
- (4) The lot shall be graded to a smooth, even, finished grade, free from building material, debris, holes, and/or depressions. Where building debris remains on the site below street level, the owner must back fill the lot with twelve (12) inches of clean fill which shall be graded to a smooth, even finished grade.
- (5) Where walls of adjacent buildings become exposed as a result of the demolition, said walls must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall, unless such doors, windows, vents, or other similar openings are to be maintained in accordance with the provisions of this Ordinance. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked and weatherproofed if necessary to prevent deterioration of the wall.

### **Section 26. Inspections.**

(a) For the purpose of carrying out the intent of this Ordinance, the Inspector is hereby authorized to enter, examine and survey at all reasonable times all non-residential buildings and premises, including abandoned structures. The owner or occupant of every non-residential building or the person in charge thereof, shall give the Inspector free access to such building and its premises, at all reasonable times for the purposes of such inspection, examination and survey. Every occupant of a non-residential building shall give the owner thereof, or his agent or employee, access to any part of such building 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.



(b) The Inspector may make periodic inspections for unsafe, unsanitary or otherwise hazardous and unlawful conditions in non-residential structures within the jurisdiction. In addition, he may make inspections when he has reason to believe that such conditions may exist in a particular structure or premises.

**Section 27. Defects in buildings to be corrected.**

When the Inspector finds any defects in a non-residential building, or finds that a building has not been constructed in accordance with applicable State and Town laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions or violations of law in the property he owns. Failure to do so shall constitute a violation of this Ordinance. Each day any violation of this Ordinance shall continue shall constitute a separate offense.

**Section 28. Violations.**

In addition to the conditions, acts or failure to act that constitute violations specified in this Ordinance, it shall be unlawful for the owner of any building or structure 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 building, with respect to which an order has been issued pursuant to Section 18, 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 29. Procedure Is Alternative**

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances, and this Ordinance shall not prevent the Town from proceeding in a criminal action against any person, firm or corporation violating the provisions of this chapter as provided in N.C. G. S. 14-4. 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.”

Part II. That all ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Part III. That this Ordinance shall become effective upon its adoption by the Town Council of the Town of Midland, North Carolina.

**ADOPTED** this the 11<sup>th</sup> day of May, 2010.

ATTEST:

SEAL

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Mayor of Midland, Kathy Kitts

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Town Clerk Nancy E. Boyden, CMC