

ARTICLE J. - DEMOLITION BY NEGLECT OF HISTORIC LANDMARKS AND STRUCTURES WITHIN HISTORIC OVERLAY DISTRICTS

Sec. 10-6180. - STANDARDS.

Sec. 10-6181. - PETITION AND ACTION.

Sec. 10-6182. - METHODS OF SERVICE.

Sec. 10-6183. - SAFEGUARDS FROM UNDUE ECONOMIC HARDSHIP.

Sec. 10-6184. - APPEALS.

Sec. 10-6185. - OTHER CITY POWERS.

Sec. 10-6186. - PENALTIES AND REMEDIES.

Sec. 10-6180. - STANDARDS.

The exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature), or any type of outdoor advertising sign either designated as an *Historic Landmark* or found to have significance located within the Historic Overlay District *shall* be preserved by the *owner* or such other *person* who *may* have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects. The *owner*, or other *person* having such legal possession, custody, and control, *shall* upon *written* request by the *City* repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to any of the *following* defects:

- (a) Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- (b) Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- (c) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- (d) Deterioration or crumbling of exterior plasters or mortars.
- (e) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- (f) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- (g) Rotting, holes, and other forms of decay.
- (h) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
- (i) Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
- (j) Deterioration of fences, gates, and accessory structures.
- (k) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the *Historic Landmark*.
- (l) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or

unsafe conditions to life, health, or other *property*.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92; Ord. No. 2001-26-TC-208, §1, TC-5-01, 6-19-01)

Sec. 10-6181. - PETITION AND ACTION.

The Historic Development Commission or the County Historic Preservation Commission, whichever has jurisdiction, *may* file a petition listing specific defects with the Inspections Director requesting that he act under the *following* procedures to require the correction of deterioration or making of repairs to any *Historic Landmark* or significant structure located within the Historic Overlay District so that such structure *shall* be preserved and protected in accordance with the purposes of §§10-1051 and 10-2011(c) of this Code.

- (a) Whenever a petition is filed with the Inspections Director charging that a structure is undergoing demolition by neglect, the Director (or a designated agent) *shall*, if his preliminary investigation discloses a basis for such charges, within seven (7) days issue and cause to be served upon the *owner* and/or such other *person* who *may* have legal possession, custody, and control thereof, as the same *may* be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Director at a place within the *County* in which the *property* is located therein fixed not less than thirty (30) nor more than forty-five (45) days after the serving of such complaint; that the *owner* and/or parties in interest *shall* be given a right to answer to give testimony at the place and time fixed in the complaint; that the commission with jurisdiction *shall* also be given notice of the hearing; and that the rules of evidence prevailing in courts of law or equity *shall* not be controlling in hearings before the Director. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the *owner* and/or other parties in interest wishes to petition the Historic Development Commission for a claim of undue economic hardship.
- (b) If after such notice and hearing, the Director determines that the structure is undergoing demolition by neglect because it is deteriorating, or if its condition is contributing to deterioration, according to the standards of §10-6181, the Director *shall* state *in writing* the findings of fact in support of such determination and *shall* issue and cause to be served upon the *owner* and/or other parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration, or deteriorated. In the event that the *owner* and/or other parties in interest wish to petition for a claim of undue economic hardship, the Director's order *shall* be stayed until after the Historic Development Commission's determination in accordance with the procedures of §10-6183, except as provided in §10-6185

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92; Ord. No. 2001-26-TC-208, §1, TC-5-01, 6-19-01; Ord. No. 2011-963-TC-349, §1, TC-10-11, 11-1-11)

Sec. 10-6182. - METHODS OF SERVICE.

Complaints or orders issued by the Director *shall* be served upon *persons* either personally or by registered or certified mail; but if the whereabouts of such *persons* are unknown and the same cannot be ascertained by the Director in the exercise of reasonable diligence, and the Director *shall* make an affidavit to that effect, stating the steps taken to determine and locate the *persons* in interest, then the serving of such complaint or order *may* be made by publishing the same once each week for two (2) successive weeks in a newspaper generally circulated within the *City*. Where such service is by publication, a notice of the pending proceedings *shall* be posted in a conspicuous place on the premises thereby affected.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92)

Sec. 10-6183. - SAFEGUARDS FROM UNDUE ECONOMIC HARDSHIP.

- (a) When a claim of undue economic hardship is made owing to the effects of this article, the Inspections Director *shall* notify the Commission with jurisdiction within three (3) days *following* the hearing on the complaint. The Commission *shall* schedule a hearing on the claim at its next regular meeting, within the limitations of its procedures for application deadlines.
- The petitioner *shall* present the information provided under subsection (b) to the Commission. The Commission *may* require that an *owner* and/or parties in interest furnish such additional information that is relevant to its determination of undue economic hardship. The Commission *may* direct its staff to furnish additional information as the Commission believes is relevant. The Commission *shall* also state which form of financial proof it deems relevant and necessary to a particular case.
- In the event that any of the required information is not reasonably available to the *owner* and/or parties in interest and cannot be obtained by the *owner*, the *owner shall* describe the reasons why such information cannot be obtained.
- (b) When a claim of undue economic hardship is made owing to the effects of this article, the *owner* and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of hardship. The minimum evidence *shall* include for all *property*:
- (1) Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
 - (2) Financial resources of the *owner* and/or parties in interest.
 - (3) Cost of repairs.
 - (4) Assessed value of the land and improvements.
 - (5) Real estate taxes for the previous two (2) *years*.
 - (6) Amount paid for the *property*, date of purchase, and party from whom purchased, including a description of the relationship between the *owner* and the *person* from whom the *property* was purchased, or other means of acquisition of title, such as by gift or inheritance.
 - (7) Annual debt service, if any, for previous two (2) *years*.
 - (8) Any listing of the *property* for sale or rent, price asked, and offers received, if any.
- For income-producing *property*:
- (9) Annual gross income from the *property* for the previous two (2) *years*.
 - (10) Itemized operating and maintenance expenses for the previous two (2) *years*, including proof that adequate and competent management procedures were followed.
 - (11) Annual cash flow, if any, for the previous two (2) *years*.
- (c) Within sixty (60) days of the Commission's hearing on the claim, the Commission *shall* cause to be made a finding of undue or no undue economic hardship and *shall* enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Commission *shall* report such finding to the Inspections Director, and the Director *shall* cause to be issued an order for such *property* to be repaired within the time specified.
- (d) In the event of a finding of undue economic hardship, the finding *shall* be accompanied by a recommended plan to relieve the economic hardship. This plan *may* include, but is not limited to, *property* tax relief as *may* be allowed under North Carolina law, loans or grants from the *City*, the *County*, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The Commission *shall* report such finding and plan to the Inspections Director. The Inspections Director *shall* cause to be issued an order for such *property* to be repaired within the time

specified, and according to the provisions of the recommended plan.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92)

Sec. 10-6184. - APPEALS.

Findings made by the Inspections Director or by the Commission with jurisdiction *may* be appealed to the Board of Adjustment. To perfect such an appeal, application must be filed by an aggrieved party with the Board of Adjustment within ten (10) days *following* receipt of the order for repair of the *property* or determination. Appeals *shall* be in the nature of certiorari.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92)

Sec. 10-6185. - OTHER CITY POWERS.

Nothing contained within this article *shall* diminish the *City's* power to declare an unsafe building or a violation of the minimum housing code.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92)

Sec. 10-6186. - PENALTIES AND REMEDIES.

Enforcement of this article *may* be by any one (1) or more of the *following* methods, and the institution of any action under any of these methods *shall* not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

(a) Equitable Remedy.

The *City* may apply for any appropriate equitable remedy to enforce the provisions of this article.

(b) Order of Abatement.

The *City* may apply for and the court *may* enter an order of abatement. An order of abatement *may* direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the *property* into compliance with this article. Whenever the party is cited for contempt by the court and the *City* executed the order of abatement, the *City shall* have a lien, in the nature of a mechanic's and materialman's, on the *property* for the cost of executing the order of abatement.

(c) Civil Penalty.

No civil penalty *shall* be levied unless and until the Inspections Department *shall* deliver a *written* notice by personal service or by registered mail or by certified mail, return receipt requested, to the *person* responsible for each violation indicating the nature of the violation and ordering corrective action. The notice *shall* also set forth the time period when corrective measures must be completed. The notice *shall* state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of an appeal if any by the Board of Adjustment, corrective action has not been completed, a civil penalty *shall* be assessed in the amount of one hundred dollars (\$100.00) per day of continuing violation.

(Ord. No. 1992-66-TC-399, §5, TC-15-92, 10-6-92)

State law reference: G.S. 160A-400.14(b).