

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**Meeting Date:** November 19, 2008

**Subject:** Formal Adoption of the Minimum Housing Code

**Attachments:** 1. Minimum Housing Code

### **SUMMARY OF REQUEST:**

At the November 3<sup>rd</sup>, 2008 meeting, the Board approved the Minimum Housing Code with changes. This agenda item incorporates the changes as directed. It also clarifies that the effective date shall be January 1, 2009 to allow for preparation time for staff to begin enforcing the code.

As directed by the Board the adopted code will only apply to rental housing, includes the water contamination provision, does not include the vacant land and structure provision, raises the heating requirement to 65 degrees, and provides a 20-day appeal period. It also clarifies the liability language in Section 120-3 A.

### **BOARD ACTION REQUESTED:**

Staff requests the Board approve the code as attached with an effective date of January 1, 2009.

### **Suggested Motion:**

I move that the Board adopt the Minimum Housing Code as presented and establish the effective date of January 1, 2009.



# **MINIMUM HOUSING CODE**

**Adopted November 19, 2008**

## CHAPTER 120 MINIMUM HOUSING CODE

### ARTICLE 1 ADMINISTRATION

#### SECTION 120-1 GENERAL

**A. Title.** These regulations shall be known as the Henderson County Minimum Housing Code, hereinafter referred to as "this code."

**B. Purpose.** The purpose of this code is to establish and enforce minimum requirements for the protection of the life, health, welfare, safety, and property of the general public and the owners and occupants of places of human habitation.

**C. Scope.** The provisions of this code shall apply to all existing rental dwellings and constitute minimum requirements and standards for: premises, structures, equipment and facilities for living conditions, safety from fire and other hazards, and for safe and sanitary maintenance. The provisions shall also constitute minimum requirements and standards for the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties. Demountable units such as manufactured homes shall be subject to the North Carolina Regulations for Manufactured Homes and other applicable provisions of this Code.

**D. Intent.** This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein. Repairs, alterations, additions to and change of occupancy in existing buildings shall comply with the North Carolina Building Code.

**E. Severability.** If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

#### ARTICLE 120-2 APPLICABILITY

**A. General.** The provisions of this code shall apply to all matters affecting or relating to structures and premises, as set forth in Section 120-1. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

**B. Maintenance.** Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

**C. Application of other codes.** Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the North Carolina Building Code. Nothing in this code shall be construed to cancel, modify or set aside any provision of the Henderson County Land Development Code, Nuisance Ordinance, and Solid Waste Ordinance.

**D. Existing remedies.** The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

**E. Workmanship.** Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

**F. Historic buildings.** The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

**G. Referenced codes and standards.** The codes and standards referenced in this code shall be those that are listed in Article 8 and considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

**H. Requirements not covered by code.** Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this code, shall be determined by the code official responsible for administration and enforcement of the State Building Code.

## **SECTION 120-3 CODE ENFORCEMENT**

**A. Liability.** Except as may otherwise be provided by statute or local law or Ordinance, no officer, agent, or employee of the county charged with the enforcement of this Ordinance shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this Code. No person who institutes or assists in the prosecution of a criminal proceeding under this Ordinance shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission.

**B. Fees.** The fees for activities and services performed by carrying out the responsibilities under this code shall be as defined by the Henderson County Board of Commissioners.

## **SECTION 120-4 DUTIES AND POWERS OF THE CODE OFFICIAL**

**A. General.** The code official responsible for enforcement of this code and/or their designees shall enforce the provisions of this code.

**B. Interpretation of code.** The code official shall have authority as necessary in the interest of public health, safety and general welfare, to interpret and implement the provisions of this code; to secure the intent thereof; and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, the North Carolina Building Code, or of violating accepted engineering methods involving public safety.

**C. Inspections.** The code official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

**D. Right of entry.** The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law including an administrative warrant.

**E. Identification.** The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

**F. Notices and orders.** The code official shall issue all necessary notices or orders to ensure compliance with this code.

**G. Department records.** The code official shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be maintained in accordance with State regulations regarding the retention of records.

**H. Coordination of inspections.** Whenever in the enforcement of this code or another code or ordinance, the responsibility of more than one code official of the jurisdiction is involved, it shall

be the duty of the code officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever a code official from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the code official's authority to enforce, the code official shall report the findings to the code official having jurisdiction.

## **SECTION 120-5 APPROVAL**

**A. Modifications.** Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

**B. Alternative materials, methods and equipment.** The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material or method of construction shall be approved where the code official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

**C. Required testing.** Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the code official shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

**D. Test methods.** Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall be permitted to approve appropriate testing procedures performed by an approved agency.

**E. Test reports.** Reports of tests shall be retained by the code official for the period required for retention of public records.

**F. Material and equipment reuse.** Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested when necessary, placed in good and proper working condition and approved.

## **SECTION 120-6 VIOLATIONS AND PENALTIES**

**A. Unlawful acts.** Any person who violates this code, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time frame, when ordered or notified to do so by the code official, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law.

**B. Notice of violation.** The code official shall serve a notice of violation and/or compliance order in accordance with Section 120-7.

**C. Violation penalties.** Violations of this code shall be prosecuted under Henderson County Code Chapter I, Article II, § 1-14 Violations and Penalties. Each day of violation constitutes a separate offense.

**D. Civil Remedies.** In the event of a violation or threat of violation of this Ordinance, the code official, through the County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The code official, through the County Attorney, enforcing provisions of this code may seek costs and expenditures, including staff time and attorneys' fees. An action taken by the

authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

**E. Abatement of violation.** The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

## **SECTION 120-7 NOTICES AND ORDERS**

**A. Notice to person responsible.** Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 120-7.B. and 120-7.C to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 120-8.C.

**B. Public Notification.** The code official shall provide information in writing about the housing violation and potential hazard to the following persons as applicable and appropriate:

- (1) Child Protection Division in situations of potential child abuse or endangerment,
- (2) Adult Protection Division in situations of potential vulnerable adult abuse or endangerment,
- (3) Neighbors in close proximity likely to be affected by the conditions found at the site,
- (4) Local Law Enforcement Officer, or
- (5) Other state or local authorities that may have public or environmental protection responsibilities.

**C. Form.** Such notice prescribed in Section 120-7.A. shall be in accordance with all of the following:

- (1) Be in writing.
- (2) Include a description of the real estate sufficient for identification.
- (3) Include a statement of the violation or violations and why the notice is being issued.
- (4) Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code. Inform the property owner of the right to appeal.
- (5) Include a statement of the right to file a lien in accordance with Section 120-6.C.

**D. Method of service.** Such notice shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally;
- (2) Sent by certified or first-class mail addressed to the last known address; or
- (3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

**E. Penalties.** Penalties for noncompliance with orders and notices shall be as set forth in Section 120-6.C.

**F. Transfer of ownership.** It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

**G. Duties of Tenants and Owners.** This Code is not intended to interfere with or abolish the duties imposed on tenants and owners of rental property by North Carolina General Statutes, Article 42-43, or with lawful written agreements between property owners and tenants.

## **SECTION 120-8 UNSAFE STRUCTURES AND EQUIPMENT**

**A. General.** When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

- (1) Unsafe structures.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.
- (2) Unsafe equipment.** Unsafe equipment includes any boiler, heating equipment, elevator (apartments), moving stairway (apartments), electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.
- (3) Structure unfit for human occupancy.** A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, because the location of the structure constitutes a hazard to the occupants of the structure or to the public or if it appears to the code official to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- (4) Unlawful structure.** An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

**B. Closing of vacant structures.** If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to attract a public nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

**C. Notice.** Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place outside of the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 120-7.C. If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 120-7.C

**D. Placarding.** Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

- (1) Placard removal.** The code official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall be subject to the penalties provided by this code.

**E. Prohibited occupancy.** Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy a placarded premise or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premise or operate placarded equipment shall be liable for the penalties provided by this code.

## **SECTION 120-9 EMERGENCY MEASURES**

**A. Imminent danger.** When, in the opinion of the code official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

**B. Hearing.** Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the Board of Adjustment, be afforded a hearing as described in this code.

## **SECTION 120-10 DEMOLITION**

**A. General.** The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than six months, to demolish and remove such structure. The structure shall be deemed irreparable if the cost of repairs exceeds fifty percent of the fair market value of the structure.

**B. Notices and orders.** All notices and orders shall comply with Section 120-7.

**C. Failure to comply.** If the owner of a premise fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

**D. Salvage materials.** When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

## **SECTION 120-11 MEANS OF APPEAL**

**A. Right of Appeal.** Any person directly affected by a decision of the code official shall have the right to appeal by filing a written request with the Henderson County Board of Adjustment for an administrative hearing within twenty (20) calendar days after the decision, notice or order was served. In the event of an unknown or absent property owner, the appeal must be requested within twenty (20) calendar days of the day of posting of the notice under Section 120-7.



**B. Hearing.** If any owner or occupant makes a written request to the Board of Adjustment for hearing, such hearing shall be held in a quasi-judicial procedure before the Board of Adjustment. A 4/5 vote of the Board is required to overturn the decision of a code official.

**C. Schedule.** The hearing shall be held at the next available meeting after the request for a hearing was received.

**D. Notice.** The Department shall mail a notice to the appealing party of the time and place of the hearing at least ten calendar days prior to the hearing.

**E. Witnesses and Evidence.** All parties shall have full opportunity to respond to and present evidence and witnesses.

**F. Standard of Proof.** The appellant shall have the burden of proving its position by clear and convincing evidence.

**G. Rules of Evidence.** Hearings shall be informal and the rules of evidence as applied in the courts shall not apply. Irrelevant, immaterial and repetitious evidence shall be excluded.

**H. Record of Hearing.** The hearing shall be recorded and the minutes of the meeting shall be approved by the Board of Adjustment at their next scheduled meeting.

**I. Notice of Decision.** The written decision of the Board of Adjustment shall be issued within 45 calendar days following the hearing. Unless otherwise provided by law, the decision of the Board of Adjustment shall constitute the final decision.

**J. Further Appellate Rights.** Any party aggrieved by a final decision is entitled to judicial review of the decision. A petition for a writ of certiorari by the party must be filed with the Court of Appeals not more than thirty calendar days after the party receives the written decision from the Board of Adjustment.

## **ARTICLE 2 DEFINITIONS**

### **SECTION 120-21 GENERAL**

**A. Scope.** Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section.

**B. Interchangeability.** Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

**C. Terms defined in other codes.** Where terms are not defined in this code and are defined in the North Carolina Building Code, North Carolina Fire Prevention Code, Henderson County Land Development Code, North Carolina Plumbing Code, North Carolina Mechanical Code, North Carolina Existing Building Code or the North Carolina Electrical Code, such terms shall have the meanings ascribed to them as in those codes.

**D. Terms not defined.** Where terms are not defined through the methods authorized by this Article, such terms shall have ordinarily accepted meanings such as the context implies.

**E. Parts.** Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit" "housekeeping unit" or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

### **SECTION 120-22 DEFINITIONS**

**APPELLANT.** One who appeals a judicial decision.

**APPROVED.** Approved refers to approval by the code official as the result of investigation and tests conducted by him or her, and/or by reason of accepted principles or tests by nationally

recognized organizations.

**BASEMENT.** That portion of a building which is partly or completely below grade.

**BATHROOM GROUP.** A group of fixtures, including or excluding a bidet, consisting of a water closet, lavatory, and bathtub or shower. Such fixtures are located on the same floor level.

**BEDROOM.** Any room or space used or intended to be used for sleeping purposes.

**CODE OFFICIAL.** The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

**CONDEMN.** To judge unfit for occupancy.

**COURT.** A space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls or a building.

**DEAD LOAD.** The weight of materials of construction incorporated into the building, including but not limited to walls, floors, ceilings, stairways, built-in partitions, finishes, cladding, and other similarly incorporated architectural and structural items, and fixed service equipment.

**DEPARTMENT.** The department responsible for the administration and enforcement of this code.

**DETERIORATED.** A dwelling unit that is unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this Chapter, at a cost not in excess of fifty percent (50%) of its value, as determined by the findings of the code official.

**DILAPIDATED.** A dwelling unit that is unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this Chapter, at a cost of more than fifty percent (50%) of its value, as determined by the findings of the code official.

**DWELLING UNIT.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**EASEMENT.** That portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on or above a said lot or lots.

**EXTERIOR PROPERTY.** The open space on the premises and on adjoining property under the control of owners or operators of such premises.

**EXTERMINATION.** The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible, materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

**GARBAGE.** All putrescible waste, including animal offal and carcasses, excluding sewage and human waste.

**GUARD.** A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

**HABITABLE SPACE.** Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

**HOUSEKEEPING UNIT.** A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

**IMMINENT DANGER.** A condition which could cause serious or life-threatening injury or death at any time.

**INFESTATION.** The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

**INOPERABLE MOTOR VEHICLE.** A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

**LABELED.** Devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.

**LET FOR OCCUPANCY OR LET.** To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

**LIVE LOAD.** Those loads produced by the use and occupancy of the building or other structure and do not include construction or environmental loads such as wind load, snow load, rain load, earthquake load, flood load or dead load.

**OCCUPANCY.** The purpose for which a building or portion thereof is utilized or occupied.

**OCCUPANT.** Any individual living or sleeping in a building, or having possession of a space within a building.

**OPENABLE AREA.** That part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.

**OPERATOR.** Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

**OWNER.** Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

**PERSON.** An individual, corporation, partnership or any other group acting as a unit.

**PREMISES.** A lot, plot or parcel of land, easement or public way, including any structures thereon.

**PUBLIC NUISANCE.** Any activity or failure to act that adversely affects the public and shall include, but is not limited to, any condition which poses an immediate and direct hazard to human health if left unheeded due to the existence of the condition itself or due to the immediate threat of transmission of disease through insects, animals, or other means of transmission or infections.

**PUBLIC WAY.** Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use and that has a clear width and height of not less than ten feet.

**PUTRESCIBLE.** Solid waste capable of being decomposed by microorganisms including, but not limited, to kitchen waste.

**ROOMING HOUSE.** A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

**ROOMING UNIT.** Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

**RUBBISH.** Solid or liquid waste from residences.

**STRICT LIABILITY OFFENSE.** An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

**STRUCTURE.** That which is built or constructed or a portion thereof.

**TENANT.** A person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.

**TOILET ROOM.** A room including or excluding a bidet and or urinal, containing a water closet, lavatory but not a bathtub or shower.

**VENTILATION.** The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

**WORKMANLIKE.** Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

**YARD.** An open space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this code, on the lot on which a building is situated.

## **ARTICLE 3 GENERAL REQUIREMENTS**

### **SECTION 120-31 GENERAL**

**A. Scope.** The provisions of this section shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

**B. Responsibility.** The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this section. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

### **SECTION 120-32 to 33 (Reserved)**

### **SECTION 120-34 EXTERIOR STRUCTURE**

**A. General.** The exterior of a structure shall be maintained so as not to pose a threat to the public health, safety or welfare.

**B. Premises identification.** A *sign* indicating the address of a property shall be provided as required by Article 142 of the Henderson County Code, *Property Addressing*.

**C. Structural members.** All structural members shall be capable of safely supporting the imposed dead and live loads.

**D. Foundation walls.** All foundation walls shall be free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of water, rodents and other pests.

**E. Exterior walls.** All exterior walls shall be free from holes and breaks.

**F. Roofs and drainage.** The roof and flashing shall be sound, tight and not have defects that admit rain.

**F. Window, skylight and door frames.** Every window, skylight, door and frame shall be kept weather tight.

**G. Building security.** Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

### **SECTION 120-35 INTERIOR STRUCTURE**

**A. General.** The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a dormitory, or two or more dwelling units, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

Conditions in the structure shall be maintained to prevent the growth of mold. Situations which cause mold should be addressed immediately.

## SECTION 120-36 to 37 (Reserved)

### SECTION 120-38 EXTERMINATION

**A. Infestation.** All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.

**B. Owner.** The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

**C. Single occupant.** The occupant of a one-family dwelling or of a single-tenant structure shall be responsible for extermination on the premises.

**D. Multiple occupancy.** The owner of a structure containing two or more dwelling units, a multiple occupancy, townhouse, a rooming house or a structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

**E. Occupant.** The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

**Exception:** Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

## ARTICLE 4 LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS

### SECTION 120-41 GENERAL

**A. Scope.** The provisions of this section shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

**B. Responsibility.** The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this section.

**C. Alternative devices.** In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the North Carolina Building Code shall be permitted.

### SECTION 120-42 LIGHT

**A. Habitable spaces.** Every habitable space shall have at least one window facing directly to the outdoors or to a court to permit natural lighting.

**Exception:** Where natural light for rooms or spaces without exterior windows or glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 5 square feet. The exterior window area shall be based on the total floor area being served.

**B. Common halls and stairways.** Every common hall, ingress, egress and stairway in residential occupancies, other than in one-and two-family dwellings, shall be lighted at all times with at least a 60 watt standard incandescent light bulb (or fluorescent equivalent) provided that the spacing between lights shall not be greater than 30 feet.

## SECTION 120-43 VENTILATION

**A. Habitable spaces.** Every habitable space shall have at least one openable window to permit natural ventilation.

**Exception:** Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least 8 percent of the floor area of the interior room or space, but not less than 25 square feet. The ventilation openings to the outdoors shall be based on a total floor area being ventilated.

**B. Bathrooms and toilet rooms.** Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by Section 120-43.A. except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge directly to the outdoors and shall not be recirculated.

**C. Process ventilation.** Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted directly to the exterior and not be recirculated to any space.

**D. Clothes dryer exhaust.** Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted directly to the outside in accordance with the manufacturer's instructions.

## SECTION 120-44 OCCUPANCY LIMITATIONS

**A. Overcrowding.** Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor area per additional occupant. The floor area shall be calculated on the basis on the total area of all habitable rooms.

## ARTICLE 5 PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

### SECTION 120-51 GENERAL

**A. Scope.** The provisions of this section shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

**B. Responsibility.** The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this section.

### SECTION 120-52 REQUIRED FACILITIES

**A. Dwelling units.** Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

**B. Rooming houses.** At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

### SECTION 120-53 (Reserved)

### SECTION 120-54 PLUMBING SYSTEMS AND FIXTURES

**A. General.** All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

**B. Fixture clearances.** Plumbing fixtures shall have adequate clearances for usage and cleaning.

**C. Plumbing system hazards.** Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting, cross connection, back-flow, improper installation, deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

## **SECTION 120-55 WATER SYSTEM**

**A. General.** Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the North Carolina Plumbing Code.

**B. Contamination.** The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

**C. Water heating facilities.** Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of hot water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

## **SECTION 120-56 SANITARY DRAINAGE SYSTEM**

**A. General.** All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system. Septic systems should be properly maintained so as not to cause failure.

**B. Maintenance.** Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

# **ARTICLE 6 MECHANICAL AND ELECTRICAL REQUIREMENTS**

## **SECTION 120-61 GENERAL**

**A. Scope.** The provisions of this section shall govern the minimum mechanical and electrical facilities and equipment to be provided.

**B. Responsibility.** The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this section.

## **SECTION 120-62 HEATING FACILITIES**

**A. Facilities required.** Heating facilities shall be provided in structures as required by this section.

**B. Residential occupancies.** Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 65°F (18.33°C) during the heating season. Cooking

appliances shall not be used to provide space heating to meet the requirements of this section.

**C. Heat supply.** Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 65°F (18.33°C) in all habitable rooms.

**Exceptions:** When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity.

**D. Occupiable common areas.** Indoor common areas spaces shall be supplied with heat to maintain a temperature of not less than 60°F (18°C) during the period the spaces are occupied.

**Exceptions:**

- (1) Processing, storage and operation areas that require cooling or special temperature conditions.
- (2) Areas in which persons are primarily engaged in vigorous physical activities.

**E. Room temperature measurement.** The required room temperatures shall be measured 3 feet above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

## **SECTION 120-63 MECHANICAL EQUIPMENT**

**A. Mechanical appliances.** All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

**B. Removal of combustion products.** All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

**Exception:** Fuel-burning equipment and appliances which are labeled for unvented operation.

- (1) Unvented fuel-burning equipment shall not be installed in any bedroom or room used for sleeping purposes.

**C. Clearances.** All required clearances to combustible materials shall be maintained.

**D. Safety controls.** All safety controls for fuel-burning equipment shall be maintained in effective operation.

## **SECTION 120-64 ELECTRICAL FACILITIES**

**A. Facilities required.** Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 120-65.

**B. Service.** The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the North Carolina Electrical Code. Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes.

**C. Electrical system hazards.** Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

## **SECTION 120-65 ELECTRICAL EQUIPMENT**

**A. Installation.** All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.



**B. Lighting fixtures.** Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room shall contain at least one electric lighting fixture.

#### **SECTION 120-66 (Reserved)**

#### **SECTION 120-67 DUCT SYSTEMS**

**A. General.** Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

### **ARTICLE 7 FIRE SAFETY REQUIREMENTS**

#### **SECTION 120-71 GENERAL**

**A. Scope.** The provisions of this section shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

**B. Responsibility.** The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this section.

#### **SECTION 120-72 MEANS OF EGRESS**

**A. General.** A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure outside to the public way. Means of egress shall comply with the North Carolina Fire Prevention Code.

**B. Aisles.** The required width of aisles in accordance with the North Carolina Fire Prevention Code shall be unobstructed.

**C. Locked doors.** All means of egress doors shall be readily operable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the North Carolina Building Code.

**D. Emergency escape openings.** Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following.

Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

#### **SECTION 120-73 FIRE-RESISTANCE RATINGS**

**A. Fire-resistance-rated assemblies.** The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

**B. Opening protectives.** Required opening protectives shall be maintained in an operative condition. All fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

#### **SECTION 120-74 FIRE PROTECTION SYSTEMS**

**A. General.** All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the North Carolina Fire Prevention Code.

**B. Smoke Alarms.** Single or multiple-station smoke alarms shall be installed and maintained per the following:

- (1) Residences constructed prior to June 30, 1999 shall have one battery operated smoke alarm for each floor of the dwelling unit.
- (2) Residences constructed on or after June 30, 1999 shall have one smoke alarm in each bedroom, one smoke alarm within 10 feet of every sleeping area, and at least one smoke alarm on each floor, including basements, but not including crawl spaces and uninhabitable attics. Such smoke alarms shall be electrically operated with a battery backup power source.
- (3) All residential dwelling units shall maintain required smoke alarm and fire protection systems required by the N.C. State Building Code applicable at the time of construction or otherwise applicable State law or regulation.
- (4) For rental dwelling units, the owner shall provide the required smoke alarms, consistent with this ordinance and state law. This shall include functioning smoke alarms with the initial occupancy by a tenant. Tenants shall be required to maintain the batteries for smoke alarms as required by state law.

**C. Power source.** When an electrical power source is required, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

**D. Interconnection.** For residential dwellings built after June 30, 1999 where more than one smoke alarm is required to be installed, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

## ARTICLE 8 REFERENCED STANDARDS

This section lists the standards that are referenced in various sections of this document. The application of the referenced standards shall be as specified in Section 120-2G.

### Referenced in

Code Section number	Title
120-21,120-64	North Carolina Electrical Code
120-2, 120-21,120-62, 120-72	North Carolina Building Code
120-21,120-72,120-74	North Carolina Fire Prevention Code
120-21	North Carolina Mechanical Code
120-21,120-55	North Carolina Plumbing Code
120-6,120-34	Henderson County Code
120-2	Henderson County Nuisance Ordinance
120-2, 120-21,120-32	Henderson County Land Development Code
120-1	North Carolina Regulations for Manufactured Homes
120-2	Henderson County Solid Waste Ordinance
120-3	North Carolina Statute 153A-132
120-7	North Carolina General Statute Article 42-53

**ARTICLE 9 EFFECTIVE DATE**

This ordinance becomes effective on January 1, 2009.

Adopted and approved this 19<sup>th</sup> day of November, 2006.

**Henderson County Board of Commissioners**

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**By: William L. Moyer, Chairman**

**Attested By:**

**[OFFICIAL SEAL]**

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**Elizabeth W. Corn, Clerk to the Board**