

ORDINANCE NO. 2021-0622-17

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 5 OF APEX TOWN CODE

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX AS FOLLOWS:

Section 1. Section 5-81 of the Town of Apex Code of Ordinances is hereby amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

Sec. 5-81. - Findings and purpose.

(a) Pursuant to G.S. 160~~DA-1201441~~, it is hereby found and declared that there exist in the town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities and due to other conditions rendering such dwellings unsafe or insanitary, dangerous and detrimental to the health, safety and morals and otherwise inimical to the welfare of the residents of the town.

(b) To protect the health, safety and welfare of the residents of the town as authorized by G.S. 160~~DA-1201441~~, it is the purpose of this article to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation.

Section 2. Section 5-100 of the Town of Apex Code of Ordinances is hereby amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

...

(c) *Failure to comply with order.*

(1) *In personam remedy.* If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the code enforcement officer to repair, alter or improve the same within the time specified therein or if the owner of a dilapidated dwelling shall fail to comply with an order of the code enforcement officer to vacate, close, remove or demolish the same within the time specified therein, the code enforcement officer shall submit to the town council at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing the owner to comply with the order of the code enforcement officer, as authorized by the General Statutes.

(2) *In rem remedy.* After failure of an owner of a deteriorated dwelling or dwelling unit or of a dilapidated dwelling to comply with an order of the code enforcement officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in paragraph (1) above, the code enforcement officer shall submit to the town council an ordinance ordering the code enforcement officer to cause the dwelling or dwelling unit to be repaired, altered or improved or vacated, closed and removed or demolished, as provided in the original order of the code enforcement officer, and pending such removal or demolition, to placard the dwelling as provided by G.S. 160~~DA-443~~1203(4).

(d) *Appeals from orders of code enforcement officer.* An appeal from any decision or order of the code enforcement officer may be taken by any person aggrieved thereby. Any appeal shall be taken within ten days from the rendering of the decision or service of the order and shall be taken by filing with the code enforcement officer and with the zoning board of adjustment a notice of appeal which shall specify the grounds on which the appeal is based. On the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record on which the decision appealed from was made. When an appeal is from a decision of the code enforcement officer refusing to allow the person aggrieved thereby to do any act, the decision shall remain in force until modified or reversed, When any appeal is made from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board unless the code enforcement officer certifies to the board, after the notice of appeal is filed with such officer, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of the requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown on not less than one day's written notice to the code enforcement officer by the board or by a court of record on petition made pursuant to G.S. 160~~DA-446(e)~~1208(a).

(1) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from and may make such decision and order as in its opinion ought to be made in the matter; and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing on appeals in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article to adapt the application of the article to the necessities of the case to the end that the spirit of the article shall be observed, public safety and welfare secured and substantial justice done.

(2) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board but not otherwise.

(e) *Petition to superior court by owner.* Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the code enforcement officer pending a final disposition of the cause, as provided by G.S. 160~~DA-446(f)~~**1208(d)**.

Section 3. Section 5-102 of the Town of Apex Code of Ordinances is hereby amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

Sec. 5-102. - In rem action; placarding.

(a) After failure of an owner of a dwelling or dwelling unit to comply with an order of the code enforcement officer issued pursuant to the provisions of this article and on adoption by the town council of an ordinance authorizing and directing such officer to do so, as provided by G.S. 160~~DA-1203~~**443**(5) the code enforcement officer shall proceed to cause the dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness established by this article or to be vacated, closed and removed or demolished, as directed by the ordinance of the town council and shall cause to be posted on the main entrance of the dwelling or dwelling unit a placard with the following words:

"This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(b) Each such ordinance shall be recorded in the office of the register of deeds in the county and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160~~DA-1203~~**443**(5).

Section 4. Section 5-103 of the Town of Apex Code of Ordinances is hereby amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

Sec. 5-103. - Costs to be lien on property.

As provided by G.S. 160~~DA-1203(7)~~**443**(6), the amount of the cost of any repairs, alterations or improvements; vacating and closing or removal or demolition caused to be made or done by the code enforcement officer pursuant to section 5-102 shall be a lien against the real property on which the cost was incurred. Such lien shall

be filed, have the same priority and be enforced and the costs collected as provided by G.S. 160A-207.

Section 5. It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances and the sections of this ordinance may be renumbered to accomplish such intention.

Section 6. Severability, Conflict of Laws. If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 7. Effective Date. This ordinance shall be effective upon adoption.

Introduced by Council Member: _____

Seconded by Council Member: _____

This the 22nd day of June, 2021.

Jacques K. Gilbert
Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

APPROVED AS TO FORM:

Laurie L. Hohe
Town Attorney