

CHAPTER 6 BUILDINGS

ARTICLE IV: COMMERCIAL MAINTENANCE CODE

GENERAL PROVISIONS

§ 6.141 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Amendments to these definitions shall apply only when all procedural requirements are met, as described in § 6.68.

BUILDING. Any covered structure intended for shelter, housing or enclosure of persons, animals 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, the use of which 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 CODE. The State Building Code.

BUILDING OF HISTORICAL VALUE. A building within the town which is listed on the national register, or constituting historical significance to the general citizenry of the town due to age, architectural design or human occurrence.

BUILDING, PRINCIPAL. A building in which the principal use of the lot, parcel or tract is conducted.

COMMERCIAL BUSINESS. Any business or enterprise which offers for sale foods or services or which, in any manner, conducts commerce within the town limits.

DETERIORATION. The condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeling paint or other evidence of physical decay.

DISTRICT. The primary zoning district containing a certain land area, and shall not be construed to include an overlay district.

FIRE HAZARD. Any activity or act which increases, or may cause an increase, of the hazard or menace of fire to a greater degree than reasonable for the conduct of the commercial business 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.

LOT. Includes the words PLOT and PARCEL.

MAINTENANCE CODE ADMINISTRATOR. The person delegated as the same by the Town Manager.

MIXED OCCUPANCY. Any building that is used for two or more occupancies classified by different occupancy use groups.

NUISANCE.

(1) Any public nuisance known at common law or in equity jurisprudence, or as provided by the State General Statutes or the ordinances of the town.

(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.

(3) A physical condition dangerous to human life or detrimental to health of persons in, on or near the premises where the condition exists.

(4) An unsanitary condition or condition that is dangerous to public health, well being or the general welfare.

(5) Fire hazard.

OPERATOR. Any person who has charge, care or control of premises 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 premises is actually occupied.

PHYSICAL VALUATION. The estimated cost to replace the building in kind.

PLUMBING. Any 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 bath, installed clothes washing machines, catch basins, vents, and other similar fixtures, together with all connections to water, sewer and gas lines, and water pipes and lines utilized in conjunction with air conditioning equipment.

PREMISES. A lot, plot or parcel of land including the buildings or structures thereon, under control by the same owner or operator and devoted to or zoned for commercial use, together with all adjacent land.

SANITARY SEWER. Any sanitary sewer owned, operated and maintained by the town and available for public use for the disposal of sewage.

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

STORY. That portion of a building between the surface of any interior floor and the ceiling next above. A basement is considered a story only when its ceiling is over six feet above the average level of the finished ground surface adjacent to the exterior walls of the front entrance and/or side street entrance of the building.

STRUCTURE. Anything constructed or erected which requires location on the ground. The term STRUCTURE does not include the terms RETAINING WALL, FENCE, UTILITY POLE or DRIVEWAY. Refer to the definition of BUILDING herein.

USE. Includes arranged, designed, and/or intended for a use, activity and/or purpose.

WASHROOM. An enclosed space containing one or more bathtubs, showers or both, and which also shall include any toilet, lavatory or fixture serving similar purposes.

WATER CLOSET COMPARTMENT. Enclosed space containing one or more toilets which may also contain one or more lavatories, urinals and other plumbing fixtures.

ZONING MAP. The official zoning map of the town and its extraterritorial jurisdiction.

§ 6.142 PURPOSE.

It is the purpose of the provisions of this chapter to provide a just, equitable and practicable method, whereby commercial buildings or structures which from any cause, endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, diminish property values, exhibit characteristics of abandonment or neglect, or detract excessively from the appropriate appearance of the commercial area, may be required to be repaired, vacated or demolished. The provisions of this code are cumulative with and in addition to any other remedy provided by law, including the current editions of standard codes adopted by the town.

§ 6.143 SCOPE.

The provisions of this code shall apply to all commercial buildings and structures which are now in existence or which may be built within the town limits or annexed therein, and to all lands zoned commercial within the town limits.

§ 6.144 APPLICABILITY.

(A) Every commercial building or structure and the premises on which it is situated, used or intended to be used for commercial business occupancy shall comply with the provisions of this chapter, whether or not the building shall have been constructed, altered or repaired before or after the enactment of this chapter, and irrespective of any permits or licenses which shall have been issued for the use or occupancy of the building, or for the installment or repair of equipment or facilities prior to the effective date of this chapter.

(B) This chapter establishes minimum standards for the initial and continual occupancy and use of all commercial buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building equipment or facilities contained therein except as provided in § 6.05.

(C) Where there is mixed occupancy, any commercial business use therein shall be nevertheless regulated by and subject to the provisions of this chapter.

§ 6.145 CONFLICTING PROVISIONS.

In any case where the provisions of this chapter impose a higher or lower standard than that set forth in any other ordinance of the town or under the laws of the state, the higher standard shall prevail. Interpretation shall be the authority of the Commercial Maintenance Code Administrator.

§ 6.146 COMPLIANCE.

(A) It shall be the duty of each owner and each operator of a commercial building or premises within the town to comply with the regulations and requirements set forth in this chapter. No license, permit or certification of occupancy shall be issued unless and until all applicable sections of this chapter have been complied with.

(B) No land or building or combination thereof shall be used in a manner inconsistent with or in conflict with the requirements of this chapter.

§ 6.147 DEMOLITION OF COMMERCIAL BUILDINGS.

Where a building is under the jurisdiction of the code, the building may be demolished by the owner provided that the following requirements are met:

(A) The owner obtains a demolition permit from the County Building Department.

(B) All sewer, gas, water and similar taps or connections are properly closed and disconnected.

(C) All debris from the building is removed from the site. This requirement is for the removal of all debris that is above the street level of the building.

(D) The lot is graded to a smooth, even, finished grade, and 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 12 inches of clean fill which shall be graded to a smooth, even finished grade.

(E) Where walls of adjacent buildings become exposed as a result of the demolition, the walls must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of the adjacent property and weather proofed to prevent deterioration of the wall.

§ 6.148 BUILDINGS AND PREMISES DAMAGED.

(A) Any building or premises damaged by fire, storm, collapse or an act of nature to such an extent that the cost of repair and reconstruction does not exceed 50% of the physical valuation of the entire structure at the time the damage occurred, the damaged portions of the building or premises may be razed or shall be secured to prevent unauthorized entry, and repaired in a manner that complies in all respects with all ordinances of the town related to new buildings.

(B) The razing or repair work shall begin within 120 days of the damage. Extensions of this time requirement may be issued by the Commercial Maintenance Board of Adjustments and appeals upon showing of cause by the property owner.

DUTIES AND RESPONSIBILITIES OF OWNER

§ 6.149 RELATIONSHIP OF DUTIES AND RESPONSIBILITIES TO OCCUPANCY.

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

§ 6.150 NUISANCES AND HAZARDS.

It shall be the duty and responsibility of the owner of commercial premises to see that the commercial premises under the control of the owner are maintained to ensure that there is compliance with the following provisions of this section:

(A) The premises are free of all nuisances and any hazards to the safety of the occupants, customers or other persons utilizing the premises or to pedestrians passing thereby.

(B) The premises are free of loose and overhanging objects which, by reason of location above ground level, constitute a danger of falling on persons in the vicinity thereof.

(State Building Code Reference, § 105.12, Unsafe buildings)

(C) The premises are free of holes, excavations, breaks, projections, or obstructions on walks, driveways, parking lots and parking areas, and other parts of the premises which are accessible to and used by persons on the premises. All the holes and excavations shall be filled and repaired, walks and steps replaced and other conditions removed where necessary to eliminate hazards or unsafe conditions with reasonable dispatch by the owner upon their discovery.

§ 6.151 CONDITION OF EXTERIOR OF PREMISES AND STRUCTURES.

(A) The exterior of the premises and structure shall be maintained in good repair and free from deterioration so as not to constitute a nuisance.

(B) All surfaces shall be maintained free of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other similar hazardous conditions.

(State Building Code reference, § 105.12, Unsafe buildings)

(C) All structures and decorative elements of building exteriors shall be repaired or replaced in a workmanlike manner to match as closely as possible the original materials and construction techniques.

§ 6.152 SOUNDNESS OF FLOORS, INTERIOR WALLS AND CEILINGS.

All floors, interior walls and ceilings of every structure shall be structurally sound and shall be maintained in a good condition compatible with its business use, and where open to the public shall be maintained in a condition so as not to constitute a hazard to the public.

§ 6.153 STRUCTURALLY DEFICIENT BUILDING IN REAR.

Structures at the rear of buildings attached or unattached to the principal commercial structure, which are found by the Maintenance Code Administrator to be structurally deficient, shall be properly repaired or demolished.

§ 6.154 REMOVAL OF MISCELLANEOUS ELEMENTS ON BUILDING WALLS, ROOFS AND SURROUNDING PREMISES.

All existing miscellaneous elements on building walls and roofs and surrounding premises, such as empty electrical or other conduits, unused sign brackets and the like shall be removed.

§ 6.155 WALLS.

(A) All foundation walls shall be kept structurally sound, and capable of bearing imposed loads safely.

(State Building Code reference, § 1302.3, Concrete footings and § 1302.5, Foundation walls)

(B) All material used to maintain or reconstruct a wall or part thereof, including the application of sidings or other surfacing material, shall be of standard quality.

(C) Where a wall of a building has become exposed as a result of demolition of adjacent buildings the wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weather proofed, if necessary, with construction material to prevent deterioration of the wall.

§ 6.156 WINDOWS.

(A) All windows must be tight fitting and have sashes of proper size and design. Sashes with rotten wood, broken joints, or broken or loose mullions or muntins shall be replaced. All broken and missing windows shall be replaced with glass or plexiglass. All exposed wood shall be repaired and painted.

(B) All windows shall be maintained free of broken glass. Where a window glass larger than four square feet becomes cracked to an extent that the largest single portion of the window free of a crack is less than 80% of the total surface area of the window glass, the window glass shall be replaced by a pane free of cracks.

(C) All openings originally designed as windows shall be maintained as windows, complete with sills, lintels, frame and glass, unless specifically approved by the Fire Marshal's Office for enclosure. Where the Fire Marshal approves the enclosure of a window, it must be so enclosed by either bricking the opening, blocking the opening with concrete blocks and stuccoing the exterior, or by boarding up the opening. When boarding is used, it shall be of trim fit, sealed to prevent water intrusion and painted or stained to properly conform with the other exterior portions of the building.

§ 6.157 PAINTING.

(A) All exterior surfaces which require paint or sealing in order to protect the underlying surface from deterioration shall be so painted or sealed.

(B) All exterior surfaces which have been painted shall be maintained free of peeling and flaking. Where 15% or more of the aggregate of any painted wall shall have peeling or flaking or previous paint worn away, the entire wall shall be repainted.

§ 6.158 SIGNS.

All advertising structures and awnings and their accompanying supporting members shall be maintained in good repair and shall not constitute a nuisance or safety hazard. All non-operative signs shall be repaired or shall, with their supporting members, be removed

forthwith. In the event the signs, billboard, marquees or awnings are not properly maintained in accordance with the foregoing, they shall, together with their supporting members, be removed forthwith. In the event the awnings or marquees are made of cloth, plastic or of a similar material, the awnings or marquees shall be maintained so as not to show evidence of excessive tearing, ripping, or other holes which diminish their function and cause unsightly conditions. Nothing herein shall be construed to authorize any encroachments on streets, sidewalks or other parts of the public domain.

§ 6.159 WASHROOMS.

(A) All washrooms and water closet compartment floors shall be surfaced with water-resistant material and shall be kept in a dry and sanitary condition at all times.

(B) All washrooms shall be provided with permanently installed artificial lighting fixtures with a switch and wall plate so located and maintained that there is no danger of short circuiting from water, from other bathroom facilities or from splashing water.

(National Electrical Code reference, Protection against corrosion, § 300-6, and Switches, § 380-4)

§ 6.160 GARBAGE.

(A) There shall not be stored or allowed to accumulate flammable or combustible liquids or other materials on the premises unless they are of a type approved for storage by the regulations of the National Fire Protection Association, and then only in quantities as may be prescribed by the regulations.

(Fire Protection Code reference, Order to eliminate injurious or hazardous conditions, § 1.5, and State Building Code, § 407.4)

(B) No garbage or solid waste shall be stored or allowed to accumulate on the premises unless contained in trash receptacles which are in accordance with Chapter 6 of these Ordinances.

§ 6.161 APPURTENANCES.

(A) 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

(State Building Code reference, Chimneys, fireplace stoves, fireplaces and venting systems)

(B) 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.

(State Building Code reference, Outside stairs and exterior balconies, § 1108, and Fire escapes, § 1007.4)

(C) All cornices shall be made structurally sound, and rotten or weakened portions shall be removed and/or replaced to match as closely as possible the original patterns. All exposed wood shall be painted. (State Building Code reference, § 710)

(D) Gutters and downspouts shall be replaced or repaired as necessary, and shall be neatly located and securely installed.

(E) Where a parking lot is constructed as part of a commercial business or as a business itself, the parking lot and all curbing, surfacing, sidewalks, and other parts thereof shall be maintained free of broken surfaces, holes or other similar conditions. All commercial parking lots so described herein shall be repaired or replaced with like material.

(F) Where landscaping has been incorporated in the development plan of a commercial business or where landscaping has been required by the town as part of a development plan, including parking plan, the landscaped areas shall be maintained in a manner to equal and reflect the original landscaping approved for the development plan.

(G) Where curb cuts are abandoned due to new construction, change of access or general discontinuous use, the curb cut shall be closed and replaced with a standard sidewalk and curb and gutter arrangement.

(H) Damage to public sidewalks or curbs and gutters located in the public right-of-way shall be repaired or replaced at no expense to the town when the damage is caused by vehicles making deliveries to the commercial premises under the control of the owner.

DUTIES AND RESPONSIBILITIES OF OPERATOR

§ 6.162 ENSURING COMPLIANCE.

It shall be the duty and responsibility of the operator to ensure compliance with this subchapter.

§ 6.163 SAFE AND SANITARY CONDITION OF PREMISES.

All parts of the premises under the control of the operator shall be kept in a safe and sanitary condition consistent with the business use, and the occupant shall refrain from performing any acts which would render other parts of the premises unsafe or unsanitary,

or which would obstruct any adjacent owner or operator from performing any duty required, or from maintaining the premises in a safe and sanitary condition.

§ 6.164 ELIMINATION OF INFESTATION.

Every operator shall be responsible for the elimination of infestation in and on the premises, subject to the operator's control.

§ 6.165 MAINTENANCE OF PLUMBING FIXTURES.

Every operator shall maintain all plumbing fixtures in a safe and sanitary condition.

§ 6.166 GARBAGE CONTAINERS.

No garbage or other solid waste shall be stored or allowed to accumulate on the premises unless contained in receptacles which are in accordance with Chapter 16 of the Codified Ordinances.

§ 6.167 REPAIR OF DAMAGE TO PUBLIC RIGHT-OF-WAY.

Damage to public sidewalks or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the town when the damage is caused by vehicles making deliveries to the business under the control of the operator.

§ 6.168 NOTIFYING OWNER OF DEFECTS.

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 operator affected thereby shall, upon learning of the defect, provide notice to the owner.

ADMINISTRATION AND ENFORCEMENT

§ 6.169 MAINTENANCE CODE ADMINISTRATOR.

(A) The Maintenance Code Administrator is hereby established and shall be the person delegated as the same by the Town Manager. It shall be his or her duty and responsibility to enforce this chapter and to legally proceed against each person found in violation of the requirements of this chapter.

(B) All inspections, regulations and enforcement of violations of the provisions of this chapter, unless expressly stated to the contrary, shall be under the direction and supervision of the Administrator.

(C) All buildings and premises as set forth in this chapter are subject to inspections by the Administrator or the Administrator's designated representatives. Upon presentation of proper identification and credentials to the owner, agent or occupant in charge of the property and/or premises, and securing the person's oral or written permission, the Administrator and/or representative may enter and make any inspections as necessary during all reasonable hours.

(D) If permission for entry for the purpose of inspections is denied, and no emergency exists, the Administrator shall, after presentation of probable cause, procure a court order from the district court judge.

(E) In cases of emergency where extreme hazards are known to exist which may involve potential loss of life or severe property damage, the above limitations will not apply.

§ 6.170 BOARD OF ADJUSTMENTS AND APPEALS.

(A) There is hereby established a Board to be called the Commercial Maintenance Board of Adjustments and Appeals.

(B) The Board of Adjustments and Appeals shall be that authorized, established and appointed body responsible for hearing appeals and requests for variance, created and authorized in Chapter 26-282 as the Board of Adjustment.

(C) The procedures, rules,¹ and processes established in Chapter 26-283 for the Board of Adjustment shall apply.

(D) The duties of the Board of Adjustments and Appeals shall be to:

(1) Consider and determine appeals whenever it is claimed that the true intent and meaning of this chapter or any of the regulations hereunder have been misconstrued or wrongly interpreted or applied by the Maintenance Code Administrator or the Administrator's representative.

(2) Grant, in cases where the application of the requirement of this code in the allowance of the stated time for the performance of any action required hereunder would appear to cause undue hardship on an owner, reasonable extensions of time not to exceed six months from date of the notice. No subsequent appeal shall be considered where an appeal has been previously decided involving the same building or premises and the same citation, unless the appellant can demonstrate to the satisfaction of the Board a change in circumstances sufficient to justify reopening the appeal.

(E) All decisions of the Board of Adjustments and Appeals which vary the application of any provision of this chapter or modify an order of the Administrator shall specify in what manner the variance or modification is to be made, the conditions under which it may be

made and the reasons therefor. Every decision shall be in writing, and a copy of all decisions shall be promptly filed in the office of the Commercial Maintenance Code Administrator, and it shall be open to public inspection.

§ 6.171 APPEALS.

(A) Within 30 days following receipt of a notice of violation, any person receiving the notice, believing that the literal application of this chapter will cause undue hardship or has been misconstrued, wrongly interpreted or applied, may appeal in writing to the Board of Adjustments and Appeals for the relief as may be granted, after investigation of the grounds thereof, by way of a reasonable extension of time or a variation from strict compliance with the provisions of this chapter. The circumstances justifying the findings related to hardship are:

- (1) Inability to immediately comply due to severe financial distress;
- (2) The unavailability of services or equipment with which to comply, without fault of the applicant; and/or
- (3) Other extenuating circumstances showing a good faith intention on the part of the applicant or another to comply when able to do so.

(B) The appeal shall be on a form provided by, and shall be addressed to the Office of the Commercial Maintenance Code Administrator, where proper forms will be prepared and forwarded to the Chairman of the Board of Adjustments and Appeals, who will set the date and time of hearing and so notify the applicant. This section shall not be construed to apply to any situation regarded by the enforcement authority as a real and immediate threat to public safety and health. Any person aggrieved by the decision of the Board may petition any court of competent jurisdiction within the county. Any appeal of this sort must be filed with the court within 15 days from the date of the Board's decision or it shall be considered abandoned.

(C) To defray the cost of processing an appeal fees to be set by the Board in the annual budget ordinance shall be required. All fees are payable to the town and must be paid prior to processing the appeal.

§ 6.172 AMENDMENTS.

The Board of Commissioners may from time to time amend, supplement, or change the provisions and requirements of this code. Any amendment shall be by ordinance of the Board. Initiation of any amendment may be by the Board of Commissioners, Planning Board, Community Appearance Commission, staff, Commercial Maintenance Board of Adjustments and Appeals, or by a private citizen.

§ 6.173 VIOLATIONS.

(A) Whenever the Maintenance Code Administrator or any other authorized official determines that there exists a violation of any provision of this chapter, the Administrator shall give notice of the violation to the person responsible therefor or to the person's agent or representative, and order compliance.

(B) The notice and order shall be in writing; specify in detail the violations, together with the respective sections of this chapter being violated; setting forth 30 days within which to correct the violations; contain an outline of remedial action which, if taken, will effect compliance.

(C) Service of the notice shall be by delivery personally to the owner or operator of the property or the person responsible; by leaving the notice at the usual place of abode or business of the owner, operator or the person's agent, or by depositing the notice in the United States post office addressed to the owner or operator or the person's agent or person responsible at the last known address with postage prepaid thereon, and certified or registered; or in the event service of the notice cannot be obtained in one of the above methods by posting and keeping posted for 24 hours a copy of the notice in a conspicuous place on the premises where the violation has occurred and published once a week for three weeks in a newspaper of general circulation in the town any information as is necessary to inform an owner, operator or person responsible of the location of the premises and the type of offense. No person shall deface or remove the notice without the consent of the Administrator.

§ 6.174 PENALTY.

Any person, or any person's agent who shall violate a provision of this chapter, or after due notice shall fail to comply with orders issued by the Maintenance Code Administrator under the terms and provisions of this chapter shall be subjected to a civil penalty pursuant to Article 1-18 of these codified ordinances.