

ORDINANCE NO. 2009- _____

AN ORDINANCE TO AMEND SECTIONS 4-210 THROUGH 4-225 OF THE CITY CODE TO UPDATE AND STREAMLINE THE PROCESSES WITHIN THE CITY FOR THE IDENTIFICATION AND HANDLING OF DWELLINGS UNFIT FOR HUMAN HABITATION.

WHEREAS, S. C. Code Ann. §5-7-30 (1976) grants to municipalities the authority to abate nuisances and §31-15-10, et seq specifically provides for a mechanism for municipalities to deal with dwellings unfit for human habitation; and

WHEREAS, it appears to Council that the fair and efficient identification and enforcement mechanisms for handling dwellings unfit for human habitation within the city requires ordinance provisions that clearly define dwellings unfit for human habitation and establish a fair and efficient process for enforcing the prohibition regarding dwellings unfit for human habitation;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Florence that Sections 4-210 through 4-225 of the City Code for Florence, South Carolina be, and are hereby, amended to read verbatim and provide as follows:

BUILDINGS; CONSTRUCTION AND RELATED ACTIVITIES

DIVISION 2. DWELLINGS UNFIT FOR HUMAN HABITATION*

Sec. 4-210. Definitions.

The following terms as used in this division, shall have the respective meanings ascribed to them:

Dilapidation: A dilapidated dwelling is one that does not provide safe and adequate shelter, and in its present condition endangers the health, safety or well-being of the occupants. Such a dwelling has one or more critical defects, or has a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding, or is of inadequate original construction. The defects are either so critical or so widespread that the structure should be extensively repaired, rebuilt, or torn down. Critical defects include: holes, open cracks, or rotted, loose or missing material (clapboard siding, shingles, bricks, concrete, tile, plaster or floorboards) over a large area of the foundation, outside walls, roof, chimney or inside walls, floors or ceilings; substantial sagging of floors, walls or roof; and extensive damage by storm, fire or flood. To be classified as dilapidated on the basis of intermediate defects, a dwelling must have such defects in

sufficient number or extent that it no longer provides safe or adequate shelter. Inadequate original construction includes: shacks, huts or tents; structures with makeshift walls or roofs, or built of packing boxes, scrap lumber or tin; structures lacking foundations (walls rest directly on the ground); structures with dirt floors; barns; garages or other places not originally intended for living quarters and inadequately converted to such quarters.)

Dwelling: Any building or structure, or part thereof, used and occupied for human habitation, or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Enforcement Officer: A code enforcement official or city employee or official as may be designated in writing by the city manager to enforce the provisions of this division.

Housing Board of Adjustments and Appeals: A board appointed as set forth in § 4-214 herein, and shall have the powers described in this division in addition to any other powers granted to such board by any other ordinance or act of the city.

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

Parties in interest: All individuals, associations, corporations, and other entities who have interests of record in a dwelling and any who are in possession thereof.

Sec. 4-211. Findings of fact.

The city finds that there exist in the city dwellings which are unfit for human habitations due to:

- (1) Dilapidation;
- (2) Defects increasing the hazards of fire, accidents or other calamities;
- (3) Lack of ventilation, light or sanitary facilities;
- (4) Other conditions rendering such dwellings unsafe or unsanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the city.

Sec. 4-212. Authority.

The city deems it necessary to exercise its police powers to repair, close or demolish any such dwelling in the manner herein provided, pursuant to the provisions of section 31-15-10 et seq., Code of Laws of South Carolina 1976, as amended.

Sec. 4-213. Powers of enforcement officer generally.

Enforcement officers are hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this division, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitation;
- (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations, provided such entries be made in such manner as to cause the least possible inconvenience to other persons in possession;
- (4) To appoint and fix the duties of such officers, agents and employees, with the approval of the city manager, as such officer deems necessary to carry out the purpose of this division;
- (5) To delegate any of such officer's functions and powers under this division to such officers and agents as such officer may designate.

Sec. 4-214. Housing Board of Adjustments and Appeals and the Powers of Said Board.

- (1) There is hereby created a board to be known as the Housing Board of Adjustments and Appeals which shall consist of five (5) members appointed by City Council pursuant to the following:
 - (a) All members of the Board shall be residence of the City of Florence.
 - (b) In appointing the members, Council will take into consideration, but not be bound by, the desire to have a real estate broker; a physician; an architect, engineer or general contractor; and a building materials dealer on the Board.
 - (c) Members of the Board shall be appointed for four- year terms, except that on the initial appointment, one shall be appointed for a two- year term, two shall be appointed for three - year terms, and two shall be appointed for four - year terms.
 - (d) Any member of the Board shall be subject to removal or replacement by City Council at any time for cause provided the basis for the determination of "cause" shall be stated during a public hearing before the City Council.

- (e) Any vacancy on said Board shall be filled by City Council for the unexpired term of such vacancy.
 - (f) The members of said Board shall serve without compensation.
- (2) As soon as practical after their appointment, the members of the Housing Board of Adjustments and Appeals shall meet and organize by electing a Chairman, Vice-Chairman, and Secretary. Thereafter, officers of the Board shall be elected by the members at the first annual meeting of the Board.
 - (3) The Board of Adjustments and Appeals shall meet at regular intervals to be determined by the Chairman, but in any event, the Board shall meet within thirty days after notification of a Notice of Appeal has been received. Reasonable notice of the place, time, and date of such meeting shall be given to all members of the Board and all interested parties in each case to be heard by the Board.
 - (4) All minutes of the Board Meetings shall be public records, and the secretary of the Board shall keep all records and perform such additional duties as the Board may deem proper.
 - (5) The Housing Board of Adjustments and Appeals shall have the power and duty to consider and determine appeals filed pursuant to §4-221 and §9-31 of this City Code, and may carry out its orders through the enforcement officer or such other officers and agents as the City Manager may designate. It shall have all of the powers which the city may grant a commission as set forth in Chapter 15 of Title 31 of the Code of Laws of South Carolina 1976, as amended.
 - (6) In considering and determining appeals before it, the Housing Board of Adjustments and Appeals shall determine whether the action before it complies with the true intent and meaning of this code and whether any code provisions, or regulations promulgated thereunder, have been misconstrued or wrongly interpreted. In addition, the Board may, in appropriate cases where the application of the requirements of this code within a time period specified for the performance of any action required hereunder is found by the Board to cause undue hardship to an owner or a party in interest as defined herein, permit one or more extensions of time, not to exceed 120 days each from the date of such decision of the Board. Applications for additional extensions of time shall be heard by the Board, provided, however, that such request for additional extensions of time shall be filed with the enforcement officer not less than 30 days prior to the expiration of the current extension or allotted time for the performance of the action required.
 - (7) The Board shall not consider an appeal of a case where it is previously considered an appeal of a case involving the same premises unless the applicant for the appeal shall first convince the Board that the condition of the premises at issue has been

significantly improved since the time of the last appeal.

- (8) The Housing Board of Adjustments and Appeals shall establish its own rules for procedure for the accomplishment of its duties and functions, provided that such rules shall not be in conflict with the provisions of this code or the laws of the State of South Carolina.
- (9) All decisions of the Housing Board of Adjustments and Appeals that will have the effect of altering the application of any provisions of this code by the enforcement official or modifying any order of the enforcement official shall specify the manner of such variance or modification, the condition upon which it is made, and the specific reasons therefore. Every decision of the Board shall be in writing and shall indicate the vote of the members of the Board regarding the decision. A copy of all decisions of the Board shall be promptly filed in the office of the Enforcement Official and shall be open to public inspection. The secretary shall notify the appellant or applicant in writing of the final action of the Board.

Sec. 4-215. Inspections of Dwellings; Filing of petition; Notice and hearing.

- (1) Enforcement officers shall have the authority to inspect all dwellings within the City, whether occupied or not, in order to investigate to determine whether such dwellings are unfit for human habitation. Inspections of dwellings may be conducted by the enforcement officer or his designee due to any of the following reasons:
 - (a) A complaint from a tenant that the unit is unsanitary, unsafe, has excessive utility bills, water leaks, or structural defects, which the owner/manager has refused to remedy.
 - (b) External building or yard inspections would lead a reasonable person to believe that the interior of the dwelling might also have sanitary, structural, or safety violations.
 - (c) A report from an independent third party, such as DSS case workers, electric or gas company technicians, law enforcement personnel, or other persons that they have personally seen safety, structural, or sanitary violations at the unit.
 - (d) Whenever any dwelling within the City makes application with the Water Department of the City to have water turned on or to have the name on such the water account for such unit changed, the Housing Department of the City will be notified of such application and will inspect the dwelling to investigate to determine whether such dwelling is unfit for human habitation.
- (2) Whenever a petition is filed with the enforcement officer by an official of the city or department head having duties relating to health, fire or building regulations or to any other activities concerning dwellings in the city or by at least five (5) residents of the

city charging that any dwelling is unfit for human habitation, or whenever it appears to the enforcement officer (on such officer's own motion) that any dwelling is unfit for human habitation, the enforcement officer shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and all parties of interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the enforcement officer or such officer's designated agent at a place therein fixed not less than ten (10) days, nor more than thirty (30) days after the serving of such complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the codes enforcement officer. In addition to determining whether the dwelling is unfit for human habitation and whether to issue an order to repair or demolish

Sec. 4-216. Order to repair, vacate, remove or demolish.

If after such notice and hearing, the codes enforcement officer determines that the dwelling under consideration is unfit for human habitation, such officer shall state in writing the findings of act in support of such determination and shall issue and cause to be served upon the owner thereof an order:

- (1) If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (which reasonable cost is hereby determined as fifty (50) percent or less of the value of the dwelling), requiring the owner, within the time specified in the order to repair, alter or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation;
- (2) If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (which reasonable cost is hereby determined as fifty (50) percent or less of the value of the dwelling) requiring the owner within the time specified in the order to remove or demolish such dwelling.
- (3) In determining the amount of time to specify in the order for repair or demolition, the enforcement officer shall consider all relevant factors, including , but not limited to the amount and of the work required and the ability of the owner to complete the work. The time specified will normally be no less than thirty (30) days and no more than ninety (90) days. After the issuance of the initial order, an owner or person in interest may apply for one additional extension of time not to exceed ninety (90) days. Such an application shall be heard by the enforcement officer; provided, however, that such request for an additional extension of time shall be filed with the enforcement officer not less than ten (10) days prior to the expiration of the current allotted time for the performance of the action required. In making a decision on such

a request for an additional extension of time, the enforcement officer will determine whether the performance of any action required under the order will cause undue hardship to an owner or a party in interest. In appropriate cases, where the application of the requirements of this code within the time prescribed by the first order is found by the enforcement officer to cause undue hardship to an owner or a party in interest as defined herein, the enforcement officer may extend the time allowed to comply with the order to a total of one hundred eighty (180) days from the date of the original order.

- (4) In order to assist owners and parties in interest who are experiencing undue financial hardship creating an inability to respond to orders issued hereunder, the city will maintain a list of charitable organizations willing to offer assistance in completing the work needed, and this list shall be made available to such owners and/or parties in interest found to be experiencing undue financial hardship creating an inability to respond to orders issued.

Sec. 4-217. Effect of failure to obey order; lien created.

- (1) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the enforcement officer may cause such dwelling to be repaired, altered or improved or to be vacated and closed. The enforcement officer may cause to be posted on the main entrance of any dwelling so closed 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."
- (2) If the owner fails to comply with an order to remove or demolish the dwelling, the city manager may cause the dwelling to be repaired, removed or demolished, and the city manager may, in a reasonable and prudent matter, direct the expenditure of public resources to repair, remove or demolish the dwelling.
- (3) The amount of the cost of such repairs, alterations or improvements, vacating and closing or removal or demolition by the codes enforcement officer shall be alien against the real property upon which such cost was incurred. The cost of such actions shall include an administrative assessment of \$250, any attorney fees and costs incurred in processing of the nuisance as described herein, plus the actual cost of labor and materials expended in the public abatement action. The person shall be served with a Notice of Assessment within seven days after the completion of the abatement. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served as provided for in Section 4-219 of the City Code upon the person responsible for payment, and the notice shall call for payment to be made within thirty days of the date of service. Upon expiration of the thirty day period, if the amount has not been paid in full or contested utilizing the appeal mechanism described in Section 4-222 below, the city manager may cause a lien in the amount to be filed in the clerk of court and the finance director for the city. The lien shall be of record in the county

courthouse and the finance director shall note it in the book of liens until such amount has been paid or recovered or otherwise released. The lien shall be collectable in the same manner and shall have the same priority as municipal taxes. Collection of the lien by way of recovery or foreclosure may be instituted by the city attorney on behalf of the city. Additionally, the City of Florence, South Carolina, is a claimant agency as defined in the Setoff Debt Collection Act, SC Code Ann. § 12-56-10, et seq. (the Act) and is therefore entitled to utilize the procedures set out in the Act to collect delinquent debts owed to the City of Florence. The city may utilize those procedures to collect any delinquent debts owed to the city as a result of abatement activities under this code section.

- (4) In the event the owner fails to comply with an order to remove or demolish the dwelling, the city may as an alternative to removing or demolishing the dwelling as allowed in this section issue a municipal ordinance summons or warrant made only by an enforcement officer or appropriate government official. Each day a violation continues constitutes a separate misdemeanor offense subject to a fine up to \$500 and/or imprisonment up to thirty days for each offense. The enforcement officer issuing a municipal summons under the provisions of this section shall place on the summons the amount of the fine, and the municipal summons shall give to the accused party the right to either pay the fine through forfeiture of the bond amount or appear in the municipal court at the time and place specified to litigate the offense and/or penalty.

Sec. 4-218. Conditions essential for making dwelling fit for human habitation.

- (1) The enforcement officer may determine that a dwelling is unfit for human habitation if such officer finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or welfare of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of the city.
- (2) Without limiting the generality of the foregoing, the following conditions are hereby declared essential to make a dwelling fit for human habitation:
 - (a) Inside running water connected to a kitchen sink, and to a lavatory or laundry sink, and to a bathtub or shower, and to a toilet, all connected to the public sewer or other disposal approved by the health authorities and the city;
 - (b) Adequate screens and glass panes for all doors and windows;
 - (c) Fireplaces, flues or other provisions for heating to afford reasonable comfort;
 - (d) A window in each living room and bedroom which opens not less than forty-five (45) per cent of its area and can be effectively opened and closed

as a means of ventilation, unless the house is equipped with central air conditioning;

- (e) Electrical wiring system connected and installed in accordance with the electrical regulations of the city;
- (f) Privacy for toilet and tub or showers, effectively ventilated;
- (g) The roof, flashing, exterior walls, basement walls, floors and all doors and windows exposed to the either constructed and maintained so as to be reasonably weather-tight and watertight, and sound and safe, and capable of affording privacy;
- (h) Any construction standard set forth under the Standard Housing Code or any other ordinance or regulation of the city setting forth construction and safety standards.

Sec. 4-219. Service of complaints and orders.

Complaints or orders issued by an enforcement officer pursuant to this division shall be served as follows:

- (1) The city shall determine the individual, firm or corporation who, from the records in the county tax assessor's office, appears to be the titled owner of the property and shall cause the complaint or order to be served upon such individual, firm, or corporation utilizing the following methods:
 - (a) Personal service as attested to Affidavit of Service by an enforcement officer as defined herein; or
 - (b) Copy mailed to such owner at the address maintained by the county tax assessor's office by United States Certified Mail, Return Receipt Requested; or
 - (c) In the event the City is unable to perfect service utilizing any of the methods described above, the City shall cause a copy of the aforesaid notice to be published in a newspaper of general circulation in the city, once per week, for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in physical possession of such property on which it is alleged that such public notice exists, or, if there is no individual in physical possession thereof, the city shall cause a copy of the complaint or order to be posted at such structure, location, or premises.
 - (d) The city shall also determine from the office of the Clerk of Court the identity of any lien holder with respect to said property, and the city shall cause a

written notice to be served upon such lien holder by United States Mail, Return Receipt Requested, utilizing the address of the lien holder as noted on the lien document in the clerk's office.

- (e) The notice of any order to the owner and lien holder, if any, shall state clearly and concisely the findings of the city with respect to the existence of a dwelling unfit for human habitation. The notice shall further provide the following information:
 - (i) The names, telephone numbers, and addresses for use in contacting the city;
 - (ii) A clear statement that, unless the owner thereof shall cause the completion of the required action pursuant to the order, the action may be completed by the city at the expense of the owner, and the city may recover all public cost by establishing and filing a lien, assessing an administrative fee and recovering attorney's fees incurred and the cost of establishing a lien against the property; and
 - (iii) Inform them of their rights to appeal.

Sec. 4-220. Disposition of proceeds from sale of materials.

If a dwelling is removed or demolished by the codes enforcement officer, such officer shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition; and any balance remaining shall be deposited in the circuit court by the codes enforcement officer, shall be secured in such manner as may be directed by such court and shall be disbursed by such court to the persons found to be entitled thereto by final order or decree of such court.

Sec. 4-221. Appeals to Housing Board of Adjustments and Appeals - Filing; Contents.

Any person receiving an order from the enforcement officer may within fifteen (15) days following the date of such notice enter an appeal in writing to the Housing Board of Adjustments and Appeals, Such appeal shall state the location of the property, the date of the notice of violations and the number of such notice. The appellant must state the variance or modification requested, the reasons thereof, and the hardship or conditions upon which the appeal is made. No appeal filed later than fifteen (15) days after the date of such notice shall be acted upon by the Housing Board of Adjustments and Appeals unless the enforcement officer shall consent thereto.

Sec. 4-222. Appeals to Housing Board of Adjustments and Appeals - Notice, Conduct of hearing; Action of Board.

- (1) The Housing Board of Adjustments and Appeals shall notify the appellant at least seven (7) days in advance of the date of a hearing on the appeal stating the time and

place of such hearing.

- (2) The Housing Board of Adjustments and Appeals may consider any matter contained the record of the enforcement officer and may take any additional testimony that may be offered by the appellant or the enforcement officer, The rules of evidence prevailing in courts of law or equity shall not be controlling in appeals or hearing before the housing board of adjustments and appeals.
- (3) After such hearing on appeal, the Housing Board of Adjustments and Appeals shall report its findings of fact in support of its determination on the issues, which may affirm, modify or reject the findings of fact, determination and order of the enforcement officer, and shall cause such to be served upon the appellant owner.
- (4) The Housing Board of Adjustments and Appeals may establish its own rules of procedure provided such are not in conflict with this division or the laws of the state.
- (5) In considering and determining appeals before it, the Housing Board of Adjustments and Appeals shall determine whether the action before it complies with the true intent and meaning of this code and whether any code provisions, or regulations promulgated thereunder, have been misconstrued or wrongly interpreted. In addition, the Board has the specific authority to review decisions made by the enforcement officer regarding the amount of time specified in the order pursuant to §4-216(3), and the Board shall be governed by the provisions of §4-216(3) in its review.
- (6) The Board shall not consider an appeal of a case where it is previously considered an appeal of a case involving the same premises unless the applicant for the appeal shall first convince the Board that the condition of the premises at issue has been significantly improved since the time of the last appeal.

Sec. 4-223. Appeals to Housing Board of Adjustments and Appeals -To stay order of enforcement officer.

The enforcement officer shall not take any action on an order issued by such officer for a seven (7) day period to allow the owner time to appeal to the Housing Board of Adjustments and Appeals. An appeal to the Housing Board of Adjustments and Appeals shall operate as a stay of the order of the enforcement officer until the appeal is heard and the Board has issued its order.

Sec. 4-224. Appeal to court.

Any person affected by this division shall have the right to appeal to a court of competent jurisdiction within sixty (60) days from any order of the codes enforcement officer or within sixty (60) days from any order from the housing board of adjustments and appeals as provided in section 31-15-70, Code of Laws of South Carolina 1976, as amended. Any order of the housing board of adjustment and appeals shall state that the owner has a right to appeal to a court of the state of competent jurisdiction as provided in such section of the Code of Laws of South Carolina. Should

any owner file a petition under this section, the codes enforcement officer shall from that time until the issue is resolved stay any further action on such officer's part with regard to the dwelling in question.

Sec. 4-225. Provisions declared supplemental.

The provisions of this division shall not abrogate the powers of any other department of the city, or repeal any criminal ordinance, but shall be in addition to and supplementary of any other provisions of this Code.

This Ordinance shall be effective immediately upon its passage on second reading.

ADOPTED THIS ___ DAY OF _____, 2010.

Stephen J. Wukela
Mayor

Approved as to form:

Attest:

James W. Peterson, Jr.
City Attorney

Dianne M. Rowan
Municipal Clerk

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