City of Asheville Ordinance Number _____

Ordinance Description

Ordinance Amending Chapter 4 of the Code of Ordinances of the City of Asheville to Provide for Repair, Closing, or Demolition of Abandoned Structures.

Ordinance Details

Whereas, the City of Asheville has the authority pursuant to Chapter 160D, Article 12 to pass ordinances providing for the repair, closing, or demolition of any abandoned structure that the City Council finds to be a health or safety hazard pursuant to the statutory procedures and provisions prescribed for the repair, closing, or demolition of dwellings found to be unfit for human habitation; and

Whereas, City Council finds that there exists an imperative to address abandoned structures other than dwellings located within the City of Asheville that have become health or safety hazards;

Now, therefore, be it ordained by the City Council of the City of Asheville that:

Section 1

Chapter 4 of the Code of Ordinances of the City of Asheville is hereby amended as follows:

1. Insert a new **Article VIII. Abandoned Structures**, as follows:

Article VIII. Abandoned Structures

Section 4-223. Exercise of police powers: authority.

The city council hereby finds and declares that the existence, within the City of Asheville, of abandoned structures which may result in health or safety hazards due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities, and that, in such case, a public necessity shall exist to exercise the police powers of the city pursuant to Article 12 of Chapter 160D of the General Statutes of North Carolina, as now or hereafter amended, to repair, close, or demolish such structures in accordance with the procedure herein provided.

Section 4-224. Purpose

The purpose of this article is to authorize the remediation and prevention of the health or safety hazards posed by abandoned structures by empowering the City to take action to repair, close, or demolish such structures for the protection of the life, health, welfare, safety, and property of the general public.

Section 4-225. Scope

The provisions of this article are applicable to all structures existing and hereafter constructed within the City of Asheville that are abandoned structures necessitating repair, closing, or demolition to protect public health, welfare and safety.

Section 4-226. Definitions

For the purposes of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

Abandoned structure: Any structure, whether designed and intended for residential, commercial, or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past one year period and which is determined by the City to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities.

City: City of Asheville, North Carolina.

Demolish: The tearing down and disposal of the entire structure in a lawful manner, leaving the property free and clear of any debris and without holes or pockets.

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

Parties in interest: All individuals, associations, and corporations that have interests of record in a structure and any that are in possession of a structure.

Public officer: The officer or officers who are authorized by this article to exercise the powers prescribed herein.

Section 4-227. Administration.

(a) The Development Services Department (the “Department”), by and through its director and code enforcement officials, and other staff as the department may deem appropriate, shall have such powers as may be necessary, lawful, or convenient to carry out and effectuate the purpose and provisions of this article, including without limitation the foregoing powers:
    (1) To investigate the structure conditions in the city in order to determine which structures therein are abandoned and may pose health or safety hazards.
    (2) To administer oaths, affirmations, examine witnesses and receive evidence.
    (3) To enter upon premises for the purpose of making inspections in a manner that will cause the least possible inconvenience to the persons in possession.
    (4) To appoint and fix the duties, as provided in this article, of such officers, agents, and employees as he deems necessary to carry out the purpose of this article.

(b) The Department is authorized to request advice and assistance from any other public authority or agency it deems appropriate in performing the duties described herein.

(c) Any public authority as defined under N.C.G.S. 160D-1202 or any other public agencies may report in writing to the code enforcement officer any structure or abandoned structure they may encounter which is, may be, or is suspected of being a health or safety hazard.

(d) Except as may otherwise be provided by statute or local law or ordinance, no officer, agent, or employee of the city charged with the enforcement of this article shall be personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this article.

Section 4-228. Investigation, complaint, hearing.

(a) Whenever a petition is filed with the Department by a public authority or by at least five residents of the City charging that any structure is abandoned and poses a health or safety hazard, or when it appears to the Department that any structure is abandoned and poses a health or safety hazard, the Department shall, if a preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such structures a complaint stating the charges in that respect and containing a notice that an administrative hearing will be held before the Department Director, or their designated agent (the "public officer"), at an appropriate location within the City.

(b) The hearing shall be not less than 10 days nor more than 30 days after the serving of the complaint. 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. The rules of evidence prevailing in courts of law shall not be controlling in administrative hearings before the public officer.

Section 4-229. Orders.

(a) If, after notice and an administrative hearing, the public officer determines that the structure under consideration is abandoned and poses a health or safety hazard, the officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner one of the following orders, as appropriate:

(1) If the repair, alteration, or improvement of the structure can be made at a reasonable cost in relation to the value of the structure, requiring the owner, within the time specified, to repair, alter, or improve the structure in order to render it no longer a health or safety hazard. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat to public health or safety, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks. The order shall state that the failure to make timely repairs as directed in the order shall make the structure subject to the issuance of a closing or demolition order under subdivisions (b) and (c) of this section.

(2) If the repair, alteration, or improvement of the structure cannot be made at a reasonable cost in relation to the value of the structure, requiring the owner, within the time specified in the order, to demolish the structure. However, notwithstanding any other provision of law, if the structure is located in a historic district and the Historic Resources Commission determines, after an administrative hearing, that the structure is of particular significance or value toward maintaining the character of the district, and the structure has not been condemned as unsafe, the order may require that the structure be vacated and closed consistent with N.C.G.S. 160D-949.

(b) *Repair, closing, and posting.* If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the structure, the public officer may cause the structure to be repaired, altered, or improved or to be vacated and closed, and the public officer may cause to be posted on the main entrance of any structure so closed a placard stating the structure is abandoned and poses a health and safety hazard. Occupation of a structure so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the City Council shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article with respect to the particular property or properties that the public officer shall have found to be abandoned and a health or safety hazard, and which property or properties

shall be described in the ordinance. This ordinance shall be recorded in the Buncombe County Registry of Deeds and shall be indexed in the name of the property owner in the grantor index.

(c) *Demolition.* If the owner fails to comply with an order to remove or demolish the structure, the public officer may cause such structure to be removed or demolished. The duties of the public officer set forth in this subdivision shall not be exercised until the City Council shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this article structure with respect to the particular property or properties that the public officer shall have found to be abandoned and a health or safety hazard, and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a structure until the owner has first been given a reasonable opportunity to remediate the conditions making the structure a health or safety hazard. This ordinance shall be recorded in the Buncombe County Registry of Deeds and shall be indexed in the name of the property owner in the grantor index.

(d) Abandonment of Intent to Repair. If the structure has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to subdivision (b) of this section or after a public officer issues an order or proceedings have commenced requiring a structure to be repaired or vacated and closed as provided in this subdivision, then the City Council may find that the owner has abandoned the intent and purpose to repair, alter, or improve the structure in order to remediate the conditions making the structure a health or safety hazard and that the continuation of the structure in its vacated and closed status would be inimical to the health, safety, and welfare of the City of Asheville due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities, and that a public necessity exists, then in such circumstances, the City Council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(1) If it is determined that the repair of the structure to render it no longer a health or safety hazard can be made at a cost not exceeding fifty percent (50%) of the then current value of the structure, the ordinance shall require that the owner either repair or demolish and remove the structure within 90 days.

(2) If it is determined that the repair of the structure to render it no longer a health or safety hazard cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the structure, the ordinance shall require the owner to demolish and remove the structure within 90 days.

This ordinance shall be recorded in the Buncombe County Registry of Deeds and shall be indexed in the name of the property owner in the grantor index.

(e) *Liens.*

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes. The amount of the cost is also a lien on any other real property of the owner located within the Asheville city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

(2) If the structure is removed or demolished by the public officer, the City shall sell the materials of the structure, and any personal property, fixtures, or appurtenances found in or attached to the structure, and shall credit the proceeds

of the sale against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the City's authority to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(f) *Civil action.* If any person is occupying a structure subject to an order to vacate the structure, the City Attorney may file a civil action to remove such occupant. The action to vacate the structure shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as defendant any person occupying such structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in N.C.G.S. 42-29. If the summons appears to have been duly served and if at the hearing the City produces a certified copy of an ordinance adopted by the City Council pursuant to subdivision (c) of this section authorizing the public officer to proceed to vacate the occupied structure, the magistrate shall enter judgment ordering that the structure be vacated and that all persons be removed. The judgment ordering that the structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under N.C.G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in N.C.G.S. 7A-228, and the execution of such judgment may be stayed as provided in N.C.G.S. 7A-227.

Section 4-230. Service of complaints and orders.

(a) Complaints or orders issued by a public officer pursuant to this article shall be served upon persons either personally or by certified mail. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the jurisdiction at least once no later than the time at which personal service would be required under the provisions of this article. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Section 2

If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3

All ordinances or parts of ordinances in conflict are hereby repealed to the extent of such conflict.

Section 4

This ordinance will become effective upon adoption.

Read, approved, and adopted this 14th day of April, 2026.

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Esther E. Manheimer, Mayor

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Brad Branham, City Attorney

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Magdalen Burleson, City Clerk