

**ORDINANCE NO. 2010- \_\_\_\_\_**

**AN ORDINANCE TO AMEND SECTIONS 4-210 THROUGH 4-225 OF THE CITY CODE WITH NEW SECTIONS 4-210 THROUGH 4-227 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City of Florence that Sections 4-210 through 4-225 of the City Code for Florence, South Carolina be, and are hereby, repealed and amended in their entirety and replaced with Sections 4-210 through 4-227 which read verbatim and provide as follows: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.

***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.

***Inadequate Original Construction:*** Inadequate original construction is defined as shacks, huts or tents; structures with makeshift walls or roofs, or built of packing boxes, scrap lumber or tin; structures lacking foundations (walls are resting directly on the ground); structures with dirt floors; barns; garages or other places not originally intended for living quarters which have been inadequately converted to such use.

***Owner:*** All individuals or other entities identified as owners of record of the dwelling in the records of the Clerk of Court of Florence County.

***Parties in interest:*** All individuals and other entities that have interests of record in a dwelling, are purchasing a dwelling under a contract for deed which is of record, are mortgagees or lien holders of record, or are legally in possession of the dwelling.

#### **Sec. 4-211. Findings of fact.**

The city finds that there exist in the city dwellings which are unfit for human habitation 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 and safety 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 make inquiries concerning and inspect the dwelling conditions within the city pursuant to Section 4-215(1) in order to determine whether a dwellings is unfit for human habitation;
- (2) To conduct hearings, administer oaths and affirmations, examine witnesses and receive evidence pursuant to Section 4-215; and
- (3) 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.

**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 residents of the City of Florence.
  - (b) In appointing the members, Council will take into consideration the duties and powers of the Board and shall appoint members qualified by education, knowledge or experience to carry out the duties of the Board. In so doing, the City Council recognizes a general desire to consider real estate brokers, physicians, architects, engineers or general contractors, and building materials dealers for the Board, but these designated professionals are not a requirement.
  - (c) All 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 meeting of the Board following June 30 of each year.
  - (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, all interested parties in each case to be heard by the Board, and the media pursuant to the requirements of Freedom of Information Act.
  - (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 §4-222 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 financial or physical 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 has 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 require a quorum of four (4) members and 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 officer 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. The Process: Initial Inquiries.**

- (1) Enforcement officers shall have the authority to begin inquiries regarding any dwellings in the city in order to start the process of determining whether such dwellings are unfit for human habitation and subject to the enforcement processes set forth herein below. Inquiries may be conducted by an enforcement officer for any of the following reasons:
  - (a) A complaint from a renter of the unit that it is unsanitary, unsafe, has water leaks, or has structural defects, which the owner or manager has refused to remedy.
  - (b) A complaint from a resident in a neighborhood directly affected by a dwelling in a dilapidated condition.
  - (c) 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.
  - (d) A report from an independent third party, such as DSS case workers, utility company technicians, law enforcement personnel, or other persons that they have personally seen safety, structural, or sanitary violations at the unit.
  - (e) A request for inspection and investigation is filed with the enforcement officer by any city official or department head having duties relating to health, fire

or building regulations or to any other activities concerning dwellings in the city alleging that a dwelling is unfit for human habitation.

- (2) Upon initiating an inquiry regarding a dwelling which the enforcement officer reasonably believes to be unfit for human habitation, the enforcement officer shall first attempt to identify which of the following categories the dwelling falls into:
  - (a) unoccupied, vacant or abandoned;
  - (b) occupied by a renter or renters;
  - (c) occupied by a person or persons having a whole or partial ownership interest in the property beyond a leasehold interest.
- (3) If said dwelling is occupied by a renter or renters, then the enforcement officer shall utilize the process set out in Sec. 4-226 below. Nothing herein or in Sec. 4-226 shall in any way prohibit the investigation of such a dwelling or premises to determine whether it constitutes a nuisance under the provisions of Chapter 9 of the City Code and the subsequent enforcement of the provisions of Chapter 9.
- (4) If said dwelling is occupied by a person or persons having a whole or partial ownership interest in the property beyond a leasehold interest, then the dwelling shall not be subject to the provisions of Division 2 of the City Code entitled “Dwellings Unfit for Human Habitation”. Nothing herein shall in any way prohibit the investigation of such a dwelling or premises to determine whether it constitutes a nuisance under the provisions of Chapter 9 of the City Code and the subsequent enforcement of the provisions of Chapter 9.
- (5) If said dwelling is unoccupied, vacant or abandoned ,or if said dwelling is occupied by a renter or renters and the process set out in Sec. 4-225 has not resolved the issues, then the enforcement officer shall utilize the process set out in Sec. 4-216 below. Nothing herein or in Sec. 4-216 shall in any way prohibit the investigation of such a dwelling or premises to determine whether it constitutes a nuisance under the provisions of Chapter 9 of the City Code and the subsequent enforcement of the provisions of Chapter 9.

**Sec. 4-216. The Process: Unoccupied, Vacant or Abandoned Dwellings and Dwellings Occupied by Renter if Sec. 4-225 Does Not Resolve ; Notice and Hearing.**

If the initial inquiry by the enforcement officer indicates that a dwelling is unoccupied, vacant or abandoned, or if said dwelling is occupied by a renter or renters and the process set out in Sec. 4-225 has not resolved the issues, then the enforcement officer shall utilize the process set out below:

- (a) Conduct an inspection and investigation and generate a report that includes a description of the property; the name and address of the owner as obtained

from the office of the Florence County Tax Assessor; photos of the property; all other information deemed pertinent by the enforcement officer, and a description of the conditions rendering the dwelling unfit for human habitation;

- (b) Submit the report to the city manager, or his designated department director, for approval of the enforcement action regarding any dwelling identified as a dwelling unfit for human habitation.
- (c) After obtaining required approval, the enforcement officer shall cause to be served upon the owner of and all parties of interest in such dwelling a notice stating the same information set out in subparagraph (a) above and containing a notice that a hearing will be held before the enforcement officer at a place therein fixed not less than ten (10) days, nor more than thirty (30) days after the serving of such complaint. Service shall be perfected as described in Sec. 4-220. The Notice shall provide the following information:
  - (i) Inform the owner and parties in interest that his property has been identified as a dwelling unfit for human habitation as herein defined;
  - (ii) Provide the owner and parties in interest with the name and phone number of the enforcement officer who is handling this case as a point of contact for the owner;
  - (iii) Inform the owner and parties in interest of their right to file an answer to the complaint and to appear in person or otherwise and give testimony relevant to the finding that the dwelling is unfit for human habitation and whether to issue an order to repair or demolish at the place and time fixed in the notice, and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the enforcement officer.
  - (iv) Inform the owner and parties in interest of the procedure by which the city intends to enforce the provisions of the ordinance, to include the number of days allowed in each step of the process;
  - (v) Include an explanation of the owner's rights and responsibilities; the appeals process through the Housing Board of Adjustments and Appeals; and court remedies available to the owner.
- (6) The purpose of the hearing is provide an opportunity to be heard to the owner and to allow the enforcement officer to address and determine the following:
  - (a) Whether the premises are unoccupied, occupied by a renter or renters, or occupied by a person or persons having a whole or partial ownership interest

in the property beyond a leasehold interest; and whether the process described in paragraphs 2 through 5 above have been followed. Any person claiming exemption from the provisions of this section by asserting that the dwelling is occupied by an owner or partial owner of the property pursuant to Sec. 4-215(4) or by a renter pursuant to Sec. 4-215(3) must assert that position as an affirmative defense and has the burden of proving their ownership interest, their status as an occupant of the property, or that the dwelling is occupied by a renter and the process set out in Sec. 4-225 has not been followed, whichever is applicable.

- (b) Whether the premises constitute a dwelling unfit for human habitation as defined herein.
- (c) Whether the owner agrees that the dwelling unfit for human habitation and is willing and able to take the action necessary to bring the dwelling into compliance with this provision of the code.
- (d) In the event the owner is willing and able to take said action, the enforcement officer and the owner are to establish a time frame within which the action is to be completed, and the enforcement officer will incorporate the terms agreed to into an Order to Repair, stating therein that it is a consent order.
- (e) In the event an owner is not willing to consent to the finding and/or action, the enforcement officer, after taking into consideration any evidence presented at the hearing, shall determine whether to issue an Order to Repair under Sec. 4-217 below.

**Sec. 4-217. Order to repair, vacate, remove or demolish.**

- (1) 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 requiring the owner, at the owner's option, to either repair the dwelling to a habitable condition or to demolish and remove the dwelling leaving the premises cleared of all building materials such as concrete, bricks, wood, and glass, thereby leaving the land with a finish grade. The order shall specify the time for compliance by the owner.
- (2) 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 financial hardship to an owner or a party in interest. In appropriate cases, in which the enforcement officer finds that the owner has made good faith efforts to complete the action required in the order, but, due to weather or other extenuating circumstances, including undue financial hardship to an owner or a party in interest, the owner has been unable to comply, 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.

- (3) 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. 4-218. 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 demolish the dwelling, the enforcement officer may cause such dwelling to be repaired, altered, improved, vacated, or demolished. 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 repair vacate, 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 manner, 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 a lien 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 4-220 herein 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 4-223 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 repair, vacate, 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 by an enforcement officer. 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. 4-219. 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, such conditions rendering a dwelling unfit for human habitation include defects in the dwelling that increase the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; and uncleanness and 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 glass panes or solid coverings 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 air conditioning;
- (e) Electrical wiring system connected and installed in accordance with the electrical regulations of the city at the time of installation and in reasonably safe working condition;
- (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. 4-220. Service of complaints and orders.**

Complaints, notices, 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, a law enforcement officer, or a process server; 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 and the enforcement officer is unable to ascertain the

address of the owner through the exercise of reasonable diligence, the enforcement officer shall make an affidavit to that effect, and 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, 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, and shall cause a copy of the notice or order to be posted at such structure, location, or premises in a conspicuous location. Such notice or order will also be posted by the City on the website maintained by the City. A copy of the complaint, notice or order shall also be filed with the Clerk of Court for Florence County and such filing shall have the same force and effect as other lis pendens notices provided by law.

- (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. 4-221. Disposition of proceeds from sale of materials.**

If a dwelling is repaired, removed or demolished by the 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 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. 4-222. 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 service of such notice shall be acted upon by the Housing Board of Adjustments and Appeals unless the enforcement officer shall consent thereto. The appeal to the Housing Board of Adjustments and Appeals provided for herein is a required administrative remedy and a prerequisite to the filing of an appeal to the Court of Common Pleas under Sec. 4-225.

**Sec. 4-223. 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) 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.
- (4) 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 §4-217(2), and the Board shall be governed by the provisions of §4-217(2) in its review.

- (5) 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.
- (6) After such hearing on appeal, the Housing Board of Adjustments and Appeals shall issue a written decision setting out 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 the written decision to be served upon the appellant owner.
- (7) The written decision of the Housing Board of Adjustments and Appeals shall constitute the final decision of the City on the issues regarding the dwelling.

**Sec. 4-224. 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 fifteen (15) day period from the date of service 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. 4-225. Appeal to Court.**

Any person affected by an order issued by an enforcement officer under this division, after an appeal to the Housing Board of Adjustments and Appeals, shall have the right to appeal to the Court of Common Pleas within sixty (60) days from the date of service of any decision or 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 the Court of Common Pleas as provided in such section of the Code of Laws of South Carolina. Should any owner file a petition under this section, the 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. 4-226. Process for Dwellings Occupied by Renter or Renters; Creation of Primary and Alternate Landlord-Tenant Ombudsman for City.**

- (1) If the initial inquiry by the enforcement officer indicates that a dwelling is occupied by a renter or renters, then the enforcement officer shall utilize the process set out below:
  - (a) The enforcement officer shall report the dwelling to the Landlord-Tenant Ombudsman appointed by the City pursuant to paragraph (2) below.
  - (b) The Landlord-Tenant Ombudsman shall utilize the provisions of the Residential Landlord Tenant Act of South Carolina (Sections 27-40-10 *et seq*

of the South Carolina Code of Laws) to investigate the dwelling and to work with the landlord and the renter to resolve the issues regarding the occupancy of a dwelling unfit for human habitation. It shall be part of the responsibility of the Landlord–Tenant Ombudsman to provide the renter or renters with information regarding the provisions and protections found in the Residential Landlord Tenant Act of South Carolina and to assist the renter in utilizing those provisions. It shall be part of the responsibility of the Landlord–Tenant Ombudsman to provide the renter or renters with information regarding the provisions and protections found in the Residential Landlord Tenant Act of South Carolina and to assist the renter in utilizing those provisions.

- (c) The Landlord–Tenant Ombudsman shall advise the enforcement officer of the status of the investigation and the efforts utilizing the Residential Landlord Tenant Act of South Carolina. Furthermore, if the Landlord-Tenant Ombudsman learns, at any time during the process, that the dwelling in question has been vacated, the Ombudsman shall immediately report this change to the enforcement officer. If the Landlord–Tenant Ombudsman is unable to bring about a resolution to conditions rendering the dwelling unfit for human habitation by working with the landlord and the renter within Thirty (30) days after the date of referral by the enforcement officer under paragraph (a) above, then the Landlord-Tenant Ombudsman shall advise the enforcement officer of the status. If the Landlord-Tenant Ombudsman determines that progress is being made and reports such progress to the enforcement officer with a request for an extension of time to work on a resolution of the issues, then the enforcement officer shall extend the time for one extension of an additional thirty (30) days.
  - (d) If the Landlord–Tenant Ombudsman is unable to bring about a resolution to conditions rendering the dwelling unfit for human habitation by working with the landlord and the tenant in the time period described in paragraph (c) above, the matter may be further handled by the enforcement officer utilizing the process set forth in Sec. 4-215(5), Sec. 4-216, and the related sections herein.
  - (e) Should the dwelling become vacant at any time during the process, the matter may be further handled by the enforcement officer utilizing the process set forth in Sec. 4-215(5), Sec. 4-216, and the related sections herein.
- (2) There are hereby created two positions to be known as the primary and alternate Landlord-Tenant Ombudsman for the City of Florence. Both the primary and alternate Landlord-Tenant Ombudsman shall be appointed by City Council pursuant to the following:

- (a) Both shall be residents of the City of Florence.
- (b) In appointing the individuals to these positions, Council will take into consideration the duties and powers of the position and shall appoint individuals qualified by education, knowledge or experience to carry out the duties of the position. In so doing, the City Council recognizes that the individuals appointed should have experience in dealing with landlord-tenant issues and should have specific knowledge regarding the provisions of the Residential Landlord Tenant Act of South Carolina (Sections 27-40-10 *et. seq.* of the South Carolina Code of Laws).
- (c) All individuals shall be appointed for four- year terms, except that on the initial appointment, the alternate shall be appointed for a two-year term,
- (d) Any Ombudsman appointed 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 in the appointments shall be filled by City Council for the unexpired term of such vacancy.
- (f) The individuals appointed shall serve without compensation.
- (g) The primary and alternate Landlord-Tenant Ombudsman for the City of Florence shall have the authority and duty to carry out the role and functions described in paragraph (1) of this section above. The primary Ombudsman will carry out the role described in all instances unless the primary is unable to do so due to a conflict of interest or due to other circumstances making the primary unavailable. If the primary Ombudsman is unavailable for any reason, then the alternate Ombudsman shall have all of the authority and duty to fully carry out the role described in paragraph (1) above with respect to the dwelling involved.

**Sec. 4-227. 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 on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

**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**