

## ARTICLE 6.400 PROPERTY MAINTENANCE CODE

### Sec. 6.401. Title, purpose, scope.

- (a) *Title.* That this article shall be known as the "Property Maintenance Code" of the City of Abernathy, and shall be referred to herein as "this code."
- (b) *Purpose.* The purpose of this code is to provide minimum standards and regulations to help safeguard and preserve life or limb, property, and public welfare by regulating the use and maintenance of the exterior of all structures, buildings, and properties within the city.
- (c) *Scope.* This code shall apply to all zoning districts, land, properties, structures, and buildings within the city, including all vacant, occupied, residential, nonresidential, improved or unimproved land, properties, structures, and buildings.
- (d) *Other ordinances.* If other ordinances of the city conflict with this code and the standards and regulations established herein, the stricter standard (or regulation) shall prevail.
- (e) *Intent.* It is the intent of this code to regulate and control public nuisances and other conditions and circumstances, as herein set forth, that adversely affect the health, safety, and welfare of the general public; it is not intended that this code be interpreted or enforced to require the city to intervene in matters which are primarily personal or private in nature and which may appropriately be resolved between or among private interests without material danger to the public health, safety, or welfare.

### Sec. 6.402. Definitions.

Where terms are not defined, they shall have their ordinary accepted meaning within the context with which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged*, copyright 1981, shall be considered as providing ordinary accepted meanings. Words in the singular include the plural and the singular. Words in the masculine gender include the feminine, and the feminine the masculine. The following terms are defined and shall apply to all sections of this code unless defined elsewhere in the code:

**Building.** Any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind which has enclosing walls of fifty (50) percent of its perimeter.

**Building official.** The City Manager or the person or department to whom the City Manager may delegate the building official duties.

**Carrion.** Dead or decaying animal, fowl or fish.

**Commercial motor vehicle.** A motor vehicle, other than a motorcycle, designed or used for:

- (1) Transportation of property; or
- (2) Delivery purposes.

**Commission.** The buildings and standards commission of the City of Abernathy.

**Enforcement authority.** The City Manager or the person or department to whom the City Manager may delegate the enforcement responsibility.

**Graffiti.** Words, phrases, designs, symbolic letters or drawings, written, painted or scratched on sidewalks, fences, windows, vehicles, walls or buildings, trees or other structure or property.

**Hazardous waste.** Toxic, caustic, or flammable materials.

**Infectious waste.** A waste containing pathogens or biologically active material capable of transmitting disease such as animal and human blood or body parts, microbiological, and pathological waste, needles, syringes, and sharps.

**Junk.** Used metals, materials, equipment, appliances, furniture, tires, engines, and parts, and other manufactured or raw goods that are so worn, deteriorated, or obsolete as to make the item unusable or inoperable in their existing condition, or is a potential safety or health hazard.

**Light truck.** A commercial motor vehicle that has a manufacturer's rated carrying capacity of one and one-half (1 1/2) ton or less.

### **Nuisance**

(1) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of the building or upon an occupied premise, including but not limited to, any abandoned wells, shafts, basements, excavations, discarded refrigerators, unsecured vacant building, motor vehicles, unprotected swimming pools, or any structurally unsound fences or structures, or any gasoline, chemicals, lumber, trash, debris or vegetation which may prove a hazard for inquisitive children.

(2) Whatever is dangerous to human life or is detrimental to health and is contrary to the public health, safety or welfare.

(3) Inadequate or unsanitary sewage or plumbing facilities, allowing sewage on lots, grounds, yard or any other place in the city, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city and state.

(4) Uncleanliness, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city and state.

(5) Whatever renders air, food, or drink unwholesome or detrimental to the health of human beings, public health, safety or welfare, or in violation of the codes and ordinances of the city and state.

(6) Graffiti of any type.

(7) Keeping, storing, or accumulating rubbish, including newspapers, refrigerators, furniture, tires, cans, etc., on premises in a neighborhood for ten (10) days or more, unless rubbish or object is completely enclosed in a building or is not visible from a public street.

(8) Maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests.

(9) Sewage, human excreta, wastewater, garbage, or other organic waste deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

- (10) A vehicle or container that is used to transport garbage, human excreta or other organic material and that is defective and allows leakage or spilling of contents.
- (11) A collection of water in which mosquitoes are breeding in the city limits.
- (12) A place or condition harboring rats or breeding flies in a populated area.
- (13) Any public nuisance known at common law or in equity jurisdiction or as defined by codes or city ordinances.
- (14) Overcrowding a room with tenants.

**Objectionable, unsightly, or unsanitary matter.** Any matter or object which is offensive to ordinary sensitivities of a person, is not conducive to high aesthetic appearance and quality of a home or neighborhood, or is a health or safety hazard or a potential health or safety hazard.

**Open storage.** The unscreened storage of new or used materials, salvaged items, vehicle parts, or any item that will cause deterioration of property values.

**Owner.** Any person claiming the ownership or title of real or personal property, including, but not limited to:

- (1) Holder of fee simple title.
- (2) Holder of life estate.
- (3) Holder of a leasehold estate for an initial term of five (5) years or more.
- (4) A buyer in possession, or having right of possession under a contract or deed.
- (5) A mortgagee, receiver, executor, or trustee in possession or control, or having right of possession or control, of real property.
- (6) Any agent who is responsible for managing, leasing, or operation of property.

**Pool.** A permanent swimming pool, spa, hot tub over eighteen (18) inches deep if public or semi-public, and three (3) feet deep if private, located at ground level, above ground or below ground, filled or empty.

**Premises.** Any parcel, lot or tract of land, including any structure, building, landscaping, trees, or other structure or improvement located thereon.

**Recreation vehicle.** A motor vehicle primarily designed as temporary living quarters for recreational camping or travel use which can be towed, hauled, or driven. The term includes, but is not limited to, a travel trailer, camping trailer, truck camper, motor home, including any truck, truck-tractor or other vehicle exclusively used to tow or haul a recreation vehicle.

**Refuse/Rubbish.** All decaying and nondecaying solid waste (except body waste) including, but not limited to, garbage, rubbish, ashes, cans, papers, boxes, glass, and other matter commonly understood as rubbish.

**Screening wall.** Wood, vegetation, or a combination of both at least six feet in height.

- (1) Screening walls shall mean a solid, opaque screening fence or wall at least six (6) feet in height; or
- (2) Vegetation consisting of solid hedgerow or evergreen shrubs, or trees and shrubs, providing full screening from the ground to a minimum of six (6) feet;
- (3) Any combination of the above; or
- (4) Any other form of compatible and appropriate screening as approved by the city.

**Semitrailer.** A vehicle designed or used with a motor vehicle so that part of the weight of the vehicle and its load rests on or is carried by another vehicle.

**Standard driveway.** The pavement between the street and the garage or carport, which is to be no wider than the width of the garage or carport which it serves, or twenty-two (22) feet, whichever is greater, or a paved circular driveway which is intended to facilitate easier access to the main entrance of the premises.

**Structure.** Any residential building, nonresidential building, dwelling, condominium, townhouse, apartment unit, detached garage, shed, awning, fence, screening wall, sign, swimming pool, excavation, any edifice, erection of material, or any other improvement placed or located on any property within the city.

**Tenant.** Any person or agent who occupies a structure or property.

**Trailer.** A vehicle that:

- (1) Is designed or used to carry a load wholly on its own structure which does not exceed eighteen (18) feet in length; and
- (2) Is drawn or designed to be drawn by a motor vehicle.

**Truck-tractor.** A motor vehicle:

- (1) Designed and used primarily for drawing another vehicle; and
- (2) Not constructed to carry a load other than a part of the weight of the vehicle and load to be drawn.

**Unsafe building.** A building which is dilapidated, substandard, structurally unsound or dangerous and unfit for human habitation and is a hazard to the public health, safety and welfare or is unoccupied by its owners, lessees, other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

**Unwholesome matter.** Any condition, object, or matter, whether decaying or nondecaying, which may produce injury, disease, or death to human beings, directly, or indirectly.

#### **Sec. 6.403. Enforcement and inspection.**

(a) The enforcement authority for the provisions of this article shall be the city manager of the City of Abernathy or the person or department to whom the city manager delegates the enforcement responsibility.

(b) Whenever it is necessary to make an inspection to enforce this Code, or whenever the enforcement authority has reasonable cause to believe that there exists upon any property a condition or violation which is unsafe, dangerous or hazardous or detrimental to the public interest, the enforcement authority may enter upon such property at all reasonable times to inspect the same; provided that if such structure or property is occupied, the enforcement authority shall first present proper credentials and request entry, and if such entry is refused, the enforcement authority shall have recourse to every remedy provided by law to secure entry.

**Sec. 6.404. Responsibility.**

(a) *Owner.* Every owner of the premises shall maintain such premises in compliance with this Code. An owner shall not let, rent, or lease a premises for occupancy or use, which does not comply with the provisions of this Code.

(b) *Owner and tenant.* Every owner and every tenant of the premises shall maintain the premises in a clean, sanitary, and safe condition, including the disposal of rubbish, garbage, organic or inorganic waste, junk, or other waste in a lawful manner.

**Sec. 6.405. Exterior grounds.**

(a) *Trash, debris, and objectionable matter.* The regulation of objectionable matter is contained in section 6.216.

All exterior property shall be maintained in clean, safe, and sanitary condition. It shall be unlawful to allow paper; wood; rocks; junk; appliances; furniture; dead grass; branches; trash debris; carrion; improper composting; rubber tires; bottles; scrap metal; vehicle parts; construction materials; fill materials; hazardous waste; i.e., chemicals, oils, solvents, gasoline, paints, pesticides, cleaners, batteries; and other unwholesome matter, to accumulate or remain on any piece of property to include easements so as to create a potential harborage, or breeding place, for rats, vermin or insects, or in such a manner as to be oppressive or injurious to the public health or unpleasant and disagreeable in sight or odor to persons residing or occupying the premises or adjacent premises or to persons who may be in a public place or public right-of-way.

(b) *Grading and drainage.*

(1) All property shall be maintained so as to prevent the accumulation of stagnant, foul, and offensive water thereon, or within or under any structure located thereon.

(2) No filling or excavation shall be performed or constructed on any property without city determination that there will be no adverse effect on an existing or planned drainage pattern on an adjacent property. If it appears that drainage problems may result from filling, excavation, improvements, or landscaping, plans must be submitted by the property owner with an engineer's seal.

(3) It shall be unlawful to drain swimming pool backwash onto public or private property. It is also unlawful to drain swimming pool water containing chemicals onto adjacent private or public property, to include alleys. However, those pools built prior to adoption of this ordinance shall maintain a nonconforming status until such time as the Environmental Protection Agency or other federal agency requires enforcement by the city.

(4) It shall be unlawful to impede the flow of water into any gutter or drainage ditch.

- (5) If dirt used for fill appears to the enforcement authority to be contaminated, the city may require proof of non-contamination.
- (6) The draining or discharging of pesticides, grease, petroleum products, paints, sewage, septic tank, or grease trap waste cooling towers, etc., and toxic chemicals onto any property, streets, alleys, or sewers is prohibited.
- (c) *Sidewalks* All sidewalks, walkways, steps, and driveways located on all private property shall be maintained in state of good repair. The owner and tenant of private property adjacent to all public sidewalks, walkways, and steps shall keep such sidewalks, walkways, and steps free of mud, debris, or other obstruction that would impair or prevent their use.
- (d) *Insect and rodent control.* Every owner and every tenant of a building, structure, or property shall prevent any condition which can provide harborage and breeding of insects, rats, ants, vermin, mosquitoes, or other pests which can create a hazard or a nuisance to said building, structure, or property, or are otherwise detrimental to the public health, safety, and welfare.
- (e) *Glare and direct illumination* Exterior lights placed or erected on private property shall be shielded, placed or erected so as not to create a traffic hazard or a public nuisance. They shall be located so as to not produce direct illumination across the bounding property line.
- (f) *Trees, shrubs, and plants.* Trees, shrubs, and plants that are dead or which are considered by the enforcement authority to be hazardous to persons or property shall be removed by the owner.
- (g) *Weeds and grass.* The regulating of high weeds and grass is contained in section 6.216 et seq. of this Code.
- (1) Weeds or grass shall be maintained at a height not exceeding twelve (12) inches.
- (2) All cut weeds, grass and shrubs or brush shall not be left or allowed to accumulate on any public street, sidewalk or public way.
- (3) Weeds, grass, shrubs or brush shall not be deposited in any drainage ditch, inlet, manhole, or storm sewer, or sanitary sewer system, or on any private or public property.
- (4) The unpaved areas of the front yard shall be maintained with grass, ground cover, or other type of landscaping to such an extent that the soil is not subject to erosion.
- (h) *Animal pens.* The regulating of animals can be found in the Abernathy Code of Ordinances [Chapter 2], Animal Control.
- (1) All animal pens, runs, exercise areas, fenced areas, houses, structures and enclosures shall be kept clean, sanitary, free from odor and excrement, insects, and other unsightly or objectionable matter which constitutes a public nuisance or is otherwise detrimental to the public health, safety, or welfare.
- (2) Pens and housing for animals shall be kept in a state of good repair.
- (i) *Accumulations of firewood, lumber, boxes, etc.* Any lumber, boxes, barrels, bricks, stones, pipes, firewood, or any other character of materials which may be used as a harborage by rats, rodents or other vermin, or in which evidence of rats, rodents or other vermin is found shall be separated from a fence owned by adjacent property owner a minimum of three (3) feet; and elevated not less than six (6) inches above ground, with a clear intervening space underneath.

(j) *Fences.*

- (1) All fences shall be maintained structurally sound and not be out of vertical alignment more than twenty (20) percent.
- (2) All damaged, rotting, removed, or missing portions shall be replaced with comparable materials to the remaining portion of the fence and shall be kept free from deterioration.
- (3) A fence that has deteriorated to a condition that it is likely to fall shall be repaired, replaced, or removed.
- (4) Fences shall not be externally braced in lieu of replacing or repairing posts, columns, or other structural members.
- (5) All damaged or missing parts of chain link or metal fences shall be replaced or repaired.

(k) *Accessory structures.*

- (1) Carports, awnings, patio covers, detached garages, sheds, storage buildings, benches, and other accessory structures shall be maintained structurally sound, and free of deterioration. All accessory structures shall be protected from the elements by periodic painting, staining, or other waterproofing or surface protection.
- (2) Structures such as tree houses, forts, skateboard ramps, etc., shall not be allowed in the front yard.

(l) *Swimming pools and spas and hot tubs*

- (1) Swimming pools, spas, and similar structures above ground, on ground, or in ground, shall be maintained safe, clean, sanitary, secure, and structurally and mechanically sound in accordance with applicable city codes.
- (2) The dumpsite for pool excavation shall be approved by the City at the time of plan review.

(m) *Enclosure of pools, spas, and hot tubs.*

- (1) Private.
  - a. Every outdoor swimming pool, spa, and hot tub shall be completely enclosed by a fence or wall not less than six (6) feet in height.
  - b. All gates or doors shall be equipped with a self-closing and self-latching device. The latching device shall be located on the pool side at least four and one-half (4 1/2) feet from the ground.
  - c. Prior to excavation, a temporary fence shall be installed and maintained until completion of the pool.
- (2) Public and semi-public.

- a. Every outdoor swimming pool, spa, and hot tub shall be completely enclosed by a fence or wall not less than six (6) feet in height.
- b. Openings under the pool yard enclosure may not allow a sphere four (4) inches in diameter to pass under the pool yard enclosure.
- c. If the pool yard enclosure is constructed with horizontal and vertical members, and the distance between the tops of the horizontal members is at least forty-five (45) inches, the openings may not allow a sphere four (4) inches in diameter to pass through the enclosure.
- d. If the pool yard enclosure is constructed with horizontal and vertical members, and the distance between the tops of the horizontal members is less than forty-five (45) inches, the openings may not allow a sphere one and three-fourths (1 3/4) inches in diameter to pass through the enclosure.
- e. If the pool yard enclosure is constructed with diagonal members and no vertical members, such as a lattice fence, the openings may not allow a sphere one and three-fourths (1 3/4) inches in diameter to pass through the enclosure.
- f. If the pool yard enclosure is constructed with chain link metal fencing material, the openings may not allow a sphere one and one-fourth (1 1/4) inches in diameter to pass through the enclosure.
- g. Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than one and three-fourths (1 3/4) inches in any direction.
- h. Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.
- i. All gates or doors shall be equipped with a self-closing and self-latching device. The latching device shall be located at least four and one-half (4 1/2) feet from the ground.

- (n) *Private parking lots, drives, and streets.* Private parking lots, drives, and streets, and improved surfaces shall be maintained in good, safe condition and be free of litter, holes, excavation, protrusions, cracks, or other failures that may affect the use, safety, appearance, or drainage of the property or of the adjoining property.
- (o) *Solid waste.* The regulation of solid waste is contained in the Abernathy Code of Ordinances [Chapter 11 Utilities and Solid Waste].

(1) *Dumpsters.*

- a. All garbage and trash shall be placed inside dumpsters. Dumpsters shall be kept closed to prevent littering and to render contents inaccessible to insects, rodents, and other animals.
- b. Construction materials shall not be placed in dumpster.
- c. Grass clippings and leaves shall be bagged and shall not be commingled with garbage or trash.

- (2) Bulky item pickup.
  - a. Bulky items shall be contained to prevent littering.
- (3) Commercial dumpsters.
  - a. Dumpsters shall be maintained in safe, clean, painted and sound condition.
  - b. Commercial customers shall insure that no liquid waste of any type is placed in their containers and that no solid waste is placed outside the container.
  - c. Dumpster lids, if provided, must be kept closed at all times.
- (4) Construction site. Each contractor and property owner shall be responsible for a construction site so that building materials and debris will be contained on the site of construction. Litter or other debris including dirt and mud deposited as a result of normal construction, remodeling, or landscaping process upon any public place or private premises, shall be removed by the contractor and/or property owner.

A temporary container, may be used on the construction site to contain the litter generated from construction or construction workers. When the trash container is full, the trash shall be disposed of immediately.

- (5) Dumping or littering.
  - a. Dumping of any residential or commercial garbage, rubbish, brush, junk, stone construction materials, appliances, furniture, grease, solvents, petroleum products, vehicle and vehicle parts in any place and in any manner is prohibited.
  - b. The hauling of materials and waste without proper containment is prohibited.
  - c. It is in violation of this section for property owners to allow dumping or littering to take place on any property under their control and supervision.
- (6) Infectious or hazardous waste
  - a. No infectious or hazardous wastes shall be deposited at any location within the city regardless of consent of property owner. Infectious and hazardous household waste shall not be placed in dumpsters. The disposal of infectious or household hazardous waste will be in accordance with the regulations and policies stipulated by the Texas State Health Department and Texas Commission on Environmental Quality.

(p) *Open storage.*

- (1) Open storage of materials and equipment.
  - a. Commercial/industrial. All properties located within a commercial development with open storage of materials, equipment, vehicles, etc., shall screen such storage from residential property [and] from public view.
  - b. Residential. Open storage shall not be permitted in the front yard, in a

carport, or on a front porch of any residential dwelling. Open storage shall be screened from adjacent properties and streets by a six-foot solid screening fence. Open storage shall include furniture other than furniture designed for outside use, household items, products of a commercial trade or business enterprise, whether such items are used or new, items of salvage such as scrap metal, papers, cans, lumber and building materials not currently being used or held for immediate use upon the premises and other similar materials.

(q) *Unsafe buildings and structures.* All unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with this code.

(r) *Burned structure.* Whenever any building or structure in the city is partially burned, the owner or person in control shall, within thirty (30) days, after completion of investigation by the fire department, remove from the premises all refuse, debris, charred and partially burned lumber and material. If such building or structure shall be burned to such an extent that it is rendered incapable of being repaired, the owner or person in control shall, within sixty (60) days, after completion of investigation by the fire department, remove from the premises all the remaining portion of the building or structure. If the building or structure is to be repaired, work shall begin within sixty (60) days and progressively be completed in one hundred twenty (120) days.

(s) *Vacant buildings* Every vacant dwelling, house, building (residential or commercial) or other similar structure within the corporate limits of the city shall comply with the following requirements:

(1) All exterior doors and windows shall be kept in sound working condition and free of broken glass.

(2) All exterior doors shall be equipped with a workable lock or locking device and shall be kept securely locked during the period of time said building is vacant.

(3) All windows shall be secured by a latch, lock or other means so as to prevent easy entry into said structure by children, vagrants or other unauthorized persons.

(4) All exterior walls and roof shall be kept in good repair and free of holes, cracks, defective materials and structural deterioration so as to keep such building from becoming a breeding place for rodents, roaches and disease carrying insects.

(5) The exterior of said building and the premises thereon shall be kept free of any accumulation of paper, hay, moss or other flammable or combustible rubbish or waste material of sufficient quantity to constitute a danger to said building or any other building or premises in case such waste material should become ignited.

(6) The exterior of the premises shall be kept free of any accumulation of trash, garbage, rubbish or any waste material of such quantity as to constitute an unsanitary condition.

(7) Fences shall be maintained in good repair and gates locked at all times.

(t) *Parking and storage of vehicles--Residential properties.*

Vehicles must be parked in such a way as not to block public walks, be in a good state of repair, maintained in such condition as not to be unsightly, and must be parked or stored in a safe manner, so as to protect the health and safety of all person.

Boats, motorhomes, recreational vehicles, and small utility trailers may be parked on the residential premises of the owner, provided grass and weeds are maintained in a neat and orderly fashion, not to exceed six (6) inches in height.

**Sec. 6.406. Exterior of structure.**

- (a) *General.* The exterior of a structure shall be maintained structurally sound.
- (b) *Structural members.* All supporting structural members of all structures shall be kept structurally sound, free of deterioration and maintained capable of safely bearing the dead and live loads upon them.
- (c) *Exterior surfaces.* The foundation, exterior wall, floor, roof, and all exterior surfaces of every structure shall be maintained in a state of repair sufficient to exclude rats, rodents, birds, vermin and other animals. Peeling paint, cracked or loose plaster, broken glass, decayed wood and other defective surface conditions shall be repaired, replaced or restored.
- (d) *Foundation walls.* All foundation walls shall be maintained so as to safely carry applicable dead and live loads that are imposed upon the foundation walls.
- (e) *Exterior walls.* The exterior wall of every structure should be free of holes, breaks, loose or rotting boards or timbers, and any other conditions which might admit rain or dampness to the interior portions of the walls or to interior of the structure. The exterior wall surface materials of every structure should be maintained weatherproof or the surface protected as required to prevent deterioration. Exterior wall surface deterioration that is visually apparent from the exterior of the building shall be considered a violation of this article.
- (f) *Roofs.* The roof of every habitable structure should be structurally sound, tight, and free of leaks. Roof drainage should be adequate to prevent rain water from causing dampness in the walls or interior portion of the structure. Roof deterioration that is visually apparent from the exterior of the building shall be considered a violation of this article.
- (g) *Decorative features.* The cornices, entablatures, belt courses, corbels, terra cotta trim, wall facings and similar decorative features of every structure shall be maintained in good repair with proper anchorage and in a safe condition.
- (h) *Exterior attachments.* All exterior canopies, marquees, signs, awnings, stairways, fire escapes, standpipes, rain gutters, exhaust ducts and similar overhang extensions attached to a structure shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
- (i) *Chimneys.* All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe, sound, properly mortared and in good repair, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
- (j) *Stairs and porches.* Every stair, porch, balcony, and all appurtenances attached thereto shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected and shall be kept in sound condition and good repair, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.
- (k) *Window and door frames.* The windows, doors, and frames of every habitable structure

shall be constructed and maintained in good repair so as to exclude rain as completely as possible from entering the dwelling or structure and weatherproofed to prevent deterioration.

(l) *Weathertight.* The windows and exterior doors of every habitable structure shall be fitted in their frames so as to be reasonably weathertight and shall be kept in sound condition and good repair.

(m) *Door hardware.* The exterior doors, door hinges, and door latches of every structure shall be maintained in good condition. Door locks in exterior doors of dwelling units shall be maintained in good repair and capable of tightly securing the door.

(n) *Garage doors.* Shall be capable of being closed reasonably plumb, properly attached and the exterior surface maintained weatherproof as required to prevent deterioration.

#### **Sec. 6.407. Multifamily residential; responsibility.**

It shall be the responsibility of the property owner, the property management firm, landlord, or apartment manager, to maintain multifamily property in accordance with the requirements of this section.

(a) *Structure.* All installed systems, including, but not limited to plumbing, electrical, heating, air conditioning shall be maintained in a structurally sound and operative condition. The following items shall also be maintained by the responsible party:

(1) Window panes and screens shall be constructed and maintained in such relation to the adjacent wall construction so as to exclude rain, moisture, and insects as completely as possible from entering the dwelling or structure.

(2) Railings for stairs, steps, balconies, porches, and elsewhere as specified in the building code in effect at time of construction of the building. They shall be kept in sound repair, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.

(3) The exterior doors, door hinges, and door latches of every habitable structure shall be maintained in good condition. Door locks in exterior doors of dwelling units shall be maintained in good repair and capable of tightly securing the door.

(4) Parking lots, fire lanes, and required paved areas with legible parking and fire lane markings in accordance with city ordinances.

(5) Swimming pools and fences shall be maintained in accordance with section 6.405(l) of this article.

(6) Decorative features, such as cornices, entablatures, belt courses, corbels, terra cotta trim, wall facings of every structure shall be maintained in good repair with proper anchorage and in a safe condition.

(7) All exterior attachments, such as canopies, marquees, signs, awnings, stairways, fire escapes, standpipes, rain gutters, exhaust ducts and similar overhang extensions attached to a structure shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition, and their exterior surface materials shall be maintained weatherproof and shall be surface coated or protected as required to prevent deterioration.

(8) Burglar bars shall comply with requirements of the building code and other codes or ordinances of the city. Burglar bars on windows of bedrooms of residential structures shall be constructed and maintained in such a way so as to be operable and openable from the interior of the residence without use of a key or special knowledge or effort.

(9) Garage doors shall be capable of being closed reasonable plumb, and shall be kept in sound condition and good repair.

(b) *Maintenance.* The responsible party shall:

(1) Paint, waterproof, and repair the structure to prevent deterioration due to the elements. Conditions requiring repair include but are not limited to loose siding with holes, excessive cracks, or rotted boards which may permit air or water to penetrate rooms; loose roof covering; holes or leaks in the roof which may cause damage to the structure or rooms; and rotting, sagging, or deteriorating supports for steps, stairs, or porches. The exterior of all buildings, including roofs, shall be maintained to such an extent as to be free of rot, decay or deformity.

(2) Repair holes, cracks, and other defects in stairs, railings, porches, steps, and balconies that may cause injury to a person.

(3) Eliminate holes, excavations, sharp protrusions, and any other object or condition on the property which may cause injury to a person.

(4) Provide drainage to prevent standing and stagnant water on the premises. No filling, excavation or other improvement shall be performed or constructed on any property which will have an adverse effect on an existing drainage pattern on an adjacent property. Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

(5) Erosion control. All unpaved areas shall be maintained with grass, ground cover, or other type of landscaping to such an extent that the soil, when wet, will not be picked up and spread to sidewalks or adjacent private or public property and is not subject to erosion during rains.

(6) Retaining walls. All retaining walls shall be maintained in good condition.

(7) Remove trees and tree limbs that are reasonably capable of damaging a structure or that are reasonably capable of causing injury to a person.

(8) Completely secure all vacant or unoccupied dwelling units from unauthorized entry.

(9) Provide and maintain on each building, and on the property, street address numbers, including unit numbers, and any additional signage as required by City of Abernathy Code of Ordinances

(10) Maintain in compliance with all applicable ordinances property screening fences and all other fences.

(11) The exterior property areas shall be maintained in a clean, safe, and sanitary condition.

(12) Sidewalks and public walks shall be kept free of mud, debris, frozen precipitation or other obstruction that would impair or prevent their use.

(13) Chimneys, antennas, towers, stacks, satellite dishes, and similar structures must be maintained structurally sound, free of deterioration, and firmly secured.

(14) Fences:

a. All fences shall be maintained reasonable plumb and structurally sound. Each structural and decorative member of a fence shall be free of deterioration and be compatible in size, material, and appearance with the remainder of the fence.

b. A fence that has deteriorated to a condition that is likely to fall shall be repaired or replaced.

c. Fences shall not be externally braced in lieu of replacing or repairing posts, columns, or other structural members.

d. Any fence repair, alteration or modification must comply with all city ordinances.

(c) *Nuisances.* The following items shall be deemed to be a nuisance and not allowed:

(1) Noxious weeds and other rank vegetation. The regulations of high weeds and grass as contained in section 6.405(g) shall be adhered to.

(2) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, or other things.

(3) Any condition which provides harborage for rats, mice, snakes, and other vermin.

(4) Any buildings or other structure which is in such a dilapidated or damaged condition that it is unfit for human habitation, does not serve its original intended function, or is kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.

(5) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or other causes which give rise to the emission or generation of such odors and stenches.

(6) Any building, structure, or other place or location where any activity which is in violation of local, state, or federal law is conducted, performed, or maintained.

(7) Dense smoke, noxious fumes, gas, soot, or cinders, in unreasonable quantities.

(8) Any portion of a building or structure that remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period of excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(9) Glare. Exterior lights placed on erected on private property shall be shielded, placed or erected so as not to create a traffic hazard or a public nuisance, and shall be erected so as to not produce direct illumination across the bounding property line.

(10) The regulations of animals as contained in section 6.405(h) shall be adhered to.

(d) *Solid waste:*

- (1) The responsible party shall provide solid waste receptacles or containers as required by the approved site plan, and the regulations of section 6.405(o) shall be adhered to.
- (2) The shared or common areas of the premises shall be maintained in a clean and sanitary condition.
- (3) The premises shall be kept clean of all abandoned items such as abandoned motor vehicles, i.e. boxes, refrigerators, stoves, glass, building materials, building rubbish or similar items.

(e) *Burned structure:*

- (1) Whenever any building or structure within the multifamily complex is partially burned, the responsible party shall, within thirty (30) days, remove from the premises all refuse, debris, charred and partially burned lumber and material. Such thirty (30) days shall begin after the fire marshal has advised that the investigation is complete. If such building or structure shall be burned to such an extent that it is rendered incapable of being repaired, the owner or person in control shall, within sixty (60) days, remove from the premises all the remaining portion of the building or structure. Such sixty (60) days shall begin after the fire marshal has advised that the investigation is complete. If the building or structure is to be repaired, work shall begin within sixty (60) days and progressively be completed in one hundred twenty (120) days.

(f) *Parking and storage of vehicles:*

- (1) It shall be unlawful for the owner, occupant, or person in charge of property zoned for multifamily uses to permit the parking, standing, or storing of automobiles, buses, trucks, tractors, motorhomes, motorcycles, mopeds, farm machinery, all-terrain vehicles, boats, aircraft, recreational vehicles, golf carts, go carts, trailers, campers, camper shells, wheeled towing frames, semi-tractor trailers, truck beds mounted on chassis, mobile homes, all vehicles motorized and non-motorized, within the front yard of the complex. Vehicles must be wholly parked or stored within the provided parking area, not block public walks, be in a good state of repair, maintained in such condition as not to be unsightly, and parked or stored in a safe manner, so as to protect the health and safety of all persons.
- (2) Inoperable and/or dismantled vehicles shall be regulated by the abandoned vehicle section of the Abernathy Code of Ordinance (Chapter 7).

(g) *Abatement:*

- (1) Notice of violation and abatement of nuisances shall be in accordance with section 6.409 of this property maintenance ordinance.

**Sec. 6.408. Unsafe building; repair, demolition and receivership; notice and hearing; liens; and civil penalties.**

- (a) If the building official finds that a building is unsafe and must be vacated, secured, repaired, removed or demolished or the tenants relocated, the building official shall give notice to an owner, lienholder or mortgagee of the building that a hearing will be held to determine whether the building is an unsafe building. The notice must include a statement that the owner, lienholder, or

mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonable perform the work. The notice shall be served by certified mail, return receipt requested and sent to the last known address of the persons described above. If the certified mail is returned undelivered, the building official may serve the notice personally if the person is located in Lubbock or Hale County and his address is known. If the notice sent to an owner is returned undelivered, and after diligent search, the building official is unable to discover a correct address for the owner or is unable to serve the owner personally, then the building official shall give notice by publication of the order once in a newspaper of general circulation in the city at least five(5) days before the hearing.

(b) A hearing to determine whether a building is unsafe shall be held before the Abernathy City Council and is open to the public. At the hearing, the building official shall present testimony and evidence of the condition of the building and the owner, lessor, tenant, mortgagee or lienholder may present testimony and evidence.

(c) The Abernathy City Council, after the public hearing, may:

(1) Find that the building is not an unsafe building and refer the matter to building official for further appropriate action;

(2) Grant a variance in order to avoid the imposition of an unreasonable hardship;

(3) In the case of a single family dwelling occupied by the owner where the health, safety and welfare of other persons will not be affected, grant an exception to any provision of this article to avoid the imposition of an unreasonable hardship; or

(4) Find the building is an unsafe building and order:

a. Demolition of the building;

b. Repair or correction of the building within a specified period of time;

c. Repair or correction of the building within a specified period of time and demolition of the building if the repair or correction is not timely effected;

d. Repair or correction of the building by the owner, mortgagee or lienholder within a specified period of time and repair or correction by the City if not timely effected by the owner, mortgagee or lienholder;

e. Repair, correction or demolition of the building within a specified period of time and the assessment of a civil penalty against the owner for each day or part of a day that the owner fails to repair, correct or demolish the building;

f. An action be brought in district court in accordance with the Texas Local Government Code § 214.03, as amended, for the appointed of a receiver of the property;

g. Vacation of the building within a specific period of time;

h. Securing the building within a specific period of time; or

i. Relocation of the tenants of the building within a specific period of time.

(d) If a building is not vacated, secured, repaired, removed, or demolished or the tenants are

not relocated within the specified period of time set forth in the Abernathy City Council 's order, the city may:

- (1) Vacate, secure, repair, remove or demolish the building at its own expense; or
- (2) Assess a civil penalty against the property owner for failure to repair, remove or demolish the building.

(e) The city may repair a building only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with ten (10) or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

(f) If the city incurs expenses to vacate, secure, repair, remove or demolish a building or assesses a civil penalty, the city has a lien against the land in which the building stands or sits, unless its a homestead as protected by the Texas Constitution, to secure the payment of said expenses or a civil penalty. The city's lien to secure the payment of a civil penalty or the cost to vacate, secure, remove, repair or demolish the building or relocate the tenants arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which property is located. The notice must be filed promptly after the imposition of the lien and contain the name and address of the owner, if reasonable determinable, legal description of the real property on which the building was located, the amount of the expenses incurred by the city, and the balance due. The city's lien is a privilege lien subordinate only to tax liens if each mortgagee and lienholder of the building was given notice and an opportunity to repair or demolish the building; otherwise, the city's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the city's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed or the repair, removal or demolition is begun by the city. The city's lien is superior to all other previously recorded judgment liens. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses.

(g) A civil penalty or assessment imposed by the city to recover its expense for the repair of a building accrues interest at the rate of ten (10) percent a year from the date of the assessment until paid in full and the city's right to the assessment lien may not be transferred to third parties.

(h) The lien imposed by the city for repair expenses may not be foreclosed if the property on which the repairs are made is occupied as a residential homestead by a person sixty-five (65) years of age or older.

(i) The city may assess and recover a civil penalty not to exceed a thousand dollars (\$1,000.00) a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed ten dollars (\$10.00) a day for each violation, if the city proves:

- (1) The property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and
- (2) After notification, the property owner committed an act in violation of the ordinance or failed to comply with the Abernathy City Council 's order.

(j) The assessment of a civil penalty is final and binding and constitutes prima facie evidence of the penalty in any suit brought by a city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty. To enforce a civil penalty the clerk or secretary of the city must file with the district clerk of the county in which the city is located a certified copy of the

Abernathy City Council's order stating the amount and duration of the penalty. No other proof is required for district court to enter a final judgment on the penalty.

(k) The building official shall, after the hearing, promptly mail by certified mail, return receipt requested, a copy of the order of the Abernathy City Council to the owner of the building and to any lienholder or mortgagee of the building and shall file a copy of the order of the commission in the deed records of the county where the property is located. Within ten (10) days after the date the order is issued, the building official shall:

- (1) File a copy of the order in the office of the city secretary or clerk; and
- (2) Publish in a newspaper of general circulation in the city in which the building is located a notice containing:
  - a. The street address or legal description of the property;
  - b. The date of the hearing;
  - c. A brief statement indicating the results of the order; and
  - d. Instructions stating where a complete copy of the order may be obtained.

(l) When an order of the Abernathy City Council has been filed in the county deed records, the execution of the order is not affected by a sale or other transfer of the premises. A person acquiring interest in the property after an order has been so filed is subject to the requirements of the order.

#### **Sec. 6.409. Vacating a building.**

(a) When the building official has given notice of a hearing to consider vacation of building, the building official shall place a sign on the building. The sign shall serve as a warning of the unsafe, unsanitary, and dangerous condition of the building. A person commits an offense if he does any of the following:

- (1) Without authority from the building official moves or destroys a sign placed by the building official;
- (2) Occupies a vacant building on which the building official has placed such sign; or
- (3) As the owner of a building authorizes a person to occupy a vacant building on which the building official has placed such sign.

(b) Each occupant of a building that has been ordered vacated shall vacate the building within a specified time determined by the Abernathy City Council. No person shall occupy a building that has been ordered vacated.

(c) The owner shall provide alternative housing to all tenants of a building which has been ordered vacated.

#### **Sec. 6.410. Securing a building.**

(a) The city may secure a building that the building official determines:

- (1) Violates the minimum standards set forth in this article; and
  - (2) Is unoccupied or is occupied by persons who do not have a right of possession to the building.
- (b) Before securing a building under subsection (a), the city shall post a notice on or near the front door of the building stating that if the owner does not secure the building within forty-eight (48) hours, the city will secure the building at the owner's expense.
- (c) Before the eleventh day after the date the building is secured, the city shall give notice to the owner by:
- (1) Personally serving the owner with written notice;
  - (2) Depositing the notice in the United States mail by certified mail, return receipt requested addressed to the owner at the owner's last known address;
  - (3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's address is unknown; or
  - (4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's address is unknown.
- (d) The notice issued under subsection (c) must contain:
- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located;
  - (2) A description of the violation of the city's minimum standards that is present at the building;
  - (3) A statement the city that will secure or has secured the building; and
  - (4) An explanation of the owner's entitlement to request a hearing regarding the city's decision to secure the building.
- (e) A hearing shall be held before the Abernathy City Council if, within thirty (30) days after the date the city secures the building, the owner files with the building official a written request for the hearing. The hearing shall be held within twenty (20) days after the date the request is filed and is open to the public. At the hearing, the building official shall present evidence of the need to secure the building and the owner may testify or present witnesses or written information about any matter relating to the city's decision to secure the building.
- (f) The Abernathy City Council shall uphold the city's action in securing a building if it finds the building or a portion of the building to be open and potentially dangerous to the health, safety, or welfare of the public. A building is open if a door, window, or other opening is not securely closed to prevent unauthorized entry, and the building is left unattended.

**Sec. 6.411. Penalty.**

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction in the municipal court shall be subject to a fine not to exceed two thousand dollars (\$2,000.00) for each offense, and each day such violation continues, it shall constitute a

separate offense.

**Sec. 6.412. Injunctive relief.**

In addition to and cumulative of all penalties, the city shall have the right to seek injunctive relief for any and all violations of this article.

**PASSED AND APPROVED, the 10th day of May, 2004.**