

STATE OF SOUTH CAROLINA

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ORDINANCE NUMBER 2006-10-16-14

COUNTY OF ORANGEBURG

**AN ORDINANCE PROVIDING FOR
ADMINISTRATION AND ENFORCEMENT OF A COMMUNITY DEVELOPMENT
CODE,
THE ESTABLISHMENT OF A COMMUNITY DEVELOPMENT REVIEW BOARD,
PROCEDURES, REMEDIES, COSTS, LIENS, PENALTIES,
AND OTHER RELATED MATTERS**

Pursuant to the authority granted to the County Council for Orangeburg County under the Constitution, statutes, and laws of the State of South Carolina, **BE IT ENACTED** by the Orangeburg County Council, in meetings duly assembled, after three readings and a public hearing, the following ordinance:

COMMUNITY DEVELOPMENT DIVISION.

Establishment.

The Community Development Division is hereby created. The Deputy County Administrator of the Community Development Division shall be appointed by the County Administrator and shall be in charge of the division. The following departments and functions shall be within the division:

- Addressing
- Building Inspection
- Land Planning
- Litter Control
- Property remediation activities
- Septic tank permitting

Purpose.

The purpose of the Community Development Division is to centralize and coordinate the County's land use and land development services.

Code.

The ordinances regulating activities handled by the various departments within the Community Development Division shall be referred to cumulatively as the "code". Those ordinances comprising the code specifically include those that regulate the following subjects:

- Administration and enforcement
- Construction, including all State mandated codes
- Conditions on improved and unimproved lots
- Land use regulations, including zoning

Standards applicable to structures of any kind

Code official.

General.

Subject to the following exception, all references to the “code official” in this chapter regarding administration and enforcement shall refer to the Deputy County Administrator of the Community Development Division.

Exception.

For purposes of administration and enforcement of the construction codes within this code that are mandated by the State, reference to the “code official” shall refer to the duly appointed County Building Official.

Assistants.

With the concurrence of the County Administrator, the code official shall have the authority to appoint one or more assistant code officials, other related technical officers, inspectors and other employees. Within this code, such persons shall be referred to cumulatively as the code official’s “subordinates”.

Liability.

The code official and/or any subordinate charged with the enforcement of the code, while acting for the County, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act required or permitted in the discharge of official duties. The County shall cause to be defended any suit instituted against the code official and/or any subordinate arising from an act performed in the lawful discharge of duties in connection with and under the provisions of the code. The code official and/or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted regarding enforcement of the code. The code official and/or any subordinate, acting in good faith and without malice, shall be free from liability for acts or omissions performed in connection with or under the code.

Fees.

The County Council shall set fees for activities and services performed by the division, the departments within the division, and the Community Development Review Board. A list of the fees relevant to a particular department and the Community Development Review Board shall be available in the main office of the department, and a list of all fees relevant to the division and the Community Development Review Board shall be available in the main office of the code official.

DUTIES AND POWERS OF THE CODE OFFICIAL

General.

The code official shall enforce the provisions of the code; however, whenever there are practical difficulties involved in carrying out the provisions of the code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of the code

impractical and the modification is in compliance with the intent and purpose of the code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the relevant department's files.

Identification.

The code official and subordinates shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

Right of entry.

Whenever necessary to make an inspection in accordance with routine administration of the code, the code official may enter or cause to be entered by subordinates a structure or property to inspect or perform any duty under the code; however, such entry is subject to constitutional restrictions, including consent of the person with the right to control entry. If entry to make a routine inspection is refused, the structure or property shall be deemed to have failed inspection and the code official shall take such action as is allowed when an inspection is failed.

Whenever the code official has reasonable cause to believe that there exists in any structure or upon any property any condition or code violation which makes the structure or property unsafe, dangerous, or hazardous to persons in or around the structure or property, the code official may enter or cause to be entered by subordinates the structure or property at reasonable times to inspect and perform any duty under the code; provided that:

if the structure or property is occupied, the code official and any subordinate shall present to the occupant identification and request entry; or

if the structure or property is unoccupied, the code official and any subordinate shall first make reasonable effort to locate the owner or other persons having charge or control of the structure or property and request entry; and

if consent for entry is refused or not obtained, the code official shall have recourse to every remedy provided by law to secure entry, including obtaining a court order to allow entry for purposes of inspection.

Inspections.

The code official shall cause qualified subordinates to conduct all required inspections and may accept reports of inspection provided by approved agencies or individuals. All inspection reports shall be in writing and be certified by the responsible subordinate or agent of the approved agency. Subject to budgetary constraints and with the consent of the County Administrator, the code official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.

Required testing.

Subject to budgetary constraints and with the consent of the County Administrator, the code official shall have the authority to require tests to be made regarding the existence of

hazardous substances; however, financial responsibility for any cost arising from such testing shall be handled in the same manner as remediation or demolition costs.

Test methods.

Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the code official shall be permitted to approve appropriate testing procedures performed by an approved agency.

Test reports.

Reports of tests shall be retained by the code official for the period required for retention of the relevant department's records.

Notices and orders.

The code official as well as the code official's duly authorized subordinates are empowered and to issue all necessary notices, orders, complaints and other documents to ensure compliance with this code.

Department records.

The code official shall oversee a record keeping system in each department for proper maintenance of department records, including of official records of all business and activities of the department as may be specified in the provisions of the code. Upon the final conclusion of a matter, records of the matter shall be retained or disposed of in accordance with the code or, where not specified in the code, with the County's document retention policy.

VIOLATIONS

Unlawful acts.

It shall be unlawful for any person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

Notice of violation.

The code official shall cause to be served upon a violator a notice of violation, order, or complaint.

Continuing violation.

Each day that a violation continues after due notice of the violation has been served shall be deemed a separate offense.

Prosecution of violation.

The code official shall prosecute any person the code official finds has violated or failed to comply with any provision or requirement of the code. Absent timely compliance, objection or appeal in response to a notice of violation or order, the person served with notice of violation or order shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. In addition, absent timely compliance, objection or appeal

in response to a notice of violation or order, the code official may institute a civil proceeding at law or in equity to restrain, correct, abate, or remove such violation or gain compliance with the order.

Costs; Lien.

Any and all costs and expenses necessarily incurred by the County in obtaining compliance with the code, including repairs, alterations or improvements, vacating and closing, demolition and removal, or any other remediation measure, or in prosecuting a violation of the code, whether incurred by use of County personnel and resources or by use of independent contractors hired by the County ("costs"), shall be considered a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as county taxes. The County shall give notice of the lien to the owner of the relevant property. If the lien remains unpaid for a period of 30 days after the date notice is given, the lien expense shall be added to the annual tax levied on the property and shall be collected by the County in the same manner as county taxes.

Existing remedies; Abatement of violation.

The provisions of the code shall not be construed to abolish or impair existing remedies, but shall be in addition to existing remedies. The imposition of the penalties prescribed in the code shall not preclude the County Attorney from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

NOTICES AND ORDERS

Notice to person responsible.

Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed.

Form.

Notice shall be and include all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation(s) and why the notice is being issued.
4. Include the date of the violation and, if applicable, if the violation is considered a continuing violation.
5. Include a correction order allowing a reasonable time to make repairs and improvements required to bring the property into compliance with the provisions of the code.
6. Inform the property owner of the right to object or appeal.
7. Include a statement of the right to charge and collect costs as a lien against the property.

Method of service.

Notices, orders and complaints shall be deemed to be properly served if served:

- a. As allowed under State law for service of process; however, if that service is by mail, then if the notice is returned showing that the letter was not delivered, a copy of the letter shall be posted in a conspicuous place in or about the structure or property that is the subject of the notice; or
- b. Personally by a person authorized by the County to make such deliveries. The County hereby authorizes the code official, any subordinate of the code official, any County litter control officer, building inspector, or the zoning administrator to make such deliveries; or
- c. As to any structure that appears to be occupied, but for which the County has not, after reasonable efforts, located the occupant, by posting on the structure or property in a conspicuous place.

Penalties.

Penalties for noncompliance with notices, orders and complaints shall be as set forth in the code and as may be provided by State and other local ordinances.

Transfer of ownership.

It shall be unlawful for the owner or anyone upon whom a notice, order or complaint of violation has been served to transfer, sell, mortgage, lease or otherwise dispose of (cumulatively "transfer") the structure or property that is the subject of the notice without first fully rectifying the violation, except if all of the following conditions have been met: the owner has furnished (1) to the transferee, a true copy of all notices, orders or complaints of violation issued by the code official relevant to the structure or property that have yet to be rectified and (2) to the code official, a signed and notarized statement from the transferee (A) acknowledging the receipt of such documents set out in list form and (B) fully accepting unconditional responsibility for compliance, including proper corrections, repairs, or demolition.

The code official shall have the right, but not the obligation, to file a lis pendens against the real property in connection with a code violation; however, in such event, upon full abatement, correction, and remediation of the violation and, where the County has incurred costs in accordance with the "Costs; lien" section of the code, full payment of the costs or lien, then the code official shall file a notice of cancellation lis pendens.

Condemning a structure.

When the code official finds a structure (1) to be in a condition that violates the code and (2) that the condition is dangerous to the health, safety or welfare of persons in or around the structure, then the code official shall cause such structure to be condemned pursuant to the provisions of this code.

Notice.

Whenever the code official condemns a structure, a notice shall be (1) posted in a conspicuous place on or about the structure condemned and (2) served on the owner or the person responsible for the structure.

Placard.

Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall cause to be posted in a conspicuous place on or about the structure a placard bearing the word "CONDEMNED" and a statement of the penalties provided for (1) occupying condemned premises and (2) removing the placard.

Placard removal.

The code official shall remove the condemnation placard whenever the condition upon which the condemnation and placard action were based has been eliminated. Any person who defaces or removes a condemnation placard without the approval of the code official shall have committed a separate violation. The County shall prosecute the violation in magistrate's court as a misdemeanor punishable by a \$200 fine.

Closing of vacant structures.

If a vacant structure is in a condition that violates the code, but is not in danger of structural collapse, the code official shall cause to be served on the owner or person responsible for the structure a notice that the structure has been condemned and an order that the structure be closed. In addition, the code official shall cause to be posted in a conspicuous place on the structure a placard bearing the word "CONDEMNED" and attach to the placard a copy of the closure order. Upon failure of the owner to securely close the structure, object or appeal within the time specified in the order, the code official shall cause the structure to be securely closed. If it is necessary for the County to securely close the structure, the cost of those measures shall be treated as set forth in the "Costs, liens" section.

Prohibited occupancy.

Any occupied structure condemned and placarded by the code official shall be vacated as ordered by the code official. Any person who shall occupy a placarded premises and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises shall have committed a separate violation. The County shall prosecute such violation in magistrate's court as a misdemeanor punishable by a \$200 fine.

EMERGENCY MEASURES

Imminent danger.

When, in the opinion of the code official, there is imminent danger of failure or collapse of a structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to persons in or around the structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, then the code official is hereby authorized and empowered to order and require the occupants to immediately vacate the premises. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: "This structure is in a DANGEROUS CONDITION. Occupancy is prohibited until further notice from the Code

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Official.” It shall be unlawful and a violation of the code for any person to enter such structure, except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same. The County shall prosecute such violation in magistrate’s court as a misdemeanor punishable by a \$200 fine.

Temporary safeguards.

Notwithstanding other provisions of the code, whenever, in the opinion of the code official, a structure or property presents imminent danger to persons in or around a structure (1) as defined in the previous section or (2) from a Dangerous Condition as defined in other sections of the code, the code official shall immediately order to be done such work as is necessary to render such structure temporarily safe whether or not the legal procedures described in the code have been instituted and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

Emergency repairs.

For purposes of this section regarding emergencies, the code official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

Costs of emergency repairs.

If it is necessary for the County to incur costs for emergency repairs, the cost of those measures shall be treated as set forth in the “Costs, liens” section.

Hearing.

Any person ordered to take emergency measures shall comply immediately with such order. Any affected person shall thereafter, upon petition directed to the Community Development Review Board, be afforded a hearing as described in the code.

DEMOLITION

General. There shall be two categories of demolition orders: (1) Category 1 for which demolition shall be mandatory; and (2) Category 2 for which repair or demolition shall be at the option of the owner, but for which the owner shall be deemed to have opted for demolition unless timely repairs are completed or timely objection to or appeal of the order is filed.

Category 1. When, in the code official’s judgment, a structure meets the following criteria, the code official shall order the owner of the property to demolish and remove such structure which order shall also be referred to as a Category 1 demolition order:

One so dilapidated or out of repair as to be dangerous, unsafe, unsanitary or, if intended for human habitation, unfit for human habitation or occupancy that it is unreasonable to repair the structure; or

One that was at some time under construction, construction ended prior to substantial completion, construction has been inactive for a period of two years or more, and is in a dangerous, unsafe, or unsanitary condition, unless arrangements for completion of construction are immediately undertaken.

Category 2. When, in the code official's judgment, a structure meets the following criteria, the code official shall order the owner of the property to take, at the owner's option, measures to repair, make safe and sanitary, or demolish and remove such structure which order shall also be referred to as a Category 2 demolition order:

One so dilapidated or out of repair as to be dangerous, unsafe, unsanitary or, if intended for human habitation, unfit for human habitation or occupancy, but is capable of being made safe by repairs.

Failure to comply.

If the owner of a structure fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed with the cost of such demolition and removal to be treated as set forth in the "Costs, liens" section. Under those circumstances, if the County contracts with a third party to demolish a Dwelling, the County must bid the work in conformity with the County's Procurement Ordinance. Further, the code official shall have the right, but not an obligation, to cause the salvage and sale of any valuable materials. If the code official opts for salvage and sale of salvaged items, the salvaged items are to be sold at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, to the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state. For purposes of this section, the person who is entitled to the report and any surplus shall be (1) the owner of the real property if the structure is other than a titled manufactured or mobile home or (2) the owner as shown on the title of a titled manufactured or mobile home.

OBJECTION; APPEAL

Application for appeal.

Any person directly affected by a decision of the code official or a notice or order issued under the code shall have the right to object or appeal to the Community Development Review Board, provided that the person pays the required fee and files the objection or appeal in writing within 20 days after the earlier of (1) the day s/he was served with or (2) had actual notice of the code official's decision, notice or order. Any person directly affected by a decision of the code official or a notice or order issued under the code who does not timely file a written application of appeal in accordance with this section shall be deemed to have failed to exhaust administrative remedies, and enforcement of the code official's decision, notice or order shall be final, fully enforceable, and not subject to any other appeal or review. The Community Development Review Board shall decide any dispute regarding the timeliness of the filing of a written application of appeal.

NOW, THEREFORE, pursuant to the authority granted to the County Council for Orangeburg County under the Constitution, statutes, and laws of the State of South Carolina, **BE IT ENACTED** by the Orangeburg County Council, in meetings duly

assembled, after three readings and a public hearing, the following ordinance:

Membership of board.

Pre-Zoning.

Until such time as zoning is enacted and a board of zoning appeals is duly and fully appointed, the Community Development Review Board shall consist of a minimum of three and a maximum of seven members; however, no employees of Orangeburg County may serve on the board. The County Council shall appoint the board. The term of each member of the board shall be three years; however, the three year term of any board member shall automatically expire prior to completion of the term if the Post-Zoning provision becomes effective. In the event that a board member shall complete a three year term, the board member shall continue to serve until Council appoints a successor board member.

Post-Zoning.

Upon the enactment of zoning, and a board of zoning appeals being duly and fully appointed, the board appointments to the Community Development Review Board shall simultaneously expire and the board of zoning appeals shall be deemed to be and shall carry out the functions of the Community Development Review Board.

Chairman and Vice Chairman.

The board shall annually select one of its members to serve as chairman and one to serve as vice chairman. The chairman shall sign the written decisions of the board; however, in the event that the chairman is unavailable to sign a written decision of the board, the vice chairman may instead sign the decision with a notation that the chairman was unavailable to sign the decision.

Quorum.

A quorum shall consist of not less than two-thirds of the board membership. Unless waived in writing by the appellant and the code official, a quorum is required for a hearing. If a quorum is waived in writing by the appellant and the code official, the decision of majority of those board members present shall be deemed to be the decision of the board. Under those circumstances, neither the appellant nor the code official may contest the board's decision based on the ground that a quorum was not present.

Disqualification of member.

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

Secretary.

The County Administrator shall designate a qualified person to serve as secretary to the board. The secretary shall maintain a detailed record of all proceedings before the board, and shall prepare for the chairman's signature all board decisions. The secretary shall not be required to prepare verbatim transcripts of board hearings, but shall make an audible, audio recording of the hearing, maintain for a set period of time the audio recording of the

hearing, and provide a copy of the audio recording of the hearing to appellant upon appellant's request and appellant's payment of the cost of making the copy. The period of time for which the secretary shall maintain the audio recording shall be the longer of the following: (A) for a period of thirty (30) days after the day of the hearing; or (B) if a judicial review or appeal is filed, for whatever period of time the judicial proceeding is pending. Notwithstanding the secretary's audio recording of the hearing, any party to an appeal before the board may, at his or her own expense, provide for the services of a certified court reporter to make a record of any appeal hearing.

Meetings and hearings.

Unless there are no objections, appeals or other items of business for board review, the board shall convene at least once a calendar month at a regularly scheduled time and place to conduct hearings on applications for appeal. In the event that there are no objections, appeals or items of business for board review, the code official shall notify the board in advance of the regularly scheduled meeting that the meeting shall not be held. The board shall also convene upon reasonable notice from the chairman when the chairman determines that meetings in addition to regularly scheduled meetings are necessary to avoid an unreasonable backlog of appeals.

Open hearing.

All hearings before the board shall be open to the public. The appellant, the appellant's legal counsel, the code official or code official's designee, and any person whose interests are affected shall be given an opportunity to be heard.

Procedure.

The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

Board decision.

The board shall modify or reverse the decision of the code official only upon a majority vote of those board members present and voting at the hearing. The board shall announce its decision orally at the conclusion of the hearing on the matter under appeal. In addition, the board shall cause its decision to be reduced to writing, signed, filed with the secretary, and mailed to the parties to the appeal.

Administration.

If an objection or appeal of a decision, notice or order of the code official is filed with the board, the code official shall take action in accordance with the board's decision no earlier than the first County workday thirty-one calendar days after the date of the board's oral decision; however, if a party timely appeals the board's decision in accordance with the "Court review" section, the "Stays of enforcement provision" shall apply.

Court review.

Any party to the appeal before the board shall have the right to apply to the appropriate

court for review of the board's decision to correct errors of law but only if (1) the party files the review proceeding with the appropriate court within 30 days of the board's issuance of its oral decision at the conclusion of the hearing and (2) the party, contemporaneous with filing the review proceeding, serves a copy of the review proceeding on the code official and on the board secretary.

Stays of enforcement.

The filing of an appeal of a decision, notice or order (other than emergency situations dealing with imminent danger) shall stay the enforcement of the decision, notice or order until the latter of the following: (1) the conclusion of the appeal other than through a decision of the Community Development Review Board; or (2) the Community Development Review Board modifies the decision, notice or order; or (3) the point in time that the Community Development Review Board's decision is no longer subject to court review as provided in the code.

DEFINITIONS. As used in the code, the following terms shall have the following meanings:

APPROVED. Approved by the code official.

CODE OFFICIAL. The official who is charged with the administration and enforcement of the code, or any duly authorized representative.

CONDEMN. To adjudge unfit for occupancy.

EXTERMINATION. The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

GARBAGE. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

IMMINENT DANGER. A condition which could cause serious or life-threatening injury or death at any time.

INFESTATION. The presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

INOPERABLE MOTOR VEHICLE.

A vehicle which cannot be driven upon the public streets for reason, including but not limited to, of being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

OCCUPANT. Any individual living or sleeping in a building, or having possession of a space within a building.

OWNER. As that term is otherwise defined by law regarding a structure or a property as well as a person who otherwise has control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON. An individual, corporation, partnership, association or any other group acting as a unit.

PREMISES. A lot, plot or parcel of land, easement or public way, including any structures.

TRASH. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials,

paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

STRICT LIABILITY OFFENSE. An offense in which the prosecution in a legal proceeding is not required to prove intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

STRUCTURE. That which is built or constructed or a portion thereof.

SECTION II. CONFLICTS

Any previously enacted ordinance that is in conflict with the provisions of this ordinance is hereby repealed from and after the effective date of this ordinance.

SECTION III. SEVERABILITY

If, for any reason, any part of this ordinance is invalidated by a court of competent jurisdiction, the remaining portions of this ordinance shall remain in effect.

SECTION IV. EFFECTIVE DATE

This ordinance shall become effective immediately upon approval at third reading.

ADOPTED and **APPROVED** in meeting duly assembled this 16th day of October, 2006.

ORANGEBURG COUNTY COUNCIL

By: _____
Harry Wimberly
In His Capacity as Vice Chairman
(Pursuant to OCCO 2-38)

ATTEST:

By: _____
Jacqueline Turner
In Her Capacity As Clerk to Council

First Reading (Title Only): August 14, 2006
Public Hearing: September 5, 2006
Public Hearing: September 18, 2006

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Second Reading:
Third Reading:

October 2, 2006
October 16, 2006