

CHAPTER 72
HOUSING STANDARDS

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**CHAPTER 72
HOUSING STANDARDS**

[HISTORY: Adopted by the Durham Town Council January 7, 2013 as Ord. No. 2012-12. This ordinance establishes a housing standards ordinance and fee scheduled designed to protect the health and safety of occupants of residential rental properties in Durham. This would occur through a systematic inspection program that seeks to correct dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions, including those set forth in Revised Statutes Annotated (RSA) 48-A:7 “Standards for Public Agency”.]

72-1. Enforcing Authority

The Town of Durham Fire Chief is hereby designated to perform the duties of interpreting, administering, and enforcing this ordinance, in addition to the Chief’s other duties. The Fire Chief may delegate some or all of the duties under this ordinance to a deputy or to other employees in the department; however, the Fire Chief shall be ultimately responsible for interpreting, administering, and enforcing this ordinance.

72-2. Powers of Enforcing Authority

The Durham Fire Chief, and his/her designees as set forth in Section I of this ordinance, in performing his/her duties under this ordinance, shall be authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including, but not limited to, the following powers:

- A. To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;
- B. To administer affirmations, examine witnesses and receive evidence;
- C. To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to minimize inconvenience to the persons in possession, and to obtain an administrative inspection warrant under RSA 595-B for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- D. To collect inspection fees for:
 - 1. Each property to be inspected under this ordinance,
 - 2. Each separate dwelling unit on the property when there is more than one dwelling unit,
 - 3. Each additional re-inspection when violations are not reasonably and properly corrected subsequent to the first re-inspection, and
 - 4. An administration fee for self-certification as provided for in Section IV- H of this ordinance.

Said fees shall be established and adjusted annually as part of the Town of Durham Master Fee Schedule by the Town Administrator with the advice and consent of the Town Council and shall reasonably reflect the estimated annual cost for staffing and administration of this ordinance.

- E. To impose fines for noncompliance with this ordinance. Said fines may be imposed after individual properties and/or dwelling units have been inspected more than two times and violations remain unabated as a result of lack of good faith efforts by the property owner as specified in Section IV- F of this ordinance. Fines of \$250 per day for each offense may be imposed pursuant to RSA 31:39-c and/or RSA 31:39-d and are in addition to other remedies provided by this ordinance.

72-3. Minimum Standards

- A. The Durham Fire Chief may determine that a dwelling is unfit for human habitation if it is found that conditions exist in such dwelling which are dangerous or injurious to the health or safety of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include the following:
 - 1. Defects which increase beyond normal the hazards of fire, accident, or other calamities;
 - 2. Lack of reasonable adequate ventilation, light, or sanitary facilities;
 - 3. Dilapidation; disrepair, dangerous structural defects;
 - 4. Uncleanliness;
 - 5. Over-crowding; inadequate ingress and egress;
 - 6. Inadequate drainage; or
 - 7. Any violation of other health, fire or safety regulations.
- B. In addition, pursuant to RSA 48-A, no residential rental property owner renting or leasing a residential dwelling shall maintain those rented premises in a condition in which:
 - 1. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
 - 2. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;
 - 3. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;

4. The roof or walls leak consistently;
 5. The plaster is falling or has fallen from the walls or ceilings;
 6. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
 7. The porches, stairs or railings are not structurally sound;
 8. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;
 9. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
 10. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
 11. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.
- C. The Durham Fire Chief shall develop a detailed inspection checklist to be used for all inspections performed under the authority of this ordinance. Said checklist shall address the minimum standards identified in this section, shall reference specific sections of applicable codes, and shall be reviewed and approved by the Town Administrator.

72-4. Inspection

- A. In order to facilitate the investigation of dwelling conditions as well as the enforcement of the standards set forth in Section III of this ordinance, all owners of residential rental property in Durham shall request inspections by the Fire Department as follows:
1. All owners of residential rental properties shall identify the property and request an inspection from the Fire Department of all of their residential rental properties and dwelling units within 60 days of adoption of this ordinance.
 2. The owner of any property that is proposed for residential rental in Durham after the adoption of this ordinance shall request an inspection of the property and each individual dwelling unit therein from the Fire Department and shall receive a Certificate of Housing Code Compliance before the residential rental unit is occupied.

3. Whenever ownership of a residential rental property is transferred to a new owner after the effective date of this ordinance, the new owner shall request an inspection of the property and each individual dwelling unit therein from the Fire Department within 60 days of the change in ownership.
4. Newly constructed residential rental units that have received a building permit and certificate of occupancy by the Town of Durham after the effective date of this ordinance shall not be required to request an inspection under this Section of this ordinance for a period of two (2) years from the date of issuance of the certificate of occupancy.

Any residential rental property owner who fails to request the inspection within the specified time frame shall be subject to a \$1,000 civil penalty.

- B. The term residential rental property owner as used herein shall not include the owners of dormitories at the University of New Hampshire, hotels, inns or bed and breakfasts, but shall include the owners of fraternities and sororities.
- C. Beginning on the effective date of this ordinance, every residential rental property shall be inspected at least once every two years. Inspections may also take place upon receipt of any complaint or petition regarding the property.
- D. If a mutually agreed inspection date and time cannot be reached with the owner or renter then a written notice of the inspection of any property shall be provided to the owner and delivered by hand or registered U.S. Mail at least forty-eight (48) hours prior to the inspection. The owner shall be responsible for notifying building tenants and securing permission to inspect individual dwelling units in accordance with the written notice of inspection. Alternatively, tenants may directly authorize inspection of their dwelling unit by the Fire Department. Should the owner be nonresponsive or refuse entry to the Town, the Town may seek an administrative search warrant to authorize the inspection.
- E. The purpose of said inspections shall be to determine compliance with this ordinance; however, should violations of other codes or ordinances be discovered during the course of such investigations, those violations may be prosecuted by the Town.
- F. Notice of any violation of the ordinances of the Town of Durham shall be given to the owner and tenant(s) and as set forth in Section V(A). The Town shall re-inspect on or about 30 days from the inspection date for any non-life threatening violations, any life threatening violations shall be corrected immediately and shall be re-inspected as outlined by the Town. Should the violations remain upon subsequent re-inspections of the property, the Fire Chief may determine that the owner and/or tenant(s) are not acting in good faith to remedy the violations after which the Town may pursue any and all legal avenues available to it including the imposition of fines in accordance with Section II-E of this ordinance and/or building repairs, condemnation and /or removal as prescribed in this ordinance.

- G. When a property and individual dwelling units have been inspected and found to be in compliance with this ordinance, the Fire Chief shall cause to be issued a Certificate of Housing Code Compliance for the property and each separate dwelling unit therein. Said Certificate shall be kept on the premises and be available for examination to tenants, prospective tenants, and Town inspection officials upon request. Said certificate shall include at a minimum the date of issuance of the Certificate together with the address and dwelling unit numbers

- H. When periodic regularly scheduled inspections of an individual residential rental property have been completed and the property found to be in substantial compliance with the Minimum Standards of this ordinance, the Fire Chief may determine that the property owner is diligent in ensuring compliance with the Minimum Standards and permit the owner of the property to self-certify that the property is in compliance with the Minimum Standards. This self-certification may be permitted on alternating inspection cycles of the anticipated two year town-wide inspection cycle (see paragraph C above) after the Fire Chief has given permission for self-certification and the property owner has completed a residential rental property Inspection checklist (Section III-C), attested to its accuracy and completeness and submitted it to the Fire Chief for review and acceptance. A self-certification administrative filing fee, established as part of the Town of Durham Master Fee Schedule, shall be paid to the Fire Department prior to acceptance of the self-certification by the Fire Chief. Self-certification acceptance does not waive the Fire Chief's right to subsequently investigate complaints or pursue concerns about violations of this ordinance and perform subsequent inspections of the property.

72-5. Enforcement Process

- A. In addition or as an alternative to the power to impose and enforce penalties set forth in Section II, herein, whenever a petition is filed with the Fire Chief by at least 10 residents of the town charging that any dwelling is unfit for human habitation or whenever it appears to the Fire Chief by inspection that any dwelling is unfit for human habitation, the Fire Chief shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such dwelling (including persons in possession) a complaint stating the charges in that respect.
 - 1. Service may be made by registered mail for persons residing outside the state; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication in a newspaper having general circulation in the town, such publication to be at least 10 days before the date set for the hearing.

 - 2. Such complaint shall contain a notice that a hearing will be held before the Fire Chief at a place therein fixed not less than 10 days nor more than 30 days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before such public agency.

- B. If, after such notice and hearing, the Fire Chief determines that the dwelling under consideration is unfit for human habitation, the Chief shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order which, if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to remove or demolish such dwelling.

72-6. Appeal

If an owner is aggrieved by an order of the Fire Chief, the owner may appeal to the Town Council. The Town Council shall hold a public hearing upon said appeal, notice of said hearing having first been given to the Fire Chief and to the owner at least 10 but no more than 30 days prior to the hearing date. The Town Council may affirm or revoke the order of the Fire Chief, or it may modify the same in accordance with its findings. If it shall affirm or modify such order, the Fire Chief shall proceed to enforce said order as affirmed or so modified, in the manner prescribed in RSA 48-A:4 and as set forth herein. If the Town Council shall revoke said order, the proceedings shall be terminated.

72-7. Superior Court Petition

If the owner fails to comply with an order, made pursuant to the provisions of RSA 48-A:3 and Section V, above, to repair, alter, improve or to vacate and close the dwelling, or to remove or demolish the dwelling, the Fire Chief may file a petition in the Strafford County Superior Court which shall set forth the charges issued, as well as any other allegations bearing upon the unfitness of the dwelling for human habitation. The court will proceed pursuant to RSA 48-A:4 and RSA 48-A:5. If the court finds the dwelling complained against is unfit for human habitation due to any of the causes or conditions enumerated, such order shall direct the Fire Chief to repair, alter, or improve such dwelling to render it fit for human habitation if such repair, alteration or improvement can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost; or if the repair, alteration or improvement of said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, to remove or demolish such dwelling. If the court shall find in favor of the owner, it shall award to the owner reasonable costs and expenses, including counsel fees, all as determined by the court, incurred by him in his defense of the action in the superior court.

72-8. Liens

- A. Whenever the Fire Chief shall incur cost for the repair, alteration, improvement, vacating or closing, or for the removal or demolition of a dwelling, pursuant to an order of the superior court, the amount of such costs shall be a lien against the real property as to which such cost was incurred and such lien, including as part thereof upon allowance of the Town's costs and necessary attorneys' fees, may be foreclosed upon order of the superior court made pursuant to a petition for that purpose filed in said court. Such lien

shall be subordinate to mortgages of record made before the institution of proceedings under this chapter. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded therein. If the dwelling is demolished by the Fire Chief, the materials of such dwelling shall be sold and the proceeds of such sale shall be paid over to the superior court, for distribution to such persons as the court shall find entitled thereto.

- B. Whenever a court of competent jurisdiction enters a fine against a property owner for violation of the minimum standards established by this ordinance, the amount of said fine shall be a lien against the real property, and such lien, including as part thereof costs and necessary attorneys' fees may be foreclosed upon order of the superior court pursuant to a petition for that purpose filed in said court. Such lien may be filed after 45 days following the entry of the fine. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded by the registrar. Such lien shall be subordinate to any mortgage, tax lien, or encumbrance of record filed prior to the municipality's lien. If the lien authorized by this section is not satisfied within 120 days of the recording of the judgment in the registry of deeds in which the property is located, it may be foreclosed upon in accordance with the provisions of RSA 48-A:6 and Section VII(A), above.

72-9. Effective Date

This ordinance shall take effect upon adoption by the Town Council.