MEMORANDUM

To: Mayor and City Councilors

From: Rich Olson, City Manager
Wade Nichols, Executive Director, Elizabeth City Downtown, Inc.

Date: February 22, 2016

Re: **Discussion/Consideration –** Downtown Maintenance Code Ordinance

BACKGROUND:

The City Council adopted Ordinance #984067 on April 6, 1998 entitled "Downtown Maintenance Code;" and this section of the code represents the policies that are currently being enforced. This ordinance is reflected in Section 10-87 of the current Code and describes a two-tenet policy that requires property owners in the downtown to maintain exterior walls "so as to not detract from the aesthetics and value of adjacent property." The code section also stipulates a measure to determine when exposed walls must be repainted in their entirety. This is the only section of the City Code of Ordinances that is exclusive to the downtown area, except for Section 42-14, which was adopted on January 8, 2007 and established a Downtown Garbage District directing the use of a trash compactor for garbage collection. All other sections of code regulating health and sanitation, community appearance, signage, dumpster screening, and other development standards apply uniformly citywide. It is the responsibility of the Code Enforcement Division to put into effect these sections of code.

More recently, City Council has made steps toward downtown revitalization through its creation of the Downtown Improvement Grant (DIG) Program in 2013. The grant program was restructured in 2014 adding specific renovation targets and goals. Similarly, one community-suggested initiative as a result of the Vision 2020 Strategic Plan is to expand the nonresidential building maintenance regulation affecting downtown.

ANALYSIS:

After collecting input from City Administration, Code Enforcement and Inspections staff, and the ECDI Board of Directors, ECDI staff drafted the suggested text, creating a code section that would regulate maintenance standards for commercial structures. The submitted version was reviewed and is supported by the ECDI Board of Directors,

Commander Bruce Brown of USCG Base Elizabeth City, and Elizabeth City Area Convention & Visitors Bureau Executive Director Christina Rehklau.

The Ordinance is divided into six subsections: Scope and Applicability; Maintenance Standards for Downtown Commercial Structures; Investigation; Complaint and Hearing; Service of Complaints and Orders; and Failure to Comply with Orders. The first section, Scope and Applicability designates the physical boundaries of the properties to be affected by the new regulation, namely all commercial properties having a Central Business District zoning classification. The ordinance language recognizes that the local historic district overlay and standards imposed by the Secretary of the Interior for National Register properties may affect abatement. The code will apply to all buildings, structures and property – vacant or occupied.

The second section, Maintenance Standards for Downtown Commercial Structures, itemizes the various nuisances and hazards that violate the standard of good repair as described in the section header. The list of violations applies to the primary structure, accessory structures and their appurtenances. Windows and surrounding grounds are also included among the criteria.

The section entitled Investigation, describes the right of the enforcement officer to inspect the exterior and interior of the building or structure. Permission must be obtained from the property owner, their agent, or a tenant before the interior of any building or structure can be inspected.

The fourth section, Complaint and Hearing, discusses that method in which an aggrieved property owner can seek relief through the land use process. A property owner will have the right to file an answer to the complaint/violations at hearing before the Board of (Zoning) Adjustment. If the Board does not dismiss or otherwise waive the violation citation, the property owner will have 90 days to correct the violation.

The Service of Complaints and Orders discusses how property owners will be notified of the impending violation, including absentee owners, by certified mail and/or advertisement in the local newspaper publication.

Lastly, the sixth section states the manner in which the City can abate the violations and the penalties imposed if a property owner fails to comply.

COUNCIL GOAL & OBJECTIVE:

This agenda items targets Council Goal No. 6 ***Improve the Quality and Safety of All Neighborhoods***, Goal J ***Develop Aesthetic-Based Ordinance to Address Blight in Neighborhoods***.

STAFF RECOMMENDATION:

Staff seeks comment and direction from the City Council on the proposed ordinance. If no significant changes or objections are expressed, staff recommends:

By motion, call for a Public Hearing to be held on Monday, March 14, 2016 at 7:30 p.m. (or as soon thereafter as the agenda allows) in Council Chambers of the Municipal

Administration Building, 306 E. Colonial Avenue to gather citizen input for the adoption of the amended Downtown Maintenance Code Ordinance.

City Manager's Office
P. O. Box 347 • 306 E. Colonial Avenue • Elizabeth City, NC 27907
Phone: 252-337-6864 • Facsimile: 252-335-2503

ORDINANCE #2016-03-_____

TO AMEND CHAPTER 10 BUILDING AND BUILDING REGULATIONS, ARTICLE II. CODES, DIVISION 3 DOWNTOWN MAINTENANCE CODE SECTIONS 10-87 IN THE CITY OF ELIZABETH CITY CODE OF ORDINANCES

WHEREAS, a community's downtown is the face it presents to the world; its condition speaks volumes about the health of the local economy, whether or not local residents and property owners reinvest in themselves, and even the history of the town's development;

WHEREAS, a vibrant downtown – or the lack of one – affects the community's ability to attract and retain residents, businesses and institutions, jobs, and investment that enable a town to endure and thrive; and

WHEREAS, the evolution of shopping habits, transportation methods, and development patterns have contributed to drastic changes in downtown economies; and as a result, less available capital and less traffic have led to neglected buildings and vacant storefronts; and

WHEREAS, the City Council believes that the historic commercial district is an important asset to our community and should be a source of community pride; and

WHEREAS, the intent of the Ordinance by way of Code Enforcement is to improve the safety, health and welfare of all citizens within the city's jurisdiction; and

WHEREAS, the City Council has identified several goals and objectives, including improving the quality and safety of all neighborhoods by developing aesthetic-based ordinances to address blight in neighborhoods; and

WHEREAS, the City Council hereby adopts revisions as noted by deletion and addition in the following Chapter 10 Buildings and Building Regulations, Article II Codes of the City of Elizabeth City Code of Ordinances:

SECTION I. ARTICLE II. CODES SECTION 10-86

Sec. 10-86. Short title.

This division shall be known as the "downtown maintenance code" and may be cited as such. (Code 1993, § 4-76; Ord. of 4-6-1998, § 1)

SECTION II. ARTICLE II. CODES SECTION 10-87

~~**Sec. 10-87. Duties and responsibilities of property owners.**~~

~~(a) Walls. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed, if necessary, due to the construction or construction material to prevent deterioration of the wall. The party causing the exposure of the wall shall bear the obligation of compliance with this subsection.~~

~~(b) Painting. All exterior surfaces which have been painted shall be maintained free of peeling and flaking. Where ten percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire wall shall be repainted. (Code 1993, § 4-77; Ord. of 4-6-1998, § 2)~~

SECTION III. ARTICLE II. CODES SECTION 10-88.

Sec. 10-88. Scope and Applicability.

Aesthetic considerations may constitute a valid basis for the exercise of police power if the public benefit outweighs private harm including: protection of property values, preservation of the character and integrity of the community, promotion of the comfort, happiness, and emotional stability of area residents.

(a) The provisions of the ordinance shall apply to all commercial premises, buildings, structures and accessories thereto within Elizabeth City's Central Business District zoning classification. The Minimum Housing Code for the City of Elizabeth City shall apply to residential structures; for combination structures, both codes will apply, with the more restrictive provision controlling in case of a conflict between the two. This code establishes minimum standards for the initial and continued occupancy and/or use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration, preservation or use of the building, equipment or facilities subject to the code.

(b) It shall be the responsibility of the owner of all buildings, structures, and/or premises to ensure that said buildings, structures, and/or premises are maintained in compliance with all applicable provisions set out here. Abatement of the following violations below may require varying levels of conformance with the Historic Preservation District Overlay of the Elizabeth City Historic Preservation Commission (HPC) and, in turn, requiring varying levels of review and approval that may include the National Register of Historic Districts and standards for historic preservation set out by the Secretary of Interior.

(c) The provisions of this code apply whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by the owner (or their representatives or any party in interest) to reasonably prevent the entry of unauthorized persons or the occurrences of damage creating conditions not permitted by law.

(d) In the event any provision, standard or requirement of this article is found to be in conflict with any provision of any other ordinance or code of the city or State, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health, safety, or welfare of citizens and the peace and dignity of the city shall control.

SECTION IV. ARTICLE II. CODES SECTION 10-89.

Sec. 10-89. Maintenance Standards for Downtown Commercial Structures.

All commercial premises shall be maintained in a state of good repair that prevents further decay from wind, rain, and external weather and reasonably secures the building from any unauthorized entry by humans, animals or birds. All commercial premises shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby, and shall remain in compliance with all enforceable state and/or local building and fire codes. Without limitation of the foregoing requirement, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected:

(a) Such damage by fire, wind or other causes as to render the building unsafe;

(b) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the city;

(c) Defects significantly increasing the hazards of fire, accident or other calamities;

(d) Any violation of the city fire prevention code which constitutes a condition which is unsafe and/or especially dangerous to life;

(e) Buildings and environs shall be kept clear of accumulations of garbage, trash, or rubbish, which creates health and sanitation problems. All garbage and solid waste, including cigarette butts, shall be in approved containers or stored in a safe and sanitary way *(Reference Elizabeth City Code Sec. 74-12. Cleaning sidewalks)*;

(f) All owners or tenants are responsible for removing ice or sweeping and disposing of refuse, including cigarette butts on a regular basis.

(g) The building and surrounding area surfaces shall be kept clear of broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and shall be repaired or replaced with like or similar material according to its original use. Approval must be received from the HPC for historical structures with proposed material changes. Prompt repairs of broken glass to original condition, wooden frames, awning frames or hard surface materials should be completed in short term to maintain the appearance and safety of the building.

(h) The building and environs shall be kept free of objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a hazard, such as abandoned electrical boxes and conduits, wires, sign brackets, and other similar objects; advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of, or visitors to the city;

(i) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair and free of defects;

(j) Gutters and downspouts shall be replaced or repaired as necessary and shall be appropriately located so as not to cause a hazard to pedestrian, vehicular traffic or adjacent or nearby property;

(k) Attached or unattached accessory structures shall not cause a safety hazard and shall be kept in good repair;

(l) All windows must be tight-fitting and have sashes of proper size and design and shall be free from rotten wood, broken joints or broken or loose mullions;

(m) All windows shall be maintained free of broken or cracked glass that could be in danger of falling or shattering. Covering an opening left by broken glass with sheets of wood will not be permitted for more than 30 days. Temporary boarding and cover materials showing wear and decay, including wood and paper, shall be replaced immediately.

SECTION V. ARTICLE II. CODES SECTION 10-90.

Sec. 10-90. Investigation.

Whenever it appears to the code enforcement officer that a nonresidential or mixed use building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public may be jeopardized for failure of the property to meet the minimum standards established by Section 10-89, the code enforcement officer shall undertake a preliminary investigation. If entry into the structure for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant or with permission of the owner, the owner's agent, a tenant, or other person legally entitled to permit entry. The code enforcement officer shall have permission to inspect all exterior areas of the building, structure, or premises as allowed by Section 42-61 Right of entry.

SECTION VI. ARTICLE II. CODES SECTION 10-91.

Sec. 10-91. Complaint and hearing.

If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, the code enforcement officer he shall issue and cause to be served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the Board of Adjustment per the Board's rules. The owner shall have 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 notice. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings under this section but any evidence received must be

relevant and material. Following the hearing, the Board shall dismiss the complaint if no violation is determined. If the Board finds that violations of this article exist, the Board shall order compliance setting forth a maximum of up to 90 days within which to correct the violations.

SECTION VII. ARTICLE II. CODES SECTION 10-92.

Sec. 10-92. Service of complaints and orders.

(a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer upon persons either personally or by certified mail. When service of a complaint or order is accomplished personally or by or certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by certified mail, a copy of the complaint or order shall also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused and/or the regular mail is not returned by the post office within ten days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the city at least once per week or two successive weeks. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten days prior to the hearing.

SECTION VIII. ARTICLE II. CODES SECTION 10-93.

Sec. 10-93. Failure to comply with orders.

(a) If the owner fails to comply with an order to repair the building or structure, the code enforcement officer may cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;

(b) The actual cost incurred by the city in remedying the threat or potential violation of this article shall be charged to the property owner as and in the manner provided for liens listed in the county tax supervisor's office. In addition, the city shall include a fee of administration, investigation, researching, travel and monitoring of the cleanup in an amount as set from time to time by the city council which shall also be paid by the property owner, or charged as a lien against the property.

(c) If charges for the removal or abatement of a violation are not paid within 30 days after the receipt of a statement of charges, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193.

(d) Each day such threat or potential violation of this article exists after notification to the property owner and/or any other person in possession of, or any other person in control of, or any person responsible for such condition upon such property shall constitute a separate and distinct misdemeanor punishable by law. This remedy shall be in addition to any abatement action taken by the city.

(e) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.

(f) This article may be enforced by any one, all, or any combination of the remedies authorized in the code.

SECTION IX. **EFFECTIVE DATE:** This Ordinance, as revised herein shall take effect immediately upon adoption.

SECTION X. **CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

SECTION XI. **SEVERABILITY CLAUSE**. If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION XII. All ordinances and sections of the Elizabeth City Code, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

READ, CONSIDERED, AND ADOPTED at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the _____ day of March, 2016.

_____
Joseph W. Peel
Mayor

Attest:

_____
Vivian D. White, CMC/NCCMC
City Clerk