CHAPTER 156: NONRESIDENTIAL MAINTENANCE CODE

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GENERAL PROVISIONS

§ 156.02 PURPOSE.

It is the purpose of the provisions of this chapter to provide a just, equitable and practicable method, whereby commercial buildings or structures which from any cause, endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, diminish property values, exhibit characteristics of abandonment or neglect, or detract excessively from the appropriate appearance of the commercial area, may be required to be repaired, vacated or demolished. The provisions of this code are cumulative with and in addition to any other remedy provided by law, including the current editions of standard codes adopted by the town.

§ 156.03 SCOPE.

The provisions of this code shall apply to all nonresidential buildings and structures which are now in existence or which may be built within the town limits or annexed therein, and to all lands zoned commercial within the town limits.

§ 156.04 APPLICABILITY.

(A) Every nonresidential building or structure and the premises on which it is situated, used or intended to be used for nonresidential occupancy shall comply with the provisions of this chapter, whether or not the building shall have been constructed, altered or repaired before or after the enactment of this chapter, and irrespective of any permits or licenses

which shall have been issued for the use or occupancy of the building, or for the installment or repair of equipment or facilities prior to the effective date of this chapter.

(B) This chapter establishes minimum standards for the initial and continual occupancy and use of all nonresidential buildings and does not replace or modify standards otherwise established for the construction, repair, alteration or use of the building equipment or facilities contained therein except as provided in § 156.05.

(C) Where there is mixed occupancy, any commercial business use therein shall be nevertheless regulated by and subject to the provisions of this chapter.

§ 156.05 CONFLICTING PROVISIONS.

In any case where the provisions of this chapter impose a higher or lower standard than that set forth in any other ordinance of the town or under the laws of the state, the higher standard shall prevail. Interpretation shall be the authority of the Nonresidential Maintenance Code Administrator.

§ 156.06 COMPLIANCE.

(A) It shall be the duty of each owner and each operator of a nonresidential building or premises within the town to comply with the regulations and requirements set forth in this chapter. No license, permit or certification of occupancy shall be issued unless and until all applicable sections of this chapter have been complied with.

(B) No land or building or combination thereof shall be used in a manner inconsistent with or in conflict with the requirements of this chapter.

Penalty, see § 156.99

§ 156.07 DEMOLITION OF NONRESIDENTIAL BUILDINGS.

Where a building is under the jurisdiction of the code, the building may be demolished by the owner provided that the following requirements are met:

(A) The owner obtains a demolition permit from the County Building Department.

(B) All sewer, gas, water and similar taps or connections are properly closed and disconnected.

(C) All debris from the building is removed from the site. This requirement is for the removal of all debris that is above the street level of the building.

(D) The lot is graded to a smooth, even, finished grade, and free from building material, debris, holes and/or depressions. Where building debris remains on the site below street level, the owner must backfill the lot with 12 inches of clean fill which shall be graded to a smooth, even finished grade.

(E) Where walls of adjacent buildings become exposed as a result of the demolition, the walls 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, stucco or bricked so as not to detract from the aesthetics and value of the adjacent property and weather proofed to prevent deterioration of the wall.

§ 156.08 BUILDINGS AND PREMISES DAMAGED.

(A) Any building or premises damaged by fire, storm, collapse or an act of nature to such an extent that the cost of repair and reconstruction does not exceed 50% of the physical valuation of the entire structure at the time the damage occurred, the damaged portions of the building or premises may be razed or shall be secured to prevent unauthorized entry, and repaired in a manner that complies in all respects with all ordinances of the town related to new buildings.

(B) The razing or repair work shall begin within 120 days of the damage. Extensions of this time requirement may be issued by the Board of Adjustment upon showing of cause by the property owner.

DUTIES AND RESPONSIBILITIES OF OWNER

§ 156.20 RELATIONSHIP OF DUTIES AND RESPONSIBILITIES TO OCCUPANCY.

The provisions of this chapter that apply to the exterior or exterior components of a structure or building shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by the owners to prevent the entry of unauthorized persons or the formation of nuisance conditions such as infestation, including roosting birds.

§ 156.21 NUISANCES AND HAZARDS.

It shall be the duty and responsibility of the owner of nonresidential premises to see that the nonresidential premises under the control of the owner are maintained to ensure that there is compliance with the following provisions of this section:

(A) The premises are free of all nuisances and any hazards to the safety of the occupants, customers or other persons utilizing the premises or to pedestrians passing thereby.

(B) The premises are free of loose and overhanging objects which, by reason of location above ground level, constitute a danger of falling on persons in the vicinity thereof.

(C) The premises are free of holes, excavations, breaks, projections, or obstructions on walks, driveways, parking lots and parking areas, and other parts of the premises which are accessible to and used by persons on the premises. All the holes and excavations shall be filled and repaired, walks and steps replaced, and other conditions removed where necessary to eliminate hazards or unsafe conditions with reasonable dispatch by the owner upon their discovery.

§ 156.22 CONDITION OF EXTERIOR OF PREMISES AND STRUCTURES.

(A) The exterior of the premises and structure shall be maintained in good repair and free from deterioration so as not to constitute a nuisance.

(B) All surfaces shall be maintained free of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other similar hazardous conditions.

(C) All structures and decorative elements of building exteriors shall be repaired or replaced in a workmanlike manner to match as closely as possible the original materials and construction techniques.

§ 156.23 SOUNDNESS OF FLOORS, INTERIOR WALLS AND CEILINGS.

All floors, interior walls and ceilings of every structure shall be structurally sound and shall be maintained in a good condition compatible with its business use, and where open to the public shall be maintained in a condition so as not to constitute a hazard to the public.

§ 156.24 STRUCTURALLY DEFICIENT BUILDING IN REAR.

Structures at the rear of buildings attached or unattached to the principal nonresidential structure, which are found by the Maintenance Code Administrator to be structurally deficient, shall be properly repaired or demolished.

§ 156.25 REMOVAL OF MISCELLANEOUS ELEMENTS ON BUILDING WALLS, ROOFS AND SURROUNDING PREMISES.

All existing miscellaneous elements on building walls and roofs and surrounding premises, such as empty electrical or other conduits, unused sign brackets and the like shall be removed.

§ 156.26 WALLS.

(A) All foundation walls shall be kept structurally sound, and capable of bearing imposed loads safely.

(B) All material used to maintain or reconstruct a wall or part thereof, including the application of sidings or other surfacing material, shall be of standard quality.

(C) Where a wall of a building has become exposed as a result of demolition of adjacent buildings the 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, stucco or bricked so as not to detract from the aesthetics and value of adjacent property and weather proofed, if necessary, with construction material to prevent deterioration of the wall.

§ 156.27 WINDOWS.

(A) All windows must be tight fitting and have sashes of proper size and design. Sashes with rotten wood, broken joints, or broken or loose mullions or muntins shall be replaced. All broken and missing windows shall be replaced with glass or plexiglass. All exposed wood shall be repaired and painted.

(B) All windows shall be maintained free of broken glass. Where a window glass larger than four square feet becomes cracked to an extent that the largest single portion of the window free of a crack is less than 80% of the total surface area of the window glass, the window glass shall be replaced by a pane free of cracks.

(C) All openings originally designed as windows shall be maintained as windows, complete with sills, lintels, frame and glass, unless specifically approved by the Fire Chief for enclosure. Where the Fire Chief approves the enclosure of a window, it must be so enclosed by either bricking the opening, blocking the opening with concrete blocks and stuccoing the exterior, or by boarding up the opening. When boarding is used, it shall be of trim fit, sealed to prevent water intrusion and painted or stained to properly conform with the other exterior portions of the building.

§ 156.28 PAINTING.

(A) All exterior surfaces which require paint or sealing in order to protect the underlying surface from deterioration shall be so painted or sealed.

(B) All exterior surfaces which have been painted shall be maintained free of peeling and flaking. Where 15% or more of the aggregate of any painted wall shall have peeling or flaking or previous paint worn away, the entire wall shall be repainted.

§ 156.29 SIGNS.

All advertising structures and awnings and their accompanying supporting members shall be maintained in good repair and shall not constitute a nuisance or safety hazard. All non-operative signs shall be repaired or shall, with their supporting members, be removed forthwith. In the event the signs, billboard, marquees or awnings are not properly maintained in accordance with the foregoing, they shall, together with their supporting members, be removed forthwith. In the event the awnings or marquees are made of cloth, plastic or of a similar material, the awnings or marquees shall be maintained so as not to show evidence of excessive tearing, ripping, or other holes which diminish their function and cause unsightly conditions. Nothing herein shall be construed to authorize any encroachments on streets, sidewalks or other parts of the public domain.

§ 156.30 WASHROOMS.

(A) All washrooms and water closet compartment floors shall be surfaced with water-resistant material and shall be kept in a dry and sanitary condition at all times.

(B) All washrooms shall be provided with permanently installed artificial lighting fixtures with a switch and wall plate so located and maintained that there is no danger of short circuiting from water, from other bathroom facilities or from splashing water.

§ 156.31 GARBAGE.

(A) There shall not be stored or allowed to accumulate flammable or combustible liquids or other materials on the premises unless they are of a type approved for storage by the regulations of the National Fire Protection Association, and then only in quantities as may be prescribed by the regulations.

(B) No garbage or solid waste shall be stored or allowed to accumulate on the premises unless contained in trash receptacles in accordance with town ordinance.

Penalty, see § 156.99

§ 156.32 APPURTENANCES.

(A) All chimneys, flues and vent attachments thereto shall be maintained structurally sound. Chimneys, flues, gas vents or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight and capable of withstanding the action of flue gases. (State Building Code reference, Chimneys, fireplace stoves, fireplaces and venting systems.)

(B) 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.

(C) All cornices shall be made structurally sound, and rotten or weakened portions shall be removed and/or replaced to match as closely as possible the original patterns. All exposed wood shall be painted.

(D) Gutters and downspouts shall be replaced or repaired as necessary and shall be neatly located and securely installed.

(E) Where a parking lot is constructed as part of a nonresidential business or as a business itself, the parking lot and all curbing, surfacing, sidewalks, and other parts thereof shall be maintained free of broken surfaces, holes or other similar conditions. All nonresidential parking lots so described herein shall be repaired or replaced with like material.

(F) Where landscaping has been incorporated in the development plan of a nonresidential business or where landscaping has been required by the town as part of a development plan, including parking plan, the landscaped areas shall be maintained in a manner to equal and reflect the original landscaping approved for the development plan.

(G) Where curb cuts are abandoned due to new construction, change of access or general discontinuous use, the curb cut shall be closed and replaced with a standard sidewalk and curb and gutter arrangement.

(H) Damage to public sidewalks or curbs and gutters located in the public right-of-way shall be repaired or replaced at no expense to the town when the damage is caused by vehicles making deliveries to the nonresidential premises under the control of the owner.

DUTIES AND RESPONSIBILITIES OF OPERATOR

§ 156.45 ENSURING COMPLIANCE.

It shall be the duty and responsibility of the operator to ensure compliance with this subchapter.

§ 156.46 SAFE AND SANITARY CONDITION OF PREMISES.

All parts of the premises under the control of the operator shall be kept in a safe and sanitary condition consistent with the business use, and the occupant shall refrain from performing any acts which would render other parts of the premises unsafe or unsanitary, or which would obstruct any adjacent owner or operator from performing any duty required, or from maintaining the premises in a safe and sanitary condition.

§ 156.47 ELIMINATION OF INFESTATION.

Every operator shall be responsible for the elimination of infestation in and on the premises, subject to the operator's control.

§ 156.48 MAINTENANCE OF PLUMBING FIXTURES.

Every operator shall maintain all plumbing fixtures in a safe and sanitary condition.

§ 156.49 GARBAGE CONTAINERS.

No garbage or other solid waste shall be stored or allowed to accumulate on the premises unless contained in receptacles which are in accordance with town ordinance.

Penalty, see § 156.99

§ 156.50 REPAIR OF DAMAGE TO PUBLIC RIGHT-OF-WAY.

Damage to public sidewalks or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the town when the damage is caused by vehicles making deliveries to the business under the control of the operator.

§ 156.51 NOTIFYING OWNER OF DEFECTS.

Where the owner would not otherwise know of a defect of any facility, utility or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the operator affected thereby shall, upon learning of the defect, provide notice to the owner.

ADMINISTRATION AND ENFORCEMENT

§ 156.65 DUTIES OF THE ADMINISTRATOR.

(A) The Administrator is hereby designated as the public officer to enforce the provisions of this chapter and to exercise the duties and powers herein prescribed.

(B) It shall be the duty of the Administrator:

(1) To carry out the objectives of this chapter by inspecting and investigating the conditions of nonresidential buildings located in the town in order to determine which nonresidential buildings reflect a lack of adequate maintenance that, in turn, jeopardizes the health and safety of the building's occupants or members of the general public;

(2) To take such action, together with other appropriate departments, agencies, and public or private entities, as may be necessary to effect the repair or demolition of nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this chapter;

(3) To keep a record of the results of inspections made under this chapter and an inventory of those nonresidential buildings that have not been properly maintained in compliance with the minimum standards established by this chapter; and

(4) To perform such other duties as may be herein prescribed.

§ 156.66 POWERS OF THE ADMINISTRATOR.

The Administrator is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this chapter, including the following powers in addition to others herein granted:

(A) To investigate nonresidential buildings located within the town to determine whether they have been properly maintained in compliance with the minimum standards

established by this chapter so that the safety and health of the occupants and members of the general public are not jeopardized;

(B) To administer oaths and affirmations, examine witnesses, and receive evidence;

(C) To enter upon premises for the purpose of making examinations and inspections, provided that the entries shall be made in accordance with all applicable constitutional protections, statutes, ordinances, and regulations and in such a manner as to cause the least possible inconvenience to the persons in possession; and

(D) To appoint and designate the duties of such officers, agents, and employees as the Administrator deems necessary to carry out the purposes of this chapter.

§ 156.67 INSPECTIONS.

(A) For the purpose of making inspections, the Administrator is hereby authorized to enter, examine, and survey, at all reasonable times, nonresidential buildings.

(B) If entry upon the premises for purposes of investigation is necessary, the entry shall be made pursuant to a duly issued administrative search warrant that is obtained and served in accordance with G.S. § 15-27.2 or with the permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

§ 156.68 PROCEDURE FOR ENFORCEMENT.

(A) Preliminary investigation. Whenever it appears to the Administrator that a nonresidential building has not been properly maintained and that the safety or health of the building's occupants or members of the general public is jeopardized due to the failure of the property to meet the minimum standards established by this chapter, the Administrator shall undertake a preliminary investigation.

(B) Complaint and hearing. If the preliminary investigation of a nonresidential building discloses evidence of a violation of the minimum standards established by this chapter, the Administrator shall issue and cause a complaint to be served upon the owner and the parties in interest identified during the investigation of the nonresidential building. The complaint shall state the charges and contain a notice that a hearing will be held before the Administrator at a place and time on a date specified within the notice, the said hearing date shall not be less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and to give testimony at the place and time specified in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Administrator.

(C) Procedure after hearing.

(1) If, after notice and hearing, the Administrator determines that the nonresidential building has been maintained so as to meet the minimum standards established by this chapter, the Administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of the determination.

(2) If, after notice and hearing, the Administrator determines that the nonresidential building has not been properly maintained and, consequently, the safety or health of the building's occupants or members of the general public is jeopardized by the failure of the property to meet the minimum standards established by this chapter, the Administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of divisions (C)(3) and (C)(4) of this section.

(3) If the Administrator determines that the cost of repair, alteration, or improvement of the building would not exceed 50% of the building's then current value, then the Administrator shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than 60 days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this chapter; or vacate and close the nonresidential building for any use.

(4) If the Administrator determines that the cost of repair, alteration, or improvement of the building would exceed 50% of the building's then current value, then the Administrator shall state in writing the findings of fact in support of the determination and issue an order that requires the owner, within a reasonable time period that shall be no less than 60 days and that shall be clearly stated in the order, to either: repair, alter, or improve the nonresidential building in order to bring the building into compliance with the minimum standards established by this chapter; or to remove or demolish the nonresidential building.

(D) Failure to comply with order and subsequent action to be taken.

(1) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, vacate and close the nonresidential building, the Administrator shall submit to the Town Council an ordinance ordering the Administrator to either cause the nonresidential building to be repaired, altered, or improved in order to bring the building into compliance with the minimum standards established by this chapter or to cause the building to be vacated and closed for any use. The property shall be described in the ordinance. If the Town Council adopts the ordinance, the Administrator shall cause the building to be repaired, altered, or improved or to be vacated and closed for any use.

(2) If the owner fails to comply with an order to repair, alter, or improve the nonresidential building or, alternatively, to remove or demolish the building, the Administrator shall submit to the Town Council an ordinance ordering the Administrator to cause the nonresidential building to be removed or demolished. No ordinance shall be

adopted to require removal or demolition of a nonresidential building until the owner has first been given a reasonable opportunity to bring the building into conformity with the minimum standards established by this chapter. The property shall be described in the ordinance. If the Town Council adopts the ordinance, the Administrator shall cause the building to be removed or demolished.

§ 156.69 COSTS ARE A LIEN ON PREMISES.

(A) As provided by G.S. § 160D-1129(i), the amount of the cost of any repairs, alterations, or improvements, vacating and closing, or removal or demolition caused to be made or done by the Administrator pursuant to § 156.68(D) shall be a lien against the real property upon which the costs were incurred. The lien shall be filed, have the same priority, be enforced, and the costs collected as provided by G.S. Ch. 160A, Art. 10. The amount of the costs shall also be a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(B) If the nonresidential building is removed or demolished by the Administrator, such officer shall offer for sale the recoverable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition. Any balance remaining shall be deposited in the Superior Court by the Administrator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

§ 156.70 FILING OF ORDINANCES.

An ordinance adopted by City Council pursuant to § 156.68(D) shall be recorded in the office of the Register of Deeds of Randolph County and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. § 160D-1129.

§ 156.71 ALTERNATIVE REMEDIES.

Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their abatement by summary action or otherwise, to enforce this chapter by criminal process as authorized by G.S. § 14-4 and § 156.99, and to utilize any remedy provided herein or in other ordinances or laws.

§ 156.72 BOARD OF ADJUSTMENT.

(A) The Board of Adjustment shall be that authorized, established and appointed body responsible for hearing appeals and requests for variance.

(B) Normal procedures, rules and processes established for the Board of Adjustment shall apply.

(C) The duties of the Board of Adjustment shall be to:

(1) Consider and determine appeals whenever it is claimed that the true intent and meaning of this chapter or any of the regulations hereunder have been misconstrued or wrongly interpreted or applied by the Code Administrator or the Administrator's representative.

(2) Grant, in cases where the application of the requirement of this code in the allowance of the stated time for the performance of any action required hereunder would appear to cause undue hardship on an owner, reasonable extensions of time not to exceed six months from date of the notice. No subsequent appeal shall be considered where an appeal has been previously decided involving the same building or premises and the same citation, unless the appellant can demonstrate to the satisfaction of the Board a change in circumstances sufficient to justify reopening the appeal.

(D) All decisions of the Board of Adjustment which vary the application of any provision of this chapter or modify an order of the Administrator shall specify in what manner the variance or modification is to be made, the conditions under which it may be made and the reasons therefor. Every decision shall be in writing, and a copy of all decisions shall be promptly filed in the office of the Code Administrator, and it shall be open to public inspection.

§ 156.73 APPEALS.

(A) Within 30 days following receipt of a notice of violation, any person receiving the notice, believing that the literal application of this chapter will cause undue hardship or has been misconstrued, wrongly interpreted or applied, may appeal in writing to the Board of Adjustment for the relief as may be granted, after investigation of the grounds thereof, by way of a reasonable extension of time or a variation from strict compliance with the provisions of this chapter. The circumstances justifying the findings related to hardship are:

(1) Inability to immediately comply due to severe financial distress;

(2) The unavailability of services or equipment with which to comply, without fault of the applicant; and/or

(3) Other extenuating circumstances showing a good faith intention on the part of the applicant or another to comply when able to do so.

(B) The appeal shall be on a form provided by, and shall be addressed to the Office of the Code Administrator, where proper forms will be prepared and forwarded to the Town Manager who will set the date and time of hearing and so notify the applicant. This section shall not be construed to apply to any situation regarded by the enforcement authority as a real and immediate threat to public safety and health. Any person aggrieved by the decision of the Board may petition any court of competent jurisdiction within the county. Any appeal of this sort must be filed with the court within 15 days from the date of the Board's decision or it shall be considered abandoned.

(C) To defray the cost of processing an appeal fee to be set by the Board in the annual budget ordinance shall be required. All fees are payable to the town and must be paid prior to processing the appeal.

§ 156.74 AMENDMENTS.

The Town Council may from time to time amend, supplement, or change the provisions and requirements of this code. Any amendment shall be by ordinance of the Council. Initiation of any amendment may be by the Town Council, Planning Board, staff, Board of Adjustment or by a private citizen.

§ 156.99 VIOLATIONS; PENALTIES.

(A) It shall be unlawful for the owner of any nonresidential building to fail, neglect, or refuse to repair, alter, or improve the same, to vacate and close, or to remove or demolish the same upon order of the Administrator duly made and served in accordance with the provisions of this chapter within the time specified in the order, and each day that any such failure, neglect, or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any nonresidential building, with respect to which an order has been issued pursuant to section § 156.68(C), to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration, improvement, or its vacation and closing, and each day that the occupancy continues after the prescribed time shall constitute a separate and distinct offense.

(B) The violation of any provision of this chapter shall constitute a misdemeanor, as provided by § 10.99.

(C) In addition to or in lieu of the other remedies provided by this chapter, any owner of a nonresidential building that fails to comply with an order of the Administrator within the time specified therein, shall be subject to a civil penalty in the amount of $50 for the first offense, $100 for the second offense in the calendar year, and $250 for the third and subsequent offenses in the calendar year. Each subsequent offense after the third will be subject to a civil penalty of $250. Each 30-day period or part thereof in which a violation is allowed to persist will constitute a separate and distinct offense.