

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE DRS35125-LM-49A (02/08)

Short Title: Nonresidential Building Code.

(Public)

Sponsors: Senators Kerr, and Jenkins.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING MUNICIPALITIES TO ADOPT ORDINANCES
3 ESTABLISHING A NONRESIDENTIAL BUILDING OR STRUCTURE CODE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 5 of Article 19 of Chapter 160A of the General Statutes is
6 amended by adding the following new section to read:

7 **"§ 160A-439. Ordinance authorized as to repair, closing, and demolition of**
8 **nonresidential buildings or structures; order of public officer.**

9 (a) The governing body of the city may adopt and enforce ordinances relating to
10 nonresidential buildings within the city and within the city's extraterritorial jurisdiction
11 that fail to meet minimum standards of maintenance, sanitation, and safety established
12 by the governing body. These ordinances shall contain the following provisions:

13 (1) That a public officer be designated or appointed to exercise the powers
14 prescribed by the ordinance.

15 (2) That whenever it appears to the public officer that any nonresidential
16 building or structure has not been properly maintained so that the
17 safety or health of its occupants or members of the general public are
18 jeopardized for failure of the property to meet the minimum standards
19 established by the governing body, the public officer shall, if his
20 preliminary investigation discloses a basis for the charges, issue and
21 cause to be served upon the owner of and parties in interest in the
22 nonresidential building or structure a complaint stating the charges in
23 that respect and containing a notice that a hearing will be held before
24 the public officer (or his designated agent) at a place within the county
25 scheduled not less than 10 days nor more than 30 days after the serving
26 of the complaint; that the owner and parties in interest shall be given
27 the right to answer the complaint and to appear in person, or otherwise,

1 and give testimony at the place and time fixed in the complaint; and
2 that the rules of evidence prevailing in courts of law or equity shall not
3 be controlling in hearings before the public officer.

4 (3) That if, after notice and hearing, the public officer determines that the
5 nonresidential building or structure under consideration has not been
6 properly maintained so that the safety or health of its occupants or
7 members of the general public are jeopardized for failure of the
8 property to meet the minimum standards established by the governing
9 body, he shall state in writing his findings of fact in support of that
10 determination and shall issue and cause to be served upon the owner
11 thereof an order,

12 a. If the repair, alteration, or improvement of the nonresidential
13 building or structure can be made at a reasonable cost in
14 relation to the value of the nonresidential building or structure
15 (the ordinance may fix a certain percentage of this value as
16 being reasonable) requiring the owner, within the time
17 specified, to repair, alter, or improve the nonresidential building
18 or structure in order to bring it into compliance with the
19 minimum standards established by the governing body or to
20 vacate and close the nonresidential building or structure for any
21 use.

22 b. If the repair, alteration, or improvement of the nonresidential
23 building or structure cannot be made at a reasonable cost in
24 relation to the value of the nonresidential building or structure
25 (the ordinance may fix a certain percentage of this value as
26 being reasonable) requiring the owner, within the time specified
27 in the order, to remove or demolish the nonresidential building
28 or structure. However, notwithstanding any other provision of
29 law, if the nonresidential building or structure is located in a
30 historic district of the city and the governing body determines,
31 after a public hearing as provided by ordinance, that the
32 nonresidential building or structure is of particular significance
33 or value toward maintaining the character of the district, and the
34 nonresidential building or structure has not been condemned as
35 unsafe, the order may require that the nonresidential building or
36 structure be vacated and closed until it is brought into
37 compliance with the minimum standards established by the
38 governing body.

39 (4) That, if the owner fails to comply with an order to repair, alter, or
40 improve, or to vacate and close the nonresidential building or
41 structure, the public officer may cause the building or structure to be
42 repaired, altered, or improved or to be vacated and closed; that the
43 public officer may cause to be posted on the main entrance of any
44 nonresidential building or structure so closed, a placard with the

1 following words: "This building is unfit for any use; the use or
2 occupation of this building for any purpose is prohibited and
3 unlawful." Occupation of a building so posted shall constitute a Class
4 1 misdemeanor.

5 (5) That, if the owner fails to comply with an order to remove or demolish
6 the nonresidential building or structure, the public officer may cause
7 the nonresidential building or structure to be removed or demolished.
8 The duties of the public officer set forth in subdivisions (4) and (5) of
9 this subsection shall not be exercised until the governing body shall
10 have by ordinance ordered the public officer to proceed to effectuate
11 the purpose of this section with respect to the particular property or
12 properties that the public officer found to be jeopardizing the health or
13 safety of its occupants or members of the general public and that the
14 property or properties shall be described in the ordinance. However, no
15 ordinance shall be adopted to require demolition of a nonresidential
16 building or structure until the owner has first been given a reasonable
17 opportunity to bring it into conformity with the minimum standards
18 established by the governing body. This ordinance shall be recorded in
19 the office of the register of deeds and shall be indexed in the name of
20 the property owner or owners in the grantor index.

21 (6) Liens.

22 a. That the amount of the cost of repairs, alterations, or
23 improvements, or vacating and closing, or removal or
24 demolition by the public officer shall be a lien against the real
25 property upon which the cost was incurred, which lien shall be
26 filed, have the same priority, and be collected as the lien for
27 special assessment provided in Article 10 of Chapter 160A of
28 the General Statutes.

29 b. If the real property upon which the cost was incurred is located
30 in an incorporated city, the amount of the costs is also a lien on
31 any other real property of the owner located within the city
32 limits or within the city's extraterritorial jurisdiction area,
33 except for the owner's primary residence. The additional lien
34 provided in this sub-subdivision is inferior to all prior liens and
35 shall be collected as a money judgment.

36 c. If the nonresidential building or structure is removed or
37 demolished by the public officer, he shall sell the materials of
38 the building or structure and any personal property, fixtures, or
39 appurtenances found in or attached to the building or structure,
40 and shall credit the proceeds of the sale against the cost of the
41 removal or demolition, and any balance remaining shall be
42 deposited in the superior court by the public officer, shall be
43 secured in a manner directed by the court, and shall be
44 disbursed by the court to the persons found to be entitled thereto

1 by final order or decree of the court. Nothing in this section
2 shall be construed to impair or limit in any way the power of the
3 governing body to define and declare nuisances and to cause
4 their removal or abatement by summary proceedings or
5 otherwise.

6 (7) If any occupant fails to comply with an order to vacate a nonresidential
7 building or structure, the public officer may file a civil action in the
8 name of the city to remove the occupant. The action to vacate shall be
9 in the nature of summary ejectment and shall be commenced by filing
10 a complaint naming as parties-defendant any person occupying the
11 nonresidential building or structure. The clerk of superior court shall
12 issue a summons requiring the defendant to appear before a magistrate
13 at a certain time, date, and place not to exceed 10 days from the
14 issuance of the summons to answer the complaint. The summons and
15 complaint shall be served as provided in G.S. 42-29. The summons
16 shall be returned according to its tenor, and if on its return it appears to
17 have been duly served, and if at the hearing the public officer produces
18 a certified copy of an ordinance adopted by the governing body
19 pursuant to subdivision (5) of this subsection to vacate the occupied
20 nonresidential building or structure, the magistrate shall enter
21 judgment ordering that the premises be vacated and all persons be
22 removed. The judgment ordering that the nonresidential building or
23 structure be vacated shall be enforced in the same manner as the
24 judgment for summary ejectment entered under G.S. 42-30. An appeal
25 from any judgment entered under this subdivision by the magistrate
26 may be taken as provided in G.S. 7A-228, and the execution of the
27 judgment may be stayed as provided in G.S. 7A-227. An action to
28 remove an occupant of a nonresidential building or structure who is a
29 tenant of the owner may not be in the nature of a summary ejectment
30 proceeding pursuant to this subdivision unless the occupant was served
31 with notice, at least 30 days before the filing of the summary ejectment
32 proceeding, that the governing body has ordered the public officer to
33 proceed to exercise his duties under subdivisions (4) and (5) of this
34 subsection to vacate and close or remove and demolish the
35 nonresidential building or structure.

36 (8) The governing body may impose civil penalties against any person or
37 entity that fails to comply with an order entered pursuant to this
38 section. However, the imposition of civil penalties shall not limit the
39 use of any other lawful remedies available to the governing body for
40 the enforcement of any ordinances adopted pursuant to this section.

41 (b) An ordinance adopted by the governing body may authorize the public officer
42 to exercise any powers necessary or convenient to carry out and effectuate the purpose
43 and provisions of this section, including the following powers in addition to others
44 herein granted:

- 1 (1) To investigate nonresidential buildings and structures in the city to
2 determine whether they have been properly maintained so that the
3 safety or health of the occupants or members of the general public are
4 not jeopardized.
- 5 (2) To administer oaths, affirmations, examine witnesses, and receive
6 evidence.
- 7 (3) To enter upon premises for the purpose of making examinations in a
8 manner that will do the least possible inconvenience to the persons in
9 possession.
- 10 (4) To appoint and fix the duties of officers, agents, and employees
11 necessary to carry out the purposes of the ordinances adopted by the
12 governing body.
- 13 (5) To delegate any of his functions and powers under the ordinance to
14 other officers and agents.

15 (c) Complaints or orders issued by a public officer pursuant to an ordinance
16 adopted under this section shall be served upon persons either personally or by
17 registered or certified mail. When service is made by registered or certified mail, a copy
18 of the complaint or order may also be sent by regular mail. Service shall be deemed
19 sufficient if the registered or certified mail is unclaimed or refused, but the regular mail
20 is not returned by the post office within 10 days after the mailing. If regular mail is
21 used, a notice of the pending proceedings shall be posted in a conspicuous place on the
22 premises affected.

23 If the identities of any owners or the whereabouts of persons are unknown and
24 cannot be ascertained by the public officer in the exercise of reasonable diligence, or if
25 the owners are known but have refused to accept service by registered or certified mail,
26 and the public officer makes an affidavit to that effect, the serving of the complaint or
27 order upon the owners or other persons may be made by publication in a newspaper
28 having general circulation in the city at least once no later than the time that personal
29 service would be required under this section. When service is made by publication, a
30 notice of the pending proceedings shall be posted in a conspicuous place on the
31 premises affected.

32 (d) The governing body may provide that appeals may be taken from any
33 decision or order of the public officer to the city's housing appeals board or zoning
34 board of adjustment. Any person aggrieved by a decision or order of the public officer
35 shall have the remedies provided in G.S. 160A-446.

36 (e) The governing body is authorized to make appropriations from its revenues
37 necessary to carry out the purposes of this section, and may accept and apply grants or
38 donations to assist in carrying out the provisions of the ordinances adopted by the
39 governing body.

40 (f) Nothing in this section shall be construed as preventing the owner or owners
41 of any property from receiving just compensation for the taking of property by the
42 power of eminent domain under the laws of this State, nor as permitting any property to
43 be condemned or destroyed except in accordance with the police power of the State."

44 **SECTION 2.** This act is effective when it becomes law.