

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 628

Short Title: Minimum Housing Codes. (Public)

Sponsors: Representatives Adams, Bowie, Jeffus, and Jones (Primary Sponsors).

Referred to: Ways and Means.

March 24, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING CERTAIN MUNICIPALITIES TO REQUIRE OWNERS  
3 TO REPAIR RESIDENTIAL PROPERTY DETERMINED UNFIT FOR HUMAN  
4 HABITATION UNDER THE MUNICIPALITIES' MINIMUM HOUSING CODES  
5 INSTEAD OF VACATING AND CLOSING THE PROPERTY.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 160A-443 reads as rewritten:

8 "§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of  
9 public officer.

10 Upon the adoption of an ordinance finding that dwelling conditions of the character  
11 described in G.S. 160A-441 exist within a city, the governing body of the city is hereby  
12 authorized to adopt and enforce ordinances relating to dwellings within the city's  
13 territorial jurisdiction that are unfit for human habitation. These ordinances shall include  
14 the following provisions:

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

17 (2) That whenever a petition is filed with the public officer by a public  
18 authority or by at least five residents of the city charging that any  
19 dwelling is unfit for human habitation or whenever it appears to the  
20 public officer (on his own motion) that any dwelling is unfit for human  
21 habitation, the public officer shall, if his preliminary investigation  
22 discloses a basis for such charges, issue and cause to be served upon  
23 the owner of and parties in interest in such dwellings a complaint  
24 stating the charges in that respect and containing a notice that a  
25 hearing will be held before the public officer (or his designated agent)  
26 at a place within the county in which the property is located fixed not  
27 less than 10 days nor more than 30 days after the serving of the  
28 complaint; that the owner and parties in interest shall be given the right  
29 to file an answer to the complaint and to appear in person, or

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

4 (3) That if, after notice and hearing, the public officer determines that the  
5 dwelling under consideration is unfit for human habitation, he shall  
6 state in writing his findings of fact in support of that determination and  
7 shall issue and cause to be served upon the owner thereof an order,

8 a. If the repair, alteration or improvement of the dwelling can be  
9 made at a reasonable cost in relation to the value of the  
10 dwelling (the ordinance of the city may fix a certain percentage  
11 of this value as being reasonable), requiring the owner, within  
12 the time specified, to repair, alter or improve the dwelling in  
13 order to render it fit for human ~~habitation or to vacate and close~~  
14 ~~the dwelling as a human habitation; or~~ habitation.

15 b. If the repair, alteration or improvement of the dwelling cannot  
16 be made at a reasonable cost in relation to the value of the  
17 dwelling (the ordinance of the city may fix a certain percentage  
18 of this value as being reasonable), requiring the owner, within  
19 the time specified in the order, to remove or demolish such  
20 dwelling. However, notwithstanding any other provision of law,  
21 if the dwelling is located in a historic district of the city and the  
22 Historic District Commission determines, after a public hearing  
23 as provided by ordinance, that the dwelling is of particular  
24 significance or value toward maintaining the character of the  
25 district, and the dwelling has not been condemned as unsafe, the  
26 order may require that the dwelling be vacated and closed  
27 consistent with G.S. 160A-400.14(a).

28 (4) That, if the owner fails to comply with an order to repair, alter or  
29 improve ~~or to vacate and close~~ the dwelling, the public officer may  
30 cause the dwelling to be repaired, altered or ~~improved or to be vacated~~  
31 ~~and closed; improved,~~ that the public officer may cause to be posted on  
32 the main entrance of any dwelling so closed, a placard with the  
33 following words: "This building is unfit for human habitation; the use  
34 or occupation of this building for human habitation is prohibited and  
35 unlawful." Occupation of a building so posted shall constitute a Class  
36 1 misdemeanor.

37 (5) That, if the owner fails to comply with an order to remove or demolish  
38 the dwelling, the public officer may cause such dwelling to be  
39 removed or demolished. The duties of the public officer set forth in  
40 subdivisions (4) and (5) shall not be exercised until the governing body  
41 shall have by ordinance ordered the public officer to proceed to  
42 effectuate the purpose of this Article with respect to the particular  
43 property or properties which the public officer shall have found to be  
44 unfit for human habitation and which property or properties shall be

1 described in the ordinance. No such ordinance shall be adopted to  
2 require demolition of a dwelling until the owner has first been given a  
3 reasonable opportunity to bring it into conformity with the housing  
4 code. This ordinance shall be recorded in the office of the register of  
5 deeds in the county wherein the property or properties are located and  
6 shall be indexed in the name of the property owner in the grantor  
7 index.

8 (5a) ~~If the governing body shall have adopted an ordinance, or the public  
9 officer shall have:~~

10 a. ~~In a municipality located in counties which have a population in  
11 excess of 71,000 by the last federal census (including the  
12 entirety of any municipality located in more than one county at  
13 least one county of which has a population in excess of 71,000),  
14 other than municipalities with a population in excess of 190,000  
15 by the last federal census, issued an order, ordering a dwelling  
16 to be repaired or vacated and closed, as provided in subdivision  
17 (3)a, and if the owner has vacated and closed such dwelling and  
18 kept such dwelling vacated and closed for a period of one year  
19 pursuant to the ordinance or order;~~

20 b. ~~In a municipality with a population in excess of 190,000 by the  
21 last federal census, commenced proceedings under the  
22 substandard housing regulations regarding a dwelling to be  
23 repaired or vacated and closed, as provided in subdivision (3)a.,  
24 and if the owner has vacated and closed such dwelling and kept  
25 such dwelling vacated and closed for a period of one year  
26 pursuant to the ordinance or after such proceedings have  
27 commenced,~~

28 ~~then if the governing body shall find that the owner has abandoned the  
29 intent and purpose to repair, alter or improve the dwelling in order to  
30 render it fit for human habitation and that the continuation of the  
31 dwelling in its vacated and closed status would be inimical to the  
32 health, safety, morals and welfare of the municipality in that the  
33 dwelling would continue to deteriorate, would create a fire and safety  
34 hazard, would be a threat to children and vagrants, would attract  
35 persons intent on criminal activities, would cause or contribute to  
36 blight and the deterioration of property values in the area, and would  
37 render unavailable property and a dwelling which might otherwise  
38 have been made available to ease the persistent shortage of decent and  
39 affordable housing in this State, then in such circumstances, the  
40 governing body may, after the expiration of such one year period,  
41 enact an ordinance and serve such ordinance on the owner, setting  
42 forth the following:~~

43 a. ~~If it is determined that the repair of the dwelling to render it fit  
44 for human habitation can be made at a cost not exceeding fifty~~

1                   ~~percent (50%) of the then current value of the dwelling, the~~  
2                   ~~ordinance shall require that the owner either repair or demolish~~  
3                   ~~and remove the dwelling within 90 days; or~~

- 4                   b.     ~~If it is determined that the repair of the dwelling to render it fit~~  
5                   ~~for human habitation cannot be made at a cost not exceeding~~  
6                   ~~fifty percent (50%) of the then current value of the dwelling, the~~  
7                   ~~ordinance shall require the owner to demolish and remove the~~  
8                   ~~dwelling within 90 days.~~

9                   ~~This ordinance shall be recorded in the Office of the Register of~~  
10                  ~~Deeds in the county wherein the property or properties are located and~~  
11                  ~~shall be indexed in the name of the property owner in the grantor~~  
12                  ~~index. If the owner fails to comply with this ordinance, the public~~  
13                  ~~officer shall effectuate the purpose of the ordinance.~~

14                  ~~This subdivision only applies to municipalities located in counties~~  
15                  ~~which have a population in excess of 71,000 by the last federal census~~  
16                  ~~(including the entirety of any municipality located in more than one~~  
17                  ~~county at least one county of which has a population in excess of~~  
18                  ~~71,000).~~

19                  ~~[This subdivision does not apply to the local government units~~  
20                  ~~listed in subdivision (5b) of this section.]~~

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 this Chapter.  
28                  b.     If the real property upon which the cost was incurred is located  
29                  in an incorporated city, then the amount of the cost is also a lien  
30                  on any other real property of the owner located within the city  
31                  limits or within one mile thereof except for the owner's primary  
32                  residence. The additional lien provided in this sub-subdivision  
33                  is inferior to all prior liens and shall be collected as a money  
34                  judgment.  
35                  c.     If the dwelling is removed or demolished by the public officer,  
36                  he shall sell the materials of the dwelling, and any personal  
37                  property, fixtures or appurtenances found in or attached to the  
38                  dwelling, and shall credit the proceeds of the sale against the  
39                  cost of the removal or demolition and any balance remaining  
40                  shall be deposited in the superior court by the public officer,  
41                  shall be secured in a manner directed by the court, and shall be  
42                  disbursed by the court to the persons found to be entitled thereto  
43                  by final order or decree of the court. Nothing in this section  
44                  shall be construed to impair or limit in any way the power of the

1 city to define and declare nuisances and to cause their removal  
2 or abatement by summary proceedings, or otherwise.

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

31 (8) That whenever a determination is made pursuant to subdivision (3) of  
32 this section that a dwelling must be ~~vacated and closed, or~~ removed or  
33 demolished, under the provisions of this section, notice of the order  
34 shall be given by first-class mail to any organization involved in  
35 providing or restoring dwellings for affordable housing that has filed a  
36 written request for such notices. A minimum period of 45 days from  
37 the mailing of such notice shall be given before removal or demolition  
38 by action of the public officer, to allow the opportunity for any  
39 organization to negotiate with the owner to make repairs, lease, or  
40 purchase the property for the purpose of providing affordable housing.  
41 The public officer or clerk shall certify the mailing of the notices, and  
42 the certification shall be conclusive in the absence of fraud. Only an  
43 organization that has filed a written request for such notices may raise  
44 the issue of failure to mail such notices, and the sole remedy shall be

1                   an order requiring the public officer to wait 45 days before causing  
2                   removal or demolition."

3                   **SECTION 2.** This act applies only to municipalities with a population of  
4                   200,000 or over, according to the most recent decennial federal census.

5                   **SECTION 3.** This act is effective when it becomes law.