

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1306

Short Title: Nonresidential Building Maintenance Code. (Public)

Sponsors: Representatives Crawford and Wray (Primary Sponsors) (By Request).

Referred to: Rules, Calendar, and Operations of the House.

April 20, 2005

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING MUNICIPALITIES TO ADOPT ORDINANCES
3 ESTABLISHING A NONRESIDENTIAL BUILDING MAINTENANCE 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,
28 and give testimony at the place and time fixed in the complaint; and

1 that the rules of evidence prevailing in courts of law or equity shall not
2 be controlling in hearings before the public officer.

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

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

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

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

1 building for any purpose is prohibited and unlawful." Occupation of a
2 building so posted shall constitute a Class 1 misdemeanor.

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

19 (6) Liens.

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

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

34 c. If the nonresidential building or structure is removed or
35 demolished by the public officer, he shall sell the materials of
36 the building or structure and any personal property, fixtures, or
37 appurtenances found in or attached to the building or structure,
38 and shall credit the proceeds of the sale against the cost of the
39 removal or demolition and any balance remaining shall be
40 deposited in the superior court by the public officer, shall be
41 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 governing body to define and declare nuisances and to cause
2 their removal or abatement by summary proceedings or
3 otherwise.

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

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

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

43 (1) To investigate nonresidential buildings and structures in the city to
44 determine whether they have been properly maintained so that the

1 safety or health of the occupants or members of the general public are
2 not jeopardized.

3 (2) To administer oaths, affirmations, examine witnesses, and receive
4 evidence.

5 (3) To enter upon premises for the purpose of making examinations in a
6 manner that will do the least possible inconvenience to the persons in
7 possession.

8 (4) To appoint and fix the duties of officers, agents, and employees
9 necessary to carry out the purposes of the ordinances adopted by the
10 governing body.

11 (5) To delegate any of his functions and powers under the ordinance to
12 other officers and agents.

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

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

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

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

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

42 (g) This section may be used as an alternative to the procedures established for
43 regulating nonresidential buildings and structures under G.S. 160A-426 through
44 G.S. 160A-432."

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