

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 556  
Second Edition Engrossed 5/15/07

Short Title: Nonresidential Building Code.

(Public)

Sponsors: Senators Kerr; and Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

March 7, 2007

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,  
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. If a building remains boarded up longer than two years  
21          after the date of the final order to vacate and close, the  
22          governing body may issue an order requiring that the building  
23          be repaired or demolished.

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

41          (4)   That, if the owner fails to comply with an order to repair, alter, or  
42          improve, or to vacate and close the nonresidential building or  
43          structure, the public officer may cause the building or structure to be  
44          repaired, altered, or improved or to be vacated and closed; that the

1           public officer may cause to be posted on the main entrance of any  
2           nonresidential building or structure so closed, a placard with the  
3           following words: "This building is unfit for any use; the use or  
4           occupation of this building for any purpose is prohibited and  
5           unlawful." Occupation of a building so posted shall constitute a Class  
6           1 misdemeanor.

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

23          (6)   Liens.

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

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

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

1                    secured in a manner directed by the court, and shall be  
2                    disbursed by the court to the persons found to be entitled thereto  
3                    by final order or decree of the court. Nothing in this section  
4                    shall be construed to impair or limit in any way the power of the  
5                    governing body to define and declare nuisances and to cause  
6                    their removal or abatement by summary proceedings or  
7                    otherwise.

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

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

43                    (b) An ordinance adopted by the governing body may authorize the public officer  
44                    to exercise any powers necessary or convenient to carry out and effectuate the purpose

1 and provisions of this section, including the following powers in addition to others  
2 herein granted:

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

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

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

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

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

42 (f) Nothing in this section shall be construed as preventing the owner or owners  
43 of any property from receiving just compensation for the taking of property by the

1 power of eminent domain under the laws of this State, nor as permitting any property to  
2 be condemned or destroyed except in accordance with the police power of the State."  
3       **SECTION 2.** This act is effective when it becomes law.