

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 556
Second Edition Engrossed 5/15/07
House Committee Substitute Favorable 7/26/07

Short Title: Nonresidential Building Code.

(Public)

Sponsors:

Referred to:

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) Authority. – The governing body of the city may adopt and enforce
10 ordinances relating to nonresidential buildings or structures that fail to meet minimum
11 standards of maintenance, sanitation, and safety established by the governing body. The
12 minimum standards shall address conditions that are dangerous and injurious to public
13 health, safety, and welfare and identify circumstances under which a public necessity
14 exists for the repair, closing, or demolition of such buildings or structures. The
15 ordinance shall provide for designation or appointment of a public officer to exercise
16 the powers prescribed by the ordinance, in accordance with the procedures specified in
17 this section. Such ordinance shall only be applicable within the corporate limits of the
18 city; provided, however, that if a county fails to adopt an ordinance pursuant to
19 G.S. 153A-372.1, a city may apply its ordinance within those portions of its
20 extraterritorial jurisdiction that are located in that county.

21 (b) Investigation. – Whenever it appears to the public officer that any
22 nonresidential building or structure has not been properly maintained so that the safety
23 or health of its occupants or members of the general public are jeopardized for failure of
24 the property to meet the minimum standards established by the governing body, the
25 public officer shall undertake a preliminary investigation. If entry upon the premises for
26 purposes of investigation is necessary, such entry shall be made pursuant to a duly
27 issued administrative search warrant in accordance with G.S. 15-27.2 or with

1 permission of the owner, the owner's agent, a tenant, or other person legally in
2 possession of the premises.

3 (c) Complaint and Hearing. – If the preliminary investigation discloses evidence
4 of a violation of the minimum standards, the public officer shall issue and cause to be
5 served upon the owner of and parties in interest in the nonresidential building or
6 structure a complaint. The complaint shall state the charges and contain a notice that a
7 hearing will be held before the public officer (or his or her designated agent) at a place
8 within the county scheduled not less than 10 days nor more than 30 days after the
9 -serving of the complaint; that the owner and parties in interest shall be given the right to
10 answer the complaint and to appear in person, or otherwise, and give testimony at the
11 place and time fixed in the complaint; and that the rules of evidence prevailing in courts
12 of law or equity shall not be controlling in hearings before the public officer.

13 (d) Order. – If, after notice and hearing, the public officer determines that the
14 nonresidential building or structure has not been properly maintained so that the safety
15 or health of its occupants or members of the general public are jeopardized for failure of
16 the property to meet the minimum standards established by the governing body, the
17 public officer shall state in writing findings of fact in support of that determination and
18 shall issue and cause to be served upon the owner thereof an order. The order may
19 require the owner to take remedial action, within a reasonable time specified, subject to
20 the procedures and limitations herein.

21 (e) Limitations on Orders. –

22 (1) An order may require the owner to repair, alter, or improve the
23 nonresidential building or structure in order to bring it into compliance
24 with the minimum standards established by the governing body or to
25 vacate and close the nonresidential building or structure for any use.

26 (2) An order may require the owner to remove or demolish the
27 nonresidential building or structure if the cost of repair, alteration, or
28 improvement of the building or structure would exceed fifty percent
29 (50%) of its then current value. Notwithstanding any other provision of
30 law, if the nonresidential building or structure is designated as a local
31 historic landmark, listed in the National Register of Historic Places, or
32 located in a locally designated historic district or in a historic district
33 listed in the National Register of Historic Places and the governing
34 body determines, after a public hearing as provided by ordinance, that
35 the nonresidential building or structure is of individual significance or
36 contributes to maintaining the character of the district, and the
37 nonresidential building or structure has not been condemned as unsafe,
38 the order may require that the nonresidential building or structure be
39 vacated and closed until it is brought into compliance with the
40 minimum standards established by the governing body.

41 (3) An order may not require repairs, alterations, or improvements to be
42 made to vacant manufacturing facilities or vacant industrial warehouse
43 facilities to preserve the original use. The order may require such
44 building or structure to be vacated and closed, but repairs may be

1 required only when necessary to maintain structural integrity or to
2 abate a health or safety hazard that cannot be remedied by ordering the
3 building or structure closed for any use.

4 (f) Action by Governing Body Upon Failure to Comply With Order. –

5 (1) If the owner fails to comply with an order to repair, alter, or improve
6 or to vacate and close the nonresidential building or structure, the
7 governing body may adopt an ordinance ordering the public officer to
8 proceed to effectuate the purpose of this section with respect to the
9 particular property or properties that the public officer found to be
10 jeopardizing the health or safety of its occupants or members of the
11 general public. The property or properties shall be described in the
12 ordinance. The ordinance shall be recorded in the office of the register
13 of deeds and shall be indexed in the name of the property owner or
14 owners in the grantor index. Following adoption of an ordinance, the
15 public officer may cause the building or structure to be repaired,
16 altered, or improved or to be vacated and closed. The public officer
17 may cause to be posted on the main entrance of any nonresidential
18 building or structure so closed a placard with the following words:
19 "This building is unfit for any use; the use or occupation of this
20 building for any purpose is prohibited and unlawful." Any person who
21 occupies or allows the occupancy of a building or structure so posted
22 shall be guilty of a Class 1 misdemeanor.

23 (2) If the owner fails to comply with an order to remove or demolish the
24 nonresidential building or structure, the governing body may adopt an
25 ordinance ordering the public officer to proceed to effectuate the
26 purpose of this section with respect to the particular property or
27 properties that the public officer found to be jeopardizing the health or
28 safety of its occupants or members of the general public. No ordinance
29 shall be adopted to require demolition of a nonresidential building or
30 structure until the owner has first been given a reasonable opportunity
31 to bring it into conformity with the minimum standards established by
32 the governing body. The property or properties shall be described in
33 the ordinance. The ordinance shall be recorded in the office of the
34 register of deeds and shall be indexed in the name of the property
35 owner or owners in the grantor index. Following adoption of an
36 ordinance, the public officer may cause the building or structure to be
37 removed or demolished.

38 (g) Action by Governing Body Upon Abandonment of Intent to Repair. – If the
39 governing body has adopted an ordinance or the public officer has issued an order
40 requiring the building or structure to be repaired or vacated and closed and the building
41 or structure has been vacated and closed for a period of two years pursuant to the
42 ordinance or order, the governing body may make findings that the owner has
43 abandoned the intent and purpose to repair, alter, or improve the building or structure
44 and that the continuation of the building or structure in its vacated and closed status

1 would be inimical to the health, safety, and welfare of the municipality in that it would
2 continue to deteriorate, would create a fire or safety hazard, would be a threat to
3 children and vagrants, would attract persons intent on criminal activities, or would cause
4 or contribute to blight and the deterioration of property values in the area. Upon such
5 findings, the governing body may, after the expiration of the two-year period, enact an
6 ordinance and serve such ordinance on the owner, setting forth the following:

7 (1) If the cost to repair the nonresidential building or structure to bring it
8 into compliance with the minimum standards is less than or equal to
9 fifty percent (50%) of its then current value, the ordinance shall
10 require that the owner either repair or demolish and remove the
11 building or structure within 90 days; or

12 (2) If the cost to repair the nonresidential building or structure to bring it
13 into compliance with the minimum standards exceeds 50 percent of its
14 then current value, the ordinance shall require the owner to demolish
15 and remove the building or structure within 90 days.

16 In the case of vacant manufacturing facilities or vacant industrial warehouse facilities,
17 the building or structure must have been vacated and closed pursuant to an order or
18 ordinance for a period of five years before the governing body may take action under
19 this subsection. The ordinance shall be recorded in the office of the register of deeds in
20 the county wherein the property or properties are located and shall be indexed in the
21 name of the property owner in the grantor index. If the owner fails to comply with the
22 ordinance, the public officer shall effectuate the purpose of the ordinance.

23 (h) Service of Complaints and Orders. – Complaints or orders issued by a public
24 officer pursuant to an ordinance adopted under this section shall be served upon persons
25 either personally or by registered or certified mail. When service is made by registered
26 or certified mail, a copy of the complaint or order may also be sent by regular mail.
27 Service shall be deemed sufficient if the registered or certified mail is unclaimed or
28 refused, but the regular mail is not returned by the post office within 10 days after the
29 mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a
30 conspicuous place on the premises affected. If the identities of any owners or the
31 whereabouts of persons are unknown and cannot be ascertained by the public officer in
32 the exercise of reasonable diligence, or if the owners are known but have refused to
33 accept service by registered or certified mail, and the public officer makes an affidavit
34 to that effect, the serving of the complaint or order upon the owners or other persons
35 may be made by publication in a newspaper having general circulation in the city at
36 least once no later than the time that personal service would be required under this
37 section. When service is made by publication, a notice of the pending proceedings shall
38 be posted in a conspicuous place on the premises affected.

39 (i) Liens. –

40 (1) The amount of the cost of repairs, alterations, or improvements, or
41 vacating and closing, or removal or demolition by the public officer
42 shall be a lien against the real property upon which the cost was
43 incurred, which lien shall be filed, have the same priority, and be

1 collected as the lien for special assessment provided in Article 10 of
2 Chapter 160A of the General Statutes.

3 (2) If the real property upon which the cost was incurred is located in an
4 incorporated city, the amount of the costs is also a lien on any other
5 real property of the owner located within the city limits or within the
6 city's extraterritorial jurisdiction area, except for the owner's primary
7 residence. The additional lien provided in this subdivision is inferior to
8 all prior liens and shall be collected as a money judgment.

9 (3) If the nonresidential building or structure is removed or demolished by
10 the public officer, he or she shall offer for sale the recoverable
11 materials of the building or structure and any personal property,
12 fixtures, or appurtenances found in or attached to the building or
13 structure and shall credit the proceeds of the sale, if any, against the
14 cost of the removal or demolition, and any balance remaining shall be
15 deposited in the superior court by the public officer, shall be secured in
16 a manner directed by the court, and shall be disbursed by the court to
17 the persons found to be entitled thereto by final order or decree of the
18 court. Nothing in this section shall be construed to impair or limit in
19 any way the power of the governing body to define and declare
20 nuisances and to cause their removal or abatement by summary
21 proceedings or otherwise.

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

1 officer to proceed to exercise his duties under subsection (f) of this section to vacate and
2 close or remove and demolish the nonresidential building or structure.

3 (k) Civil Penalty. – The governing body may impose civil penalties against any
4 person or entity that fails to comply with an order entered pursuant to this section.
5 However, the imposition of civil penalties shall not limit the use of any other lawful
6 remedies available to the governing body for the enforcement of any ordinances adopted
7 pursuant to this section.

8 (l) Powers Supplemental. – The powers conferred by this section are
9 supplemental to the powers conferred by any other law. An ordinance adopted by the
10 governing body may authorize the public officer to exercise any powers necessary or
11 convenient to carry out and effectuate the purpose and provisions of this section,
12 including the following powers in addition to others herein granted:

13 (1) To investigate nonresidential buildings and structures in the city to
14 determine whether they have been properly maintained so that the
15 safety or health of the occupants or members of the general public are
16 not jeopardized.

17 (2) To administer oaths, affirmations, examine witnesses, and receive
18 evidence.

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

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

25 (5) To delegate any of his or her functions and powers under the ordinance
26 to other officers and agents.

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

31 (n) Funding. – The governing body is authorized to make appropriations from its
32 revenues necessary to carry out the purposes of this section and may accept and apply
33 grants or donations to assist in carrying out the provisions of the ordinances adopted by
34 the governing body.

35 (o) No Effect on Just Compensation for Taking by Eminent Domain. – Nothing
36 in this section shall be construed as preventing the owner or owners of any property
37 from receiving just compensation for the taking of property by the power of eminent
38 domain under the laws of this State, nor as permitting any property to be condemned or
39 destroyed except in accordance with the police power of the State.

40 (p) Definitions. –

41 (1) "Parties in interest" means all individuals, associations, and
42 corporations who have interests of record in a nonresidential building
43 or structure and any who are in possession thereof.

1 (2) "Vacant manufacturing facility" means any building or structure
2 previously used for the lawful production or manufacturing of goods,
3 which has not been used for that purpose for at least one year and has
4 not been converted to another use.

5 (3) "Vacant industrial warehouse" means any building or structure
6 designed for the storage of goods or equipment in connection with
7 manufacturing processes, which has not been used for that purpose for
8 at least one year and has not been converted to another use."

9 **SECTION 2.** Part 4 of Article 18 of Chapter 153A of the General Statutes is
10 amended by adding a new section to read:

11 **"§ 153A-372.1. Ordinance authorized as to repair, closing, and demolition of**
12 **nonresidential buildings or structures; order of public officer.**

13 The provisions of G.S. 160A-439 shall apply to counties."

14 **SECTION 3.** This act is effective when it becomes law. To allow sufficient
15 time for counties to adopt ordinances, a city shall not apply its ordinance in its
16 extraterritorial jurisdiction in accordance with G.S. 160A-439(a) until six months
17 following the effective date of this act.