

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  
House Committee Substitute #2 Favorable 7/27/07

Short Title: Nonresidential Building Code.

(Public)

Sponsors:

Referred to:

March 7, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING MUNICIPALITIES TO ADOPT ORDINANCES  
ESTABLISHING A NONRESIDENTIAL BUILDING OR STRUCTURE CODE.

The General Assembly of North Carolina enacts:

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

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

(a) Authority. – The governing body of the city may adopt and enforce ordinances relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing body. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The ordinance shall provide for designation or appointment of a public officer to exercise the powers prescribed by the ordinance, in accordance with the procedures specified in this section. Such ordinance shall only be applicable within the corporate limits of the city.

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

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

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

19       (e) Limitations on Orders. –

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

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

39           (3) An order may not require repairs, alterations, or improvements to be  
40 made to vacant manufacturing facilities or vacant industrial warehouse  
41 facilities to preserve the original use. The order may require such  
42 building or structure to be vacated and closed, but repairs may be  
43 required only when necessary to maintain structural integrity or to

1                    abate a health or safety hazard that cannot be remedied by ordering the  
2                    building or structure closed for any use.

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

4            (1)    If the owner fails to comply with an order to repair, alter, or improve  
5            or to vacate and close the nonresidential building or structure, the  
6            governing body may adopt an ordinance ordering the public officer to  
7            proceed to effectuate the purpose of this section with respect to the  
8            particular property or properties that the public officer found to be  
9            jeopardizing the health or safety of its occupants or members of the  
10           general public. The property or properties shall be described in the  
11           ordinance. The ordinance shall be recorded in the office of the register  
12           of deeds and shall be indexed in the name of the property owner or  
13           owners in the grantor index. Following adoption of an ordinance, the  
14           public officer may cause the building or structure to be repaired,  
15           altered, or improved or to be vacated and closed. The public officer  
16           may cause to be posted on the main entrance of any nonresidential  
17           building or structure so closed a placard with the following words:  
18           "This building is unfit for any use; the use or occupation of this  
19           building for any purpose is prohibited and unlawful." Any person who  
20           occupies or knowingly allows the occupancy of a building or structure  
21           so posted shall be guilty of a Class 3 misdemeanor.

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

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

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

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

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

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

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

38 (i) Liens. –

39 (1) The amount of the cost of repairs, alterations, or improvements, or  
40 vacating and closing, or removal or demolition by the public officer  
41 shall be a lien against the real property upon which the cost was  
42 incurred, which lien shall be filed, have the same priority, and be  
43 collected as the lien for special assessment provided in Article 10 of  
44 Chapter 160A of the General Statutes.

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

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

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

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

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

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

15           (2) To administer oaths, affirmations, examine witnesses, and receive  
16 evidence.

17           (3) To enter upon premises pursuant to subsection (b) of this section for  
18 the purpose of making examinations in a manner that will do the least  
19 possible inconvenience to the persons in possession.

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

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

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

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

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

38       (p) Definitions. –

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

42           (2) "Vacant manufacturing facility" means any building or structure  
43 previously used for the lawful production or manufacturing of goods,

1                   which has not been used for that purpose for at least one year and has  
2                   not been converted to another use.

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

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

9   "§ 153A-372.1. Ordinance authorized as to repair, closing, and demolition of  
10                   nonresidential buildings or structures; order of public officer.

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

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