

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH50132-LM-33 (03/06)

Short Title: Minimum Housing Codes. (Public)

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

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CERTAIN MUNICIPALITIES TO REQUIRE OWNERS TO REPAIR RESIDENTIAL PROPERTY DETERMINED UNFIT FOR HUMAN HABITATION UNDER THE MUNICIPALITIES' MINIMUM HOUSING CODES INSTEAD OF VACATING AND CLOSING THE PROPERTY.

The General Assembly of North Carolina enacts:

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

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

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

- (1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.
- (2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the

1 complaint; that the owner and parties in interest shall be given the right
2 to file an answer to the complaint and to appear in person, or
3 otherwise, and give testimony at the place and time fixed in the
4 complaint; and that the rules of evidence prevailing in courts of law or
5 equity shall not be controlling in hearings before the public officer.

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

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

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

30 (4) That, if the owner fails to comply with an order to repair, alter or
31 improve ~~or to vacate and close~~ the dwelling, the public officer may
32 cause the dwelling to be repaired, altered or ~~improved or to be vacated~~
33 ~~and closed;~~ improved, that the public officer may cause to be posted on
34 the main entrance of any dwelling so closed, a placard with the
35 following words: "This building is unfit for human habitation; the use
36 or occupation of this building for human habitation is prohibited and
37 unlawful." Occupation of a building so posted shall constitute a Class
38 1 misdemeanor.

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

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

10 (5a) ~~If the governing body shall have adopted an ordinance, or the public
11 officer shall have:~~

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

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

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

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

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

16 ~~This subdivision only applies to municipalities located in counties~~
17 ~~which have a population in excess of 71,000 by the last federal census~~
18 ~~(including the entirety of any municipality located in more than one~~
19 ~~county at least one county of which has a population in excess of~~
20 ~~71,000).~~

21 ~~{This subdivision does not apply to the local government units~~
22 ~~listed in subdivision (5b) of this section.}~~

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 this Chapter.
- 30 b. If the real property upon which the cost was incurred is located
31 in an incorporated city, then the amount of the cost is also a lien
32 on any other real property of the owner located within the city
33 limits or within one mile thereof except for the owner's primary
34 residence. The additional lien provided in this sub-subdivision
35 is inferior to all prior liens and shall be collected as a money
36 judgment.
- 37 c. If the dwelling is removed or demolished by the public officer,
38 he shall sell the materials of the dwelling, and any personal
39 property, fixtures or appurtenances found in or attached to the
40 dwelling, and shall credit the proceeds of the sale against the
41 cost of the removal or demolition and any balance remaining
42 shall be deposited in the superior court by the public officer,
43 shall be secured in a manner directed by the court, and shall be
44 disbursed by the court to the persons found to be entitled thereto

1 by final order or decree of the court. Nothing in this section
2 shall be construed to impair or limit in any way the power of the
3 city to define and declare nuisances and to cause their removal
4 or abatement by summary proceedings, or otherwise.

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

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

1 organization that has filed a written request for such notices may raise
2 the issue of failure to mail such notices, and the sole remedy shall be
3 an order requiring the public officer to wait 45 days before causing
4 removal or demolition."

5 **SECTION 2.** This act applies only to municipalities with a population of
6 200,000 or over, according to the most recent decennial federal census.

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