

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH30286-LM-128C* (03/13)

Short Title: Housing Conditions/Inspections.

(Public)

Sponsors: Representative Gibson.

Referred to:

A BILL TO BE ENTITLED

AN ACT REQUIRING CITIES AND COUNTIES TO HAVE PROBABLE CAUSE BEFORE INSPECTING RESIDENTIAL AND NONRESIDENTIAL STRUCTURES AND REQUIRING OWNERS AND LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY IMMEDIATELY REPAIRING CERTAIN UNSAFE CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-42(a)(2) reads as rewritten:

"(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. However, the landlord shall immediately repair or remedy any imminently dangerous condition in the premise after acquiring actual knowledge or receiving notice of the condition. For purposes of this subdivision, the term 'imminently dangerous condition' means any of the following:

- a. Unsafe wiring.
- b. Unsafe flooring or steps.
- c. Unsafe ceilings or roofs.
- d. Unsafe chimneys or flues.
- e. Lack of potable water.
- f. Lack of operable locks on all doors leading to the outside.
- g. Broken windows or lack of operable locks on all windows on the ground level.
- h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
- i. Lack of an operable toilet.
- j. Lack of an operable bathtub or shower.

- 1 k. Rat infestation as a result of defects in the structure that make
2 the premises not impervious to rodents.
3 l. Excessive standing water, sewage, or flooding problems caused
4 by plumbing leaks or inadequate drainage that contribute to
5 mosquito infestation or mold."

6 **SECTION 2.** G.S. 153A-364 reads as rewritten:

7 "**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

8 (a) The inspection department ~~shall~~may make periodic inspections, subject to
9 the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous
10 and unlawful conditions in residential and nonresidential buildings within its territorial
11 jurisdiction. Except as provided in subsection (b) of this section, the inspection
12 department shall make periodic inspections only when there is probable cause to believe
13 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
14 residential or nonresidential building. For purposes of this section, the term 'probable
15 cause' means: (i) the landlord or owner has a substantial history of noncompliance with
16 the county's ordinances on unsafe buildings; (ii) an occupant of the building has
17 reported that substandard conditions exist within the building or an occupant has
18 requested that the building be inspected; and (iii) the inspections department has actual
19 knowledge of unsafe conditions within the building that was acquired as a result of
20 routine business activities conducted by the inspection department. In conducting
21 inspections authorized under this section, the inspection department shall not
22 discriminate between single-family and multifamily buildings or between
23 owner-occupied and tenant-occupied buildings. In addition, it shall make any necessary
24 inspections when it has reason to believe that such conditions may exist in a particular
25 building. In exercising these powers, each member of the inspection department has a
26 right, upon presentation of proper credentials, to enter on any premises within the
27 territorial jurisdiction of the department at any reasonable hour for the purposes of
28 inspection or other enforcement action.

29 (b) A county may require periodic inspections under subsection (a) of this section
30 as part of a targeted effort to respond to blighted or potentially blighted conditions
31 within a Community Development Block Grant geographic area that has been
32 designated by the board of commissioners, the Department of Commerce, Division of
33 Community Assistance, or the United States Department of Housing and Urban
34 Development."

35 **SECTION 3.** G.S. 160A-424 reads as rewritten:

36 "**§ 160A-424. Periodic inspections.**

37 (a) The inspection department ~~shall~~may make periodic inspections, subject to
38 the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful
39 conditions in residential and nonresidential buildings or structures within its territorial
40 jurisdiction. Except as provided in subsection (b) of this section, the inspection
41 department shall make periodic inspections only when there is probable cause to believe
42 that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a
43 residential or nonresidential building or structure. For purposes of this section, the term
44 'probable cause' means: (i) the landlord or owner has a substantial history of

1 noncompliance with the city's ordinances on unsafe buildings or structures; (ii) an
2 occupant of the building or structure has reported that substandard conditions exist
3 within the building or structure or an occupant has requested that the building or
4 structure be inspected; and (iii) the inspection department has actual knowledge of
5 unsafe conditions within the building or structure that was acquired as a result of routine
6 business activities conducted by the inspection department. In conducting inspections
7 authorized under this section, the inspection department shall not discriminate between
8 single-family and multifamily buildings or structures or between owner-occupied and
9 tenant-occupied buildings or structures. ~~In addition, it shall make inspections when it~~
10 ~~has reason to believe that such conditions may exist in a particular structure.~~ In
11 exercising this power, members of the department shall have a right to enter on any
12 premises within the jurisdiction of the department at all reasonable hours for the
13 purposes of inspection or other enforcement action, upon presentation of proper
14 credentials.

15 (b) A city may require periodic inspections under subsection (a) of this section as
16 part of a targeted effort to respond to blighted or potentially blighted conditions within a
17 Community Development Block Grant geographic area that has been designated by the
18 city council, the Department of Commerce, Division of Community Assistance, or the
19 United States Department of Housing and Urban Development."

20 **SECTION 4.** G.S. 160A-443 reads as rewritten:

21 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of**
22 **public officer.**

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

28 ...

- 29 (2) That whenever a petition is filed with the public officer by a public
30 authority or by at least five residents of the city charging that any
31 dwelling is unfit for human ~~habitation~~ or habitation, whenever the
32 occupant of a dwelling requests that the dwelling be inspected, or
33 whenever it appears to the public officer (on his own motion) that any
34 dwelling is unfit for human habitation, the public officer shall, if his
35 preliminary investigation discloses a basis for such charges, issue and
36 cause to be served upon the owner of and parties in interest in such
37 dwellings a complaint stating the charges in that respect and
38 containing a notice that a hearing will be held before the public officer
39 (or his designated agent) at a place within the county in which the
40 property is located fixed not less than 10 days nor more than 30 days
41 after the serving of the complaint; that the owner and parties in interest
42 shall be given the right to file an answer to the complaint and to appear
43 in person, or otherwise, and give testimony at the place and time fixed
44 in the complaint; and that the rules of evidence prevailing in courts of

1 law or equity shall not be controlling in hearings before the public
2 officer.

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

7 a. If the repair, alteration or improvement of the dwelling can be
8 made at a reasonable cost in relation to the value of the
9 dwelling (the ordinance of the city may fix a certain percentage
10 of this value as being reasonable), requiring the ~~owner, within~~
11 ~~the time specified,~~ owner to repair, alter or improve the
12 ~~dwelling in order to render it fit for human habitation or to~~
13 ~~vacate and close the dwelling as a human habitation; or within a~~
14 reasonable time, which shall be fixed in the order, any
15 ordinance violations that are not imminently dangerous to the
16 occupant of the dwelling and to render the dwelling safe for
17 human habitation. If any of the following imminently dangerous
18 conditions are found to exist in the dwelling, the order shall
19 require the owner to immediately repair or remedy the
20 conditions:

21 1. Unsafe wiring.

22 2. Unsafe flooring or steps.

23 3. Unsafe ceilings or roofs.

24 4. Unsafe chimneys or flues.

25 5. Lack of potable water.

26 6. Lack of operable locks on all doors leading to the
27 outside.

28 7. Broken windows or lack of operable locks on all
29 windows on the ground level.

30 8. Lack of operable heating facilities capable of heating
31 living areas to 65 degrees Fahrenheit when it is 20
32 degrees Fahrenheit outside from November 1 through
33 March 31.

34 9. Lack of an operable toilet.

35 10. Lack of an operable bathtub or shower.

36 11. Rat infestation as a result of defects in the structure that
37 make the premises not impervious to rodents.

38 12. Excessive standing water, sewage, or flooding problems
39 caused by plumbing leaks or inadequate drainage that
40 contribute to mosquito infestation or mold.

41 b. If the repair, alteration or improvement of the dwelling cannot
42 be made at a reasonable cost in relation to the value of the
43 dwelling (the ordinance of the city may fix a certain percentage
44 of this value as being reasonable), requiring the owner, within

the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

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

...

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

a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in ~~subdivision (3)a,~~ subdivisions (3)a. and (4) of this section, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in ~~subdivision (3)a,~~ subdivisions (3)a. and (4) of this section, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the

1 health, safety, morals and welfare of the municipality in that the
2 dwelling would continue to deteriorate, would create a fire and safety
3 hazard, would be a threat to children and vagrants, would attract
4 persons intent on criminal activities, would cause or contribute to
5 blight and the deterioration of property values in the area, and would
6 render unavailable property and a dwelling which might otherwise
7 have been made available to ease the persistent shortage of decent and
8 affordable housing in this State, then in such circumstances, the
9 governing body may, after the expiration of such one year period,
10 enact an ordinance and serve such ordinance on the owner, setting
11 forth the following:

- 12 a. If it is determined that the repair of the dwelling to render it fit
13 for human habitation can be made at a cost not exceeding fifty
14 percent (50%) of the then current value of the dwelling, the
15 ordinance shall require that the owner either repair or demolish
16 and remove the dwelling within 90 days; or
17 b. If it is determined that the repair of the dwelling to render it fit
18 for human habitation cannot be made at a cost not exceeding
19 fifty percent (50%) of the then current value of the dwelling, the
20 ordinance shall require the owner to demolish and remove the
21 dwelling within 90 days.

22 This ordinance shall be recorded in the Office of the Register of
23 Deeds in the county wherein the property or properties are located and
24 shall be indexed in the name of the property owner in the grantor
25 index. If the owner fails to comply with this ordinance, the public
26 officer shall effectuate the purpose of the ordinance.

27 ~~This subdivision only applies to municipalities located in counties
28 which have a population in excess of 71,000 by the last federal census
29 (including the entirety of any municipality located in more than one
30 county at least one county of which has a population in excess of
31 71,000).~~

32 [This subdivision does not apply to the local government units
33 listed in subdivision (5b) of this section.]

- 34 (5b) If the governing body shall have adopted an ordinance, or the public
35 officer shall have:
- 36 a. In a municipality other than municipalities with a population in
37 excess of 190,000 by the last federal census, issued an order,
38 ordering a dwelling to be repaired or vacated and closed, as
39 provided in ~~subdivision (3)a,~~ subdivisions (3)a. and (4) of this
40 section, and if the owner has vacated and closed such dwelling
41 and kept such dwelling vacated and closed for a period of one
42 year pursuant to the ordinance or order;
- 43 b. In a municipality with a population in excess of 190,000 by the
44 last federal census, commenced proceedings under the

1 substandard housing regulations regarding a dwelling to be
2 repaired or vacated and closed, as provided in subdivision
3 ~~(3)a.~~, subdivisions (3)a. and (4) of this section, and if the owner
4 has vacated and closed such dwelling and kept such dwelling
5 vacated and closed for a period of one year pursuant to the
6 ordinance or after such proceedings have commenced,

7 then if the governing body shall find that the owner has abandoned the
8 intent and purpose to repair, alter or improve the dwelling in order to
9 render it fit for human habitation and that the continuation of the
10 dwelling in its vacated and closed status would be inimical to the
11 health, safety, morals and welfare of the municipality in that the
12 dwelling would continue to deteriorate, would create a fire and safety
13 hazard, would be a threat to children and vagrants, would attract
14 persons intent on criminal activities, would cause or contribute to
15 blight and the deterioration of property values in the area, and would
16 render unavailable property and a dwelling which might otherwise
17 have been made available to ease the persistent shortage of decent and
18 affordable housing in this State, then in such circumstances, the
19 governing body may, after the expiration of such one year period,
20 enact an ordinance and serve such ordinance on the owner, setting
21 forth the following:

- 22 a. If it is determined that the repair of the dwelling to render it fit
23 for human habitation can be made at a cost not exceeding fifty
24 percent (50%) of the then current value of the dwelling, the
25 ordinance shall require that the owner either repair or demolish
26 and remove the dwelling within 90 days; or
27 b. If it is determined that the repair of the dwelling to render it fit
28 for human habitation cannot be made at a cost not exceeding
29 fifty percent (50%) of the then current value of the dwelling, the
30 ordinance shall require the owner to demolish and remove the
31 dwelling within 90 days.

32 This ordinance shall be recorded in the Office of the Register of Deeds
33 in the county wherein the property or properties are located and shall
34 be indexed in the name of the property owner in the grantor index. If
35 the owner fails to comply with this ordinance, the public officer shall
36 effectuate the purpose of the ordinance.

37 This subdivision applies to the Cities of Eden, Lumberton,
38 Roanoke Rapids, and Whiteville, to the municipalities in Lee County,
39 and the Towns of Bethel, Farmville, Newport, and Waynesville only.

40 (6) Liens. –

- 41 a. That the amount of the cost of repairs, alterations or
42 improvements, or vacating and closing, or removal or
43 demolition by the public officer shall be a lien against the real
44 property upon which the cost was incurred, which lien shall be

- 1 filed, have the same priority, and be collected as the lien for
2 special assessment provided in Article 10 of this Chapter.
- 3 b. If the real property upon which the cost was incurred is located
4 in an incorporated city, then the amount of the cost is also a lien
5 on any other real property of the owner located within the city
6 limits or within one mile thereof except for the owner's primary
7 residence. The additional lien provided in this sub-subdivision
8 is inferior to all prior liens and shall be collected as a money
9 judgment.
- 10 c. If the dwelling is removed or demolished by the public officer,
11 he shall sell the materials of the dwelling, and any personal
12 property, fixtures or appurtenances found in or attached to the
13 dwelling, and shall credit the proceeds of the sale against the
14 cost of the removal or demolition and any balance remaining
15 shall be deposited in the superior court by the public officer,
16 shall be secured in a manner directed by the court, and shall be
17 disbursed by the court to the persons found to be entitled thereto
18 by final order or decree of the court. Nothing in this section
19 shall be construed to impair or limit in any way the power of the
20 city to define and declare nuisances and to cause their removal
21 or abatement by summary proceedings, or otherwise.
- 22 (7) If any occupant fails to comply with an order to vacate a dwelling, the
23 public officer may file a civil action in the name of the city to remove
24 such occupant. The action to vacate the dwelling shall be in the nature
25 of summary ejectment and shall be commenced by filing a complaint
26 naming as parties-defendant any person occupying such dwelling. The
27 clerk of superior court shall issue a summons requiring the defendant
28 to appear before a magistrate at a certain time, date and place not to
29 exceed 10 days from the issuance of the summons to answer the
30 complaint. The summons and complaint shall be served as provided in
31 G.S. 42-29. The summons shall be returned according to its tenor, and
32 if on its return it appears to have been duly served, and if at the hearing
33 the public officer produces a certified copy of an ordinance adopted by
34 the governing body pursuant to subdivision (5) authorizing the officer
35 to proceed to vacate the occupied dwelling, the magistrate shall enter
36 judgment ordering that the premises be vacated and that all persons be
37 removed. The judgment ordering that the dwelling be vacated shall be
38 enforced in the same manner as the judgment for summary ejectment
39 entered under G.S. 42-30. An appeal from any judgment entered
40 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
41 and the execution of such judgment may be stayed as provided in
42 G.S. 7A-227. An action to remove an occupant of a dwelling who is a
43 tenant of the owner may not be in the nature of a summary ejectment
44 proceeding pursuant to this paragraph unless such occupant was served

1 with notice at least 30 days before the filing of the summary ejectment
2 proceeding that the governing body has ordered the public officer to
3 proceed to exercise his duties under subdivisions (4) and (5) of this
4 section to vacate and close or remove and demolish the dwelling.

5 (8) That whenever a determination is made pursuant to subdivision ~~(3)~~
6 subdivisions (3) and (4) of this section that a dwelling must be vacated
7 and closed, or removed or demolished, under the provisions of this
8 section, notice of the order shall be given by first-class mail to any
9 organization involved in providing or restoring dwellings for
10 affordable housing that has filed a written request for such notices. A
11 minimum period of 45 days from the mailing of such notice shall be
12 given before removal or demolition by action of the public officer, to
13 allow the opportunity for any organization to negotiate with the owner
14 to make repairs, lease, or purchase the property for the purpose of
15 providing affordable housing. The public officer or clerk shall certify
16 the mailing of the notices, and the certification shall be conclusive in
17 the absence of fraud. Only an organization that has filed a written
18 request for such notices may raise the issue of failure to mail such
19 notices, and the sole remedy shall be an order requiring the public
20 officer to wait 45 days before causing removal or demolition."

21 **SECTION 5.** This act is effective when it becomes law.