

Nonresidential Building Maintenance Regulations in North Carolina

Prepared by Karen Smith, AICP, Chief Planner
North Carolina Division of Community Assistance, Western Regional Office
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For many years, cities and counties in North Carolina have had the authority to adopt minimum maintenance, health and safety standards for residential structures through minimum housing codes adopted in accordance with North Carolina General Statutes (G.S.) Chapter 160A, Article 19, Part 6, Minimum Housing Standards. Until recently, there was no similar authority for maintenance codes for nonresidential structures. In addition to requirements contained in the North Carolina Fire Code, cities and towns in North Carolina have relied on a variety of regulatory tools to address nonresidential building maintenance issues, including nuisance ordinances adopted under G.S. 160A-74, police power ordinances for abandoned structures adopted under G.S. 160A-441, and condemnation of unsafe buildings through building inspections ordinances adopted under G.S. 160A-426.

In 2007, the North Carolina General Assembly adopted G.S. 160A-439 (copy attached), which gave cities and towns specific authority to adopt ordinances establishing minimum standards of maintenance, sanitation and safety for nonresidential buildings and structures within their corporate limits. A parallel statute, G.S. 153A-372.1, also adopted by the General Assembly in 2007, gives counties the same authority.

G.S. 160A-439 allows cities and towns to establish minimum nonresidential standards that address 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 and structures.” Such an ordinance may provide, upon evidence of a violation, notice, and a hearing before a public officer, that the local government order the owner of a noncompliant building to repair, alter, or improve it or to vacate and close it for any use. The order may require the owner to remove or demolish a noncompliant building if the cost to improve it would exceed fifty percent (50%) of its value. The statute contains special provisions if the noncompliant building is designated as a local historic landmark, is listed in the National Register of Historic Places or is within in a locally designated historic district or an historic district listed in the National Register of Historic Places. There are also special provisions that apply to vacant manufacturing and industrial warehouse facilities. If noncompliance continues, the local government may arrange for a building to be repaired, altered, or improved, vacated and closed, or demolished and removed. The local government may place a lien on the property to recover expenses it incurs from repairing, demolishing, removing, etc., a noncompliant building. The local government may also impose a civil penalty for violation of a nonresidential property maintenance ordinance. In cases where owners vacate and close noncompliant buildings but later abandon their intent to repair them, G.S. 160A-439 contains a procedure under which local governments may take further action to have the buildings repaired or demolished and removed after a certain period of time (two years for most nonresidential buildings and five years for vacant manufacturing or industrial warehouse facilities).

According to communications with Richard Ducker, J.D, Associate Professor of Public Law and Government at the University of North Carolina at Chapel Hill School of Government, one of the challenges with regulating nonresidential building maintenance is determining which tools fit the situation. Now that specific legal authority for establishing nonresidential building maintenance standards is granted by G.S. 160A-439, he recommended using it rather than the general police power of G.S. 160A-174. He also stated that the power to abate nuisances (G.S. 1260A-193) should be used only when there is no other regulatory tool available. Regarding the power to condemn unsafe buildings (G.S. 160A-426), he said it is "...more drastic and speedier, and is suitable only when the threat is more imminent..." For reference purposes, attached is a chart prepared in 2007 by Professor Ducker to summarize a variety of tools available to regulate building maintenance, condemnation, and nuisances in municipalities.

Since G.S. 160A-439 was enacted in 2007, some local governments in western North Carolina have adopted nonresidential building maintenance ordinances. The City of Hendersonville in Henderson County, for example, added maintenance standards for commercial structures to its city code in early 2008. It already had regulations for condemning unsafe buildings. Hendersonville contracts with Henderson County for building inspections but has a Zoning Administrator and Code Enforcement Officer that administer the City's zoning, flood damage prevention, minimum housing, building condemnation, commercial building maintenance, nuisance, and other ordinances. The City of Newton in Catawba County adopted a nonresidential building maintenance ordinance under G.S. 160A-439 in 2008. It has an abandoned structures ordinance from 2002 that uses the police power authority to address nonresidential buildings. The Town of Tryon (Polk County) has an ordinance with nonresidential building maintenance standards. It cites only G.S. 160A-174 (the nuisance statute) but reads as though it is also based on the authority granted by G.S. 160A-439.

The City of Morganton (Burke County) is in the early stages of considering whether to establish a nonresidential building maintenance ordinance. Several fires in and around the city damaged or destroyed some structures and the public has been asking what the City could do to require the property owners to attend to the structures. The City Attorney presented a draft ordinance to the Morganton City Council in November of 2009 for information purposes. During a Council workshop planned for February of 2010, the City Council plans to discuss the ordinance and what funding, personnel, and other resources might be required to implement it.

As with the adoption of most regulations, a community considering a nonresidential building maintenance ordinance must consider the costs associated with administering it. Professor Ducker has stated that, in some respects, enforcing such an ordinance would be similar to enforcing a minimum housing code. He indicated that the enforcement costs could be substantial and it is likely that a city will not fully recover them.

The City of Hendersonville did not add new staff when it adopted commercial structure maintenance standards. According to its Zoning Administrator, Hendersonville's fiscal year 2009-2010 budget included \$44,000 for enforcing both its minimum housing code and the regulations related to unsafe building condemnation and commercial building maintenance standards. The funds may be used, for example, to front the costs of demolishing buildings. Previously, the budgeted amount was between \$80,000 and \$100,000. The Zoning

Administrator noted that it can be years before the City is reimbursed for costs associated with demolishing a building if the property owner does not reimburse the City and it has to wait for the property to be sold and a lien placed by the City to be paid.

The Morganton City Attorney expects that if the City Council decides to proceed with adopting a nonresidential building maintenance ordinance, administration could be done with existing staff. Morganton has its own building inspectors. However, the City Attorney said the Council will need to assess if the City can afford the additional costs associated with demolishing and removing buildings, noting that costs related to asbestos remediation, for example, could result in some very expensive building removals. He also said that, in some cases, the value of a property may be less than what it would cost the City to tear down a building on it. He added that some of the nonresidential buildings that were causing safety concerns in the City of Morganton have been demolished by a company interested in salvaging the building materials. Therefore, the urgency for the proposed ordinance may have diminished somewhat.

Due to the personnel, financial, and other resources required to administer the various regulatory tools mentioned above, they may not be suitable for all communities. Other measures, such as non-regulatory and/or incentive-based programs, may also be worthy of investigation.