

Housing Codes for Repair and Maintenance

Using the General Police Power
and Minimum Housing Statutes to
Prevent Dwelling Deterioration

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Introduction

Local government officials are all too familiar with the negative effects of a slowly deteriorating house. Neighbors complain as the front lawn gradually becomes overgrown, the exterior falls into unsightly (but not uninhabitable) disrepair, and the owner seems disinclined to do anything about it. Some residential structures deteriorate because they are vacant or abandoned, while others are occupied but neglected by the owners. The neighbors worry about the effect of such an eyesore on property values in the vicinity, about how far into decline the dwelling might slide, and about its ripple effects on the character of the community. The degree of disrepair may vary widely from complaint to complaint: from a house with merely an overgrown lawn and a broken ornamental light to a house with broken windows and a propensity to attract vagrants. In some cases, homeowners associations may be able to rely on restrictive covenants to police the condition of neighborhood homes, but even if these covenants are in place, enforcement may be too difficult or expensive for associations to undertake. It is not uncommon, therefore, for citizens to request local government assistance in addressing a problem with a deteriorating dwelling.¹

Local governments, for their part, seek to regulate these dwellings for their own reasons: abating hazards to occupants and neighbors, maintaining property values (and therefore property tax revenue), eliminating blighting influences in a neighborhood, reducing crime, and preserving affordable housing stock, among others.² Local governing boards must therefore understand the limits of their regulatory authority.

To that end, this publication discusses the authority available under North Carolina law for local governments to address the problem of deteriorating dwellings, with a particular emphasis on repair-oriented intervention—in other words, intervention prior to the point at which a structure becomes so dilapidated that it is a better candidate for demolition than for repair.³ Repair-oriented code enforcement occurs at an early stage in a

dwelling's slide into disrepair; it is undertaken by local governments that are not content to stand idly by as dwellings deteriorate. These governments would prefer to maintain their housing stock in a reasonably good state of repair rather than wait until condemnation is necessary.

Once a dwelling is essentially beyond repair, of course, code enforcement must necessarily become more demolition-oriented, relying upon condemnation authority to eliminate the blighted structure. This publication will not address demolition-oriented code enforcement in much detail. The methods discussed herein, while applicable to all local governments, will be of greatest interest to local governments seeking to enact repair-oriented policies.

Another code enforcement topic that will not receive much treatment in this publication is building codes. While building codes will almost certainly be incorporated into any code enforcement program enacted by a local government, their primary purpose is to establish construction standards and, as a result, they tend to be less helpful with dwellings that were adequately constructed but have since been neglected. A deteriorating dwelling may exhibit outward appearance or other problems that are symptomatic of neglect before a building code violation can be observed or detected. The point of a repair-oriented code enforcement policy is to bring neglected and deteriorating dwellings to the attention of public officials sooner so that the dwellings can be repaired *before* they cause harm to occupants or the neighborhood. Such a policy requires going beyond building codes.

In North Carolina, other than the authority to preserve historic structures, there are two primary sources of statutory authority for repair-oriented residential code enforcement:⁴ (1) the general police power for the regulation and abatement of “acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the [city or county]”⁵ and (2) minimum housing standards.⁶ After dissecting and explaining the complex patchwork of statutes and case law from which these authorities are derived, this publication will explore how counties and cities can tailor local ordinances to meet specific needs.

Chapter 1 introduces the broad array of statutorily granted tools local governments might employ to deal with dwellings in varying stages of neglect. Chapter 2 elaborates on the general police power, the principal source of authority for regulating a dwelling when it first begins to deteriorate, and discusses how that power is limited by state statutes governing minimum housing standards (hereinafter “minimum housing statutes”). Chapter 3 then turns to the minimum housing statutes to examine their

operation and limitations. Chapter 4 concludes by analyzing how the police power and minimum housing statutes can be applied together in the context of a hypothetical repair-oriented housing code.

Notes

1. A dwelling, as the term is used in this publication, is owner-occupied or rental residential property. Dwellings can be single-family homes, multifamily residential buildings, and residential components of mixed-use structures. Buildings under construction are beyond the scope of this publication.

2. For an analysis of these local government rationales in the context of vacant dwellings, see C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 CAMPBELL L. REV. 1, 2–3 (2009), available at <http://law.campbell.edu/lawreview/articles/32-1-1.pdf>.

3. This publication expands on a similar analysis applied in the context of vacant property registration in Mulligan, note 2 above.

4. Code enforcement authority is also available for nonresidential buildings (see, e.g., N.C. GEN. STAT. (hereinafter G.S.) § 160A-439) and for historic structures (G.S. 160A-400.11 and G.S. 160A-400.14). This publication focuses on local government authority to regulate dwellings not designated as historic.

5. G.S. 160A-174(a) (cities) and G.S. 153A-121(a) (counties).

6. G.S. 160A-441 through G.S. 160A-450.