

## Code Enforcement

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## Overview

- ▶ Kinds of Codes that Municipalities Enforce
- ▶ Frameworks for Enforcement
- ▶ Problem Areas
- ▶ Code Enforcement Working Group
- ▶ House Select Committee

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## What Codes Are Being Enforced?

- ▶ General Code of Ordinances provisions
- ▶ Public nuisance ordinances
- ▶ The North Carolina State Building Code
- ▶ Minimum housing codes
- ▶ Zoning ordinances (including historic district regulations)
- ▶ Subdivision ordinances
- ▶ Other environmental ordinances (i.e. flood damage prevention, stormwater, etc.)

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What kinds of problems are we talking about?

Sometimes it's obvious...




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What kinds of problems are we talking about?

► Sometimes it's not...




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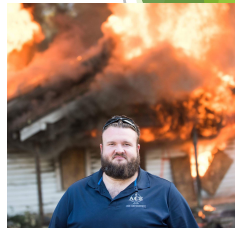
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Who Enforces the Codes?

- Code enforcement officers
- Building Inspectors
- Planners
- Police
- Contract code enforcement companies




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### Remedies: Criminal vs. Civil Enforcement

- ▶ Criminal enforcement requires:
  - ▶ A sworn law enforcement officer
  - ▶ A District Attorney's office willing to prosecute
- ▶ Civil enforcement can include:
  - ▶ Notices of violation
  - ▶ Civil penalties
  - ▶ Court-ordered orders of abatement
  - ▶ Municipal abatement and associated liens

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### Jurisdiction

- ▶ Within the corporate limits only
  - ▶ Other police power/Code of Ordinances violations
  - ▶ Abatement under G.S. § 160A-439.
  - ▶ Sedimentation and erosion control ordinances?
- ▶ Enforceable within the corporate limits and one mile thereof
  - ▶ Public nuisances
- ▶ Enforceable within the corporate limits and the ETJ
  - ▶ Minimum housing codes
  - ▶ State Building Code
  - ▶ Zoning & subdivision ordinances
  - ▶ All Other ordinances under G.S. Chpt. 160A, Art. 19
  - ▶ Flood damage prevention ordinances. G.S. § 143-215.57(b).
  - ▶ Stormwater.

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### Enforcement of Ordinances

- ▶ A Code of Ordinances is required for every municipality having a population of 5,000 or more. G.S. § 160A-77(a).
- ▶ The Code includes "general ordinances" and "technical ordinances," which include ordinances pertaining buildings, public utilities, zoning, subdivisions, and "and other similar technical ordinances designated as such by the council." Standalone technical ordinances are permitted. G.S. § 160A-77.
- ▶ There is no single code enforcement statute; instead enforcement statutes are spread throughout the municipal statutes.

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### Enforcement of Police Power Ordinances

- These are the “everything else” ordinances in a Code of Ordinances: noise ordinances, livestock and domestic animal ordinances, shooting firearms within the corporate limits, and others. They do not include Public Nuisances, Minimum Housing, Building Code, Zoning, or Subdivisions.



- G.S. § 160A-174(a): “A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.”

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### Enforcement of Police Power Ordinances

- No mandated enforcement process, but due process must be given.
- G.S. § 160A-175 authorizes:
  - Civil penalties,
  - Orders of abatement, and
  - Other “appropriate equitable remedies.”
- For violation of “local ordinances,” G.S. § 14-4 authorizes:
  - A Class 3 misdemeanor charge, and
  - Up to a \$500 criminal fine
  - Traffic and parking violations are an infraction with a penalty no more than \$50.
- NO automatic right of appeal to a municipal board. Some ordinances include appeals to the board of adjustment or governing board.

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### Public Nuisance

- G.S. § 160A-193
- “A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety.”
- Abatement lien on the property with the same priority as unpaid taxes.
- A second lien on any other real property owned by the person in default within the city limits or within one mile of the limits, except for the person’s primary residence. This lien is inferior to all other liens and can only be collected as a money judgment.




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### Public Nuisance Ordinances

- ▶ Ordinances typically enumerate a list of conditions that are declared to be public nuisances and also reserve the right for the governing body to declare public nuisances. *Monroe v. City of New Bern*, 158 N.C. App. 275, 580 S.E.2d 372 (2003)
- ▶ No ordinance is required for a governing board to declare a public nuisance.
- ▶ The ordinance can be enforced by any staff person or contractor.
- ▶ How much due process is required?
  - ▶ There is no mandated process, but there must be notice and an opportunity to be heard.
  - ▶ Some ordinances do not mandate a hearing for some violations. The NC courts have not ruled as to whether these ordinances are lawful, but so long as due process is given, they probably are lawful.
  - ▶ NCGS § 160A-200.1: Chronic public nuisance statute.

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### The Special Case of Junked Motor Vehicles

- ▶ Junked motor vehicles can be regulated as public nuisances, but the ordinance language should specifically describe the conditions that constitute nuisances. Purely aesthetic issues should not be addressed as public nuisances.
- ▶ Aesthetics can be addressed through zoning and also through G.S. § 160A-303 and 160A-303.2. These statutes authorize the towing of “junked” and “abandoned” motor vehicles, provided that notice is given in accordance with the statutes.




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### Due Process for Removing Junked and Abandoned Motor Vehicles

- ▶ Either the municipality or a contracted towing service can remove vehicles.
- ▶ If the local government uses a towing contractor who collects the towing fees, the requirements of G.S. Chpt. 20, Art. 7A apply:
  - Notice must be given.
  - If the vehicle has a NC registration plate or registration, notice shall be given to the owner within 24 hours.
  - If the vehicle is not registered in NC, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone.
  - Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing.
  - Reasonable notice is presumed if it is “posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred”
  - No pretowing notice is required if the vehicle “impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.”

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### Due Process for Removing Junked and Abandoned Motor Vehicles

- ▶ If the local government does the towing or collects the towing fees, the government must:
  - Provide for a schedule of "reasonable" towing fees,
  - Provide a procedure for a "prompt fair hearing to contest the towing,"
  - Provide for an appeal to district court from that hearing,
  - Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due,
  - Provide a sale procedure similar to that provided in G.S. § 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required.
  - If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the municipality may destroy it.

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### Minimum Housing in General

- ▶ G.S. Chapter 160A, Art. 19, Part 6
- ▶ Must adopt an ordinance first.
- ▶ Minimum standards in determining the fitness of a dwelling for human habitation can be unique, or simply refer to the State Building Code. G.S. § 160A-444.
- ▶ The ordinance can be enforced by any staff person or contractor. The code officer should be capable of enforcing whichever standards are used.
- ▶ The only statutory requirement: a minimum heat source. G.S. § 160A-443.1.




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### Minimum Housing Procedure

- ▶ G.S. § 160A-443 sets forth a specific enforcement process to be followed:
  1. Designate or appoint a code officer (does NOT have to be a building inspector).
  2. An investigation begins either (a) when "five residents" complain or (b) when it appears to the officer that a dwelling is "unfit for human habitation."
  3. The Officer then does a preliminary investigation of the property.
  4. If the investigation discloses a basis for "charges," the officer serves a complaint upon the "owner and parties in interest." The complaint states the officer's findings and sets a hearing date.

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### Minimum Housing Procedure

1. The hearing must be "not less than 10 day nor more than 30 days after serving the complaint."
2. The hearing is quasi-judicial in nature.
3. Based on the evidence presented at the hearing, the officer determines if some or all of the structure is "unfit for human habitation" and whether it is "deteriorated" or "dilapidated."
  - **Deteriorated** = Order for repair, alteration, or improvement, or vacate and close if there is a significant threat of bodily harm
  - **Dilapidated** = Order for repair, alteration, improvement, vacate and close, or demolition
4. Appeals are to the housing appeals board (if created) or board of adjustment, **within 10 days** from the rendering of the decision or service of the order. G.S. § 160A-446

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### Minimum Housing Procedure

- What happens if the property owner does not comply?
1. The order should include a reasonable time for compliance.
  2. If the property owner does not comply, then the officer can take the matter to the governing board.
  3. The governing board can issue an "ordinance" requiring the compliance with the order and authorizing the code officer to follow through the with order in the event of further noncompliance.
  4. Also, after the ordinance is adopted, the code officer can placard the structure with, "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."
  5. Occupation of a building so posted constitutes a Class 1 misdemeanor.
  6. Special rules for vacating and closing a structure in large jurisdictions.
  7. Summary ejectment process.

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### Minimum Housing Procedure - Liens

If a minimum housing violation is abated by the municipality, the jurisdiction may:

- Place a lien on the property, which is collected in the same manner as a lien for special assessments; and
- Place a second lien on any other real property owned by the person in default within the city limits or within one mile of the limits, except for the person's primary residence. This lien is inferior to all other liens and can only be collected as a money judgment.

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### North Carolina State Building Code

- ▶ The Building Code can only be enforced by a licensed building inspector. G.S. § 160A-411.1.
- ▶ Inspections (G.S. § 160A-424):
  - The inspector can use their authority for dwellings and nonresidential structures.
  - The inspector must have "reasonable cause" to inspect a residential unit.
  - There is no specific standard for inspecting nonresidential structures, but likely it is also a reasonable cause standard.
  - Special provisions relating to inspections of rental property.

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### Unsafe Building Code Enforcement Procedure

1. Notify the "owner or occupant" when a building is "dangerous or contains fire hazardous conditions." G.S. § 160A-425.
2. If the problem is not fixed, condemn some or all of the structure. G.S. § 160A-426. Removing of the notice is a Class 1 misdemeanor. G.S. § 160A-427.
3. If a building is condemned and no corrective action is taken, the inspector gives notice of a hearing to be held no later than ten days after the date of the notice. G.S. § 160A-428.
4. The hearing is quasi-judicial in nature.

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5. "Following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate."
6. The order shall require the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within a minimum of 60 days. G.S. § 160A-429.
7. Failure to follow an order is a Class 1 misdemeanor. G.S. § 160A-431.
8. Other remedies: civil penalties and orders of abatement.

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### Unsafe Building Code Appeals

- ▶ Any owner who has received an order under G.S. § 160A-429 may appeal to the governing board. The governing board may affirm, modify and affirm, or revoke the order. G.S. § 160A-430.
- ▶ Appeals of interpretations of the State Building Code are to the NC Department of Insurance and to the NC State Building Code Council. G.S. § 160A-434.

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### Unsafe Building Code Enforcement

- ▶ If an order is not complied with, the municipality may demolish the building.
- ▶ If a building is demolished minimum housing violation is abated by the municipality, the jurisdiction may:
  - Place a lien on the property, which is collected in the same manner as a lien for special assessments; and
  - A second lien on any other real property owned by the person in default within the city limits or within one mile of the limits, except for the person's primary residence. This lien is inferior to all other liens and can only be collected as a money judgment.

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### Other Statutes for Nonresidential Structures

- ▶ G.S. §160A-441: Authorizes the minimum housing process to also be used for "abandoned structures." Like the minimum housing authority, this authority applies in the ETJ.
- ▶ G.S. § 160A-439: Authorizes an enforcement process for "nonresidential buildings or structures" that is similar to the minimum housing process. The ordinance can be enforced by someone other than a building inspector.\* It is limited to structures within the corporate limits.

\*G.S. § 160A-439(a): "The ordinance shall provide for designation or appointment of a public officer to exercise the powers prescribed by the ordinance." This appears to authorize the use of an officer other than a building inspector.

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### Zoning Enforcement

- ▶ The zoning statutes do not specifically provide for enforcement mechanisms.
- ▶ Instead, G.S. § 160A-365(a) provides that any ordinance adopted pursuant G.S. Chpt. 160A, Art. 19 may be enforced by the remedies in G.S. § 160A-175.
- ▶ Appeals are to the board of adjustment. G.S. § 160A-388.

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### Subdivision Enforcement

- ▶ Like zoning, subdivision ordinances may be enforced using the remedies of G.S. § 160A-175.
- ▶ G.S. § 160A-375 provides additional penalties for transferring lots in unapproved subdivisions:
  - ▶ Class 1 misdemeanor,
  - ▶ Injunctive action, and
  - ▶ Building permits may be denied.
- ▶ The subdivision statutes do not specify an appeals process for enforcement actions, but ordinances often assign this to the board of adjustment.




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### Historic Districts and Landmarks Ordinances

- ▶ Chapter 160A, Art. 19, Part 3C
- ▶ In practice, enforced in the same manner as zoning ordinances. G.S. § 160A-400.11.
- ▶ G.S. § 160A-400.11 also authorizes the municipality to seek an injunction prevent violations of the ordinance.

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### Other Enforcement Areas: Flood Damage Prevention

- ▶ G.S. Chpt. 143, Art. 21, Part 6.
- ▶ G.S. § 143-215.58:
  - A "willful violation" is a Class 1 misdemeanor.
  - Civil penalties, orders of abatement, injunctions
- ▶ The State provides a model ordinance, which jurisdictions must adopt as a prerequisite for maintaining eligibility for flood insurance.\*
- ▶ G.S. § 143-215.57(c) authorizes review of final permit decisions by a Superior Court, including the option for a jury trial.

\*See: <https://www.ncdps.gov/emergency-management/em-community/em-resources/floodplain-mapping/national-flood-insurance-program>

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### Other Enforcement Areas: Stormwater

- ▶ Authorized by G.S. § 143-214.7 and 160A-459.
- ▶ Enforcement remedies are pursuant to G.S. § 14-4, 160A-175, and 160A-365:
  - Class 3 misdemeanor and fine,
  - Civil penalties,
  - Injunctions, and
  - Orders of abatement.
- ▶ No mandated enforcement process.
- ▶ No mandated appeal process, but ordinances often authorize appeals to the board of adjustment.

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### Other Enforcement Areas: Sedimentation and Erosion Control

- ▶ Sedimentation Pollution Control Act, Chapter 113A, Art. 4.
- ▶ Can be administered through the State or delegated to local governments.
- ▶ Statutory enforcement remedies and limitations.
  - Class 2 misdemeanor and fine not to exceed \$5,000. (G.S. § 113A-64(b))
  - Civil penalty (G.S. § 113A-64(a))
    - Maximum daily civil penalty for a violation: \$5,000; Maximum total for 1<sup>st</sup> time violator: \$25,000
    - Five factor determination required: (1) Degree and extent of harm caused by the violation; (2) Cost of rectifying the damage; (3) Amount of money saved by noncompliance; (4) Whether the violation was committed willfully; and (5) Prior record of the violator.
    - Remission of civil penalties. G.S. § 113A-64.2.
  - Injunctions (G.S. § 113A-65)
  - Stop Work Orders (G.S. § 113A-65.1)
  - Orders of Abatement (G.S. § 113A-65)
  - Civil Relief (G.S. § 113A-66)
- ▶ Appeals depend on whether it is administered by the State or local government. G.S. § 113A-64(a)(2).

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### Challenges

- ▶ Combined enforcement processes?
- ▶ Which process to use?
- ▶ Finding the owner.
- ▶ Access to the property.
- ▶ The unenforceable ordinance (some noise ordinances, etc.).
- ▶ The paper pushing code officer.
- ▶ How to record the lien?
- ▶ Property owners who are immune to enforcement.
- ▶ A lack of local government funding.
- ▶ Statutory ambiguity.

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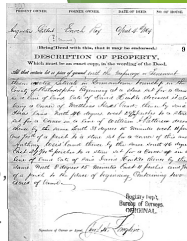
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### Finding the "Owner"

- ▶ Who is the "owner"?
  - ▶ How much due diligence is required? At a minimum, identify owners of record.
- *Monroe v. City of New Bern*, 158 N.C. app. 275, 580 S.E. 372 (2003).
  - *Lawyer v. City of Elizabeth City*, 199 N.C. App. 304, 681 S.E.2d 415 (2009).
  - *Patterson v. City of Gastonia*, 220 N.C. 233, 725 S.E.2d 82 (2012).




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### Access to the Property

- ▶ While some evidence can be obtained from observation from a public right-of-way, it is usually necessary to inspect the structures and property.
- ▶ Absent emergency situations, statutory authority, or the property owner's or tenant's permission, an officer should not enter the property without a warrant to conduct an inspection.
- ▶ If there is no permission, get an administrative search warrant pursuant to G.S. § 15-27.2.
  - ▶ Form: <http://www.nccourts.org/Forms/Documents/172.pdf>
- ▶ If you have to enter without permission, be prepared to bring a locksmith and a police officer.
- ▶ *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523 (1967).

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Access to the Property:  
G.S. § 15-27.2.Requirements

1. Issued by magistrate, judge, clerk, or assistant/ deputy clerk
2. Must establish, under oath or affirmation, that the property is to be searched or inspected as part of a legally authorized program of inspection which includes that property, or that there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies the inspection;
3. An affidavit, signed under oath or affirmation, by the inspector indicating the basis for the inspection;

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Access to the Property:  
G.S. § 15-27.2.Requirements

4. The warrant must describe the property where the inspection is to occur and be accurate enough so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what is authorized to be inspected;
5. It must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;
6. It must be attached to the affidavit used to obtain the warrant.
7. An administrative search warrant is only valid for 24 hours.

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Statutory Ambiguity: G.S. § 160A-365(b)

“When any ordinance adopted pursuant to authority conferred by this Article is to be applied or enforced in any area outside the territorial jurisdiction of the city as described in G.S. 160A-360(a), the city and the property owner shall certify that the application or enforcement of the city ordinance is not under coercion or otherwise based upon any representation by the city that the city’s approval of any land use planning would be withheld from the property owner without the application or enforcement of the city ordinance outside the territorial jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any approved plat recorded in accordance with this Article.”

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### Code Enforcement Working Group

- ▶ The NCBA Government & Public Sector and Zoning, Planning, & Land Use Sections have jointly convened a working group of attorneys from each section and local code enforcement officers, to revise, simplify, and improve current local government code enforcement statutes with a goal of developing a set of recommendations that could be jointly endorsed by the two sections to present to legislators at the 2019 Long Session.

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### Why a Code Enforcement Working Group?

- ▶ The General Assembly passed HB252, Building Code Regulatory Reform, making significant changes to the Building Code and processes for inspectors, including statutes of limitations in code enforcement cases.
- ▶ Local Government Code Enforcement Statutes are slightly different, partly because the General Assembly enacted them at different times in response to specific problems:
  - Cities: Articles 8 and 19 of Chapter 160A in 1971
  - Counties: Articles 6 and 18 of Chapter 153A in 1973
- ▶ This parallel system of separate city and county statutes regarding local code enforcement has led to redundancy and, likely, unintended differences in the wording of local code enforcement statutes on the same subject, creating confusion among the public and enforcement staff.
- ▶ No comprehensive reorganization of North Carolina's local code enforcement statutes has ever before been undertaken.

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### House Select Committee

- ▶ The House Select Committee on Implementation of Building Code Regulatory Reform held their first meeting on Wednesday. Committee Chair Rep. Mark Brody opened the committee by noting "gross inconsistencies in building code across the state." The committee will study three existing state laws:
- ▶ **HB 170: Building Codes: Local Consistency/ Exempt Cities**, passed in 2013, requires local governments to receive approval from the NC Building Code Council before requiring building inspections in addition to those required by the state building code.
- ▶ Passed in 2015, **HB 255: Building Code Reg. Reform** enacted a number of reforms to building code enforcement to promote economic growth.
- ▶ **HB 252: Building Code Regulatory Reform**, passed in 2017, made a number of changes and clarifications to the statutes governing the creation and enforcement of building codes.\*
- ▶ Their next meeting is set for March 28th at 1:00pm to Discuss Draft Recommendations to the 2018 Short Session.

\*From McGuire Woods Consulting Web site:  
<http://www.mwcllc.com/ideas/updates/articles/2017/12/nc-general-assembly-dec-15.aspx>

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