

**CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY**

MEMORANDUM

TO: Walter Abernethy, Code Enforcement Division Manager

FROM: DeWitt F. McCarley, City Attorney
Anna F. Schleunes, Assistant City Attorney
S. Mujeeb Shah-Khan, Assistant City Attorney

DATE: May 2, 2006

RE: Enforcement of Minimum Standard Housing Code Occupancy Limits

In connection with the possible amendment of Chapter 11 of the City of Charlotte's Code of Ordinances ("Housing Code") to create stricter occupancy limits, you have asked this office to provide a brief summary of the Code Enforcement Division's Housing Code enforcement options. The authority for the City's ability to enforce Housing Code violations is found in Section 160A-443 of the North Carolina General Statutes ("State law").

State law establishes the exclusive enforcement mechanisms that the City may utilize when conditions in violation of the Housing Code exist at a dwelling. As a result, the enforcement provisions set forth in the Housing Code are essentially identical to the State law. In general, after providing proper and reasonable notice to the owner and other parties in interest and after giving such parties an opportunity to discuss the violations with a Code Enforcement inspector, the Code Enforcement Division may only order the owner, depending on the cost of repair, to repair the dwelling or to demolish it.

The Enforcement Process

The Code Enforcement Division may open a Housing Code case under any of the following circumstances: (i) a public agency (i.e. CMPD) makes a referral; (ii) at least five City residents over the age of eighteen file a petition, (iii) a Code inspector makes a field observation; or (iv) a tenant complains. Once a property is identified as having potential Housing Code violations, a Code Enforcement inspector may enter and inspect the dwelling; provided that the inspection is made at a reasonable time and in a manner that causes the least possible inconvenience to the owner or occupants of the dwelling. If the owner or occupants do not voluntarily give the inspector access to the dwelling, the Code Enforcement Division must obtain an administrative search warrant which permits inspection between the hours of 8:00 a.m. and 8:00 p.m.

If a Code inspector finds Housing Code violations during the initial inspection, he or she issues a Complaint and Notice of Hearing (“Complaint”) which lists all the violations. An administrative hearing is held approximately 30 days after the Complaint is sent. After the hearing, the inspector issues either an order to repair or an order to demolish.

Repair

If the cost to repair a dwelling does not exceed 65% of the tax value of the structure, the Code Enforcement inspector may order an owner to repair. If an owner does not comply with the order to repair, the Code Enforcement Division has two enforcement options. The first option is to ask City Council for a resolution authorizing the City Attorney’s office to petition the Superior Court for an order directing the owner to comply with the repair order. The second option is to submit to City Council an ordinance for approval which orders the Code Enforcement Division to have the structure repaired.

Demolish

If the cost to repair the dwelling would exceed 65% of the tax value of the dwelling, the Code Enforcement inspector may order an owner to demolish it. If the owner does not comply with the order to demolish the dwelling, the Code Enforcement Division has essentially the same options as it does when the order is to repair. The first option is to ask City Council for a resolution authorizing the City Attorney’s office to petition the Superior Court for an order directing the owner to comply with the demolition order. The second option is to submit to City Council an ordinance for approval which orders the Code Enforcement Division to have the structure demolished.

Vacate and Close

If the Code Enforcement inspector orders the owner of the dwelling to repair it, the inspector, if he or she deems it necessary, may also order that the occupants vacate the dwelling and that it be closed while the repairs are being made. If, however, the inspector orders the dwelling demolished, the dwelling must also be vacated and closed. If the occupants fail to vacate the dwelling, the City may go to court to evict the occupants.

Civil Penalties

Under certain circumstances, the owner of a dwelling under code enforcement may also be subject to civil penalties. If an owner fails to comply with the Code Enforcement Division’s order, he or she will be fined \$100.00 for the first day of non-compliance and an additional \$10.00 for every subsequent day of non-compliance. It is important to note, however, that these penalties are not assessed against an owner who occupies the dwelling in question.

