

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 639

Short Title: Street Closings Validated.

(Public)

Sponsors: Senator Marvin.

Referred to: Local Government and Regional Affairs.

March 27, 1989

A BILL TO BE ENTITLED

AN ACT TO VALIDATE ORDINANCES CLOSING STREETS AND ALLEYS
NOTWITHSTANDING A FAILURE TO SEND NOTICE BY REGISTERED OR
CERTIFIED MAIL, AND TO ALLOW SUCH MAILINGS BY FIRST-CLASS
MAIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-299 reads as rewritten:

"§ 160A-299. Procedure for permanently closing streets and alleys.

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by ~~registered or certified~~ first-class mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. The city clerk shall make and file with the council a certificate of mailing, which shall be conclusive as to mailing except in the case of fraud. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress

1 to his property, the council may adopt an order closing the street or alley. A certified
2 copy of the order (or judgment of the court) shall be filed in the office of the register of
3 deeds of the county in which the street, or any portion thereof, is located.

4 (b) Any person aggrieved by the closing of any street or alley including the
5 Department of Transportation if the street or alley is under its authority and control,
6 may appeal the council's order to the General Court of Justice within 30 days after its
7 adoption. The court shall hear the matter **de novo**, and shall have full jurisdiction to try
8 the issues arising and to order the street or alley closed upon proper findings of fact by
9 the jury. No cause of action or defense founded upon the invalidity of any proceedings
10 taken in closing any street or alley may be asserted, nor shall the validity of the order be
11 open to question in any court upon any ground whatever, except in an action or
12 proceeding begun within 30 days after the order is adopted. The failure to send notice
13 by registered or certified mail shall not invalidate any ordinance adopted prior to
14 January 1, 1982.

15 (c) Upon the closing of a street or alley in accordance with this section, subject to
16 the provisions of subsection (f) of this section, all right, title, and interest in the right-of-
17 way shall be conclusively presumed to be vested in those persons owning lots or parcels
18 of land adjacent to the street or alley, and the title of such adjoining landowners, for the
19 width of the abutting land owned by them, shall extend to the centerline of the street or
20 alley.

21 (d) This section shall apply to any street or public alley within a city or its
22 extraterritorial jurisdiction that has been irrevocably dedicated to the public, without
23 regard to whether it has actually been opened.

24 (e) No street or alley under the control of the Department of Transportation may
25 be closed unless the Department of Transportation consents thereto.

26 (f) A city may reserve its right, title, and interest in any utility improvement or
27 easement within a street closed pursuant to this section. Such reservation shall be stated
28 in the order of closing."

29 Sec. 2. This act is effective upon ratification.