

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 912*

Short Title: Housing Violation Closings.

(Public)

Sponsors: Representatives Gottovi; Bowie, Colton, Flaherty, Hurley, Oldham, and Payne.

Referred to: Commerce.

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CITIES TO VACATE AND CLOSE CERTAIN
3 DWELLINGS FOUND TO BE IN VIOLATION OF THE MINIMUM HOUSING
4 CODE.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 160A-443 reads as rewritten:

7 "**§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of**
8 **public officer.**

9 Upon the adoption of an ordinance finding that dwelling conditions of the character
10 described in G.S. 160A-441 exist within a city, the governing body of the city is hereby
11 authorized to adopt and enforce ordinances relating to dwellings within the city's
12 territorial jurisdiction that are unfit for human habitation. These ordinances shall include
13 the following provisions:

14 (1) That a public officer be designated or appointed to exercise the powers
15 prescribed by the ordinance.

16 (2) That whenever a petition is filed with the public officer by a public
17 authority or by at least five residents of the city charging that any
18 dwelling is unfit for human habitation or whenever it appears to the
19 public officer (on his own motion) that any dwelling is unfit for human
20 habitation, the public officer shall, if his preliminary investigation
21 discloses a basis for such charges, issue and cause to be served upon
22 the owner of and parties in interest in such dwellings a complaint
23 stating the charges in that respect and containing a notice that a

1 hearing will be held before the public officer (or his designated agent)
2 at a place within the county in which the property is located fixed not
3 less than 10 days nor more than 30 days after the serving of the
4 complaint; that the owner and parties in interest shall be given the right
5 to file an answer to the complaint and to appear in person, or
6 otherwise, and give testimony at the place and time fixed in the
7 complaint; and that the rules of evidence prevailing in courts of law or
8 equity shall not be controlling in hearings before the public officer.

9 (3) That if, after notice and hearing, the public officer determines that the
10 dwelling under consideration is unfit for human habitation, he shall
11 state in writing his findings of fact in support of that determination and
12 shall issue and cause to be served upon the owner thereof an order,

13 a. If the repair, alteration or improvement of the dwelling can be
14 made at a reasonable cost in relation to the value of the
15 dwelling (the ordinance of the city may fix a certain percentage
16 of this value as being reasonable), requiring the owner, within
17 the time specified, to repair, alter or improve the dwelling in
18 order to render it fit for human habitation or to vacate and close
19 the dwelling as a human habitation; or

20 b. If the repair, alteration or improvement of the dwelling cannot
21 be made at a reasonable cost in relation to the value of the
22 dwelling (the ordinance of the city may fix a certain percentage
23 of this value as being reasonable), requiring the owner, within
24 the time specified in the order, to remove or demolish such
25 dwelling. However, notwithstanding any other provision of
26 law, if the dwelling is located in a historic district of the city
27 and the Historic District Commission determines, after a public
28 hearing as provided by ordinance, that the dwelling is of
29 particular significance or value toward maintaining the
30 character of the district, and the dwelling has not been
31 condemned as unsafe, the order may require that the dwelling
32 be vacated and closed.

33 (4) That, if the owner fails to comply with an order to repair, alter or
34 improve or to vacate and close the dwelling, the public officer may
35 cause the dwelling to be repaired, altered or improved or to be vacated
36 and closed; that the public officer may cause to be posted on the main
37 entrance of any dwelling so closed, a placard with the following
38 words: 'This building is unfit for human habitation; the use or
39 occupation of this building for human habitation is prohibited and
40 unlawful.' Occupation of a building so posted shall constitute a
41 misdemeanor.

42 (5) That, if the owner fails to comply with an order to remove or demolish
43 the dwelling, the public officer may cause such dwelling to be
44 removed or demolished. The duties of the public officer set forth in

1 subdivisions (4) and (5) shall not be exercised until the governing body
2 shall have by ordinance ordered the public officer to proceed to
3 effectuate the purpose of this Article with respect to the particular
4 property or properties which the public officer shall have found to be
5 unfit for human habitation and which property or properties shall be
6 described in the ordinance. No such ordinance shall be adopted to
7 require demolition of a dwelling until the owner has first been given a
8 reasonable opportunity to bring it into conformity with the housing
9 code. This ordinance shall be recorded in the office of the register of
10 deeds in the county wherein the property or properties are located and
11 shall be indexed in the name of the property owner in the grantor
12 index.

13 (5a) If the governing body shall have adopted an ordinance ordering a
14 dwelling to be repaired or vacated and closed, as provided in
15 subdivision (3)a., and if the owner has vacated and closed such
16 dwelling and kept such dwelling vacated and closed for a period of one
17 year pursuant to the ordinance, then if the governing body shall find
18 that the owner has abandoned the intent and purpose to repair, alter or
19 improve the dwelling in order to render it fit for human habitation and
20 that the continuation of the dwelling in its vacated and closed status
21 would be inimical to the health, safety, morals and welfare of the
22 municipality in that the dwelling would continue to deteriorate, would
23 create a fire and safety hazard, would be a threat to children and
24 vagrants, would attract persons intent on criminal activities, would
25 cause or contribute to blight and the deterioration of property values in
26 the area, and would render unavailable property and a dwelling which
27 might otherwise have been made available to ease the persistent
28 shortage of decent and affordable housing in this State, then in such
29 circumstances, the governing body may, after the expiration of such
30 one year period, enact an ordinance and serve such ordinance on the
31 owner, setting forth the following:

- 32 a. If it is determined that the repair of the dwelling to render it fit
33 for human habitation can be made at a cost not exceeding fifty
34 percent (50%) of the then current value of the dwelling, the
35 ordinance shall require that the owner either repair or demolish
36 and remove the dwelling within 90 days; or
37 b. If it is determined that the repair of the dwelling to render it fit
38 for human habitation cannot be made at a cost not exceeding
39 fifty percent (50%) of the then current value of the dwelling, the
40 ordinance shall require the owner to demolish and remove the
41 dwelling within 90 days.

42 This ordinance shall be recorded in the Office of the Register of
43 Deeds in the county wherein the property or properties are located and
44 shall be indexed in the name of the property owner in the grantor

1 index. If the owner fails to comply with this ordinance, the public
2 officer shall effectuate the purpose of the ordinance.

3 This subdivision only applies to municipalities located in counties
4 which have a population in excess of 163,000 by the last federal
5 census.

6 (6) That the amount of the cost of repairs, alterations or improvements, or
7 vacating and closing, or removal or demolition by the public officer
8 shall be a lien against the real property upon which the cost was
9 incurred, which lien shall be filed, have the same priority, and be
10 collected as the lien for special assessment provided in Article 10 of
11 this Chapter. If the dwelling is removed or demolished by the public
12 officer, he shall sell the materials of the dwelling, and any personal
13 property, fixtures or appurtenances found in or attached to the
14 dwelling, and shall credit the proceeds of the sale against the cost of
15 the removal or demolition and any balance remaining shall be
16 deposited in the superior court by the public officer, shall be secured in
17 a manner directed by the court, and shall be disbursed by the court to
18 the persons found to be entitled thereto by final order or decree of the
19 court. Nothing in this section shall be construed to impair or limit in
20 any way the power of the city to define and declare nuisances and to
21 cause their removal or abatement by summary proceedings, or
22 otherwise.

23 (7) If any occupant fails to comply with an order to vacate a dwelling, the
24 public officer may file a civil action in the name of the city to remove
25 such occupant. The action to vacate the dwelling shall be in the nature
26 of summary ejectment and shall be commenced by filing a complaint
27 naming as parties-defendant any person occupying such dwelling. The
28 clerk of superior court shall issue a summons requiring the defendant
29 to appear before a magistrate at a certain time, date and place not to
30 exceed 10 days from the issuance of the summons to answer the
31 complaint. The summons and complaint shall be served as provided in
32 G.S. 42-29. The summons shall be returned according to its tenor, and
33 if on its return it appears to have been duly served, and if at the hearing
34 the public officer produces a certified copy of an ordinance adopted by
35 the governing body pursuant to subdivision (5) authorizing the officer
36 to proceed to vacate the occupied dwelling, the magistrate shall enter
37 judgment ordering that the premises be vacated and that all persons be
38 removed. The judgment ordering that the dwelling be vacated shall be
39 enforced in the same manner as the judgment for summary ejectment
40 entered under G.S. 42-30. An appeal from any judgment entered
41 hereunder by the magistrate may be taken as provided in G.S. 7A-228,
42 and the execution of such judgment may be stayed as provided in G.S.
43 7A-227. An action to remove an occupant of a dwelling who is a
44 tenant of the owner may not be in the nature of a summary ejectment

1 proceeding pursuant to this paragraph unless such occupant was served
2 with notice at least 30 days before the filing of the summary ejectment
3 proceeding that the governing body has ordered the public officer to
4 proceed to exercise his duties under paragraphs 4 and 5 of this section
5 to vacate and close or remove and demolish the dwelling."

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