

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 772

Local Government and Regional Affairs Committee Substitute Adopted 5/6/93

Short Title: Durham City Street Closings.

(Public)

Sponsors:

Referred to:

April 8, 1993

A BILL TO BE ENTITLED

1 AN ACT CLARIFYING THE AUTHORITY OF THE CITIES TO PERMIT THE
2 CLOSING OF UNOPENED STREETS, THE RETENTION OF UTILITY
3 EASEMENTS, AND THE DIVISION OF RIGHT-OF-WAY IN TYPICAL
4 STREET CLOSINGS, AND ESTABLISHING PROCEDURES FOR APPEALS OF
5 STREET CLOSINGS.
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 160A-299. Procedure for permanently closing streets and alleys.**

10 (a) When a city proposes to permanently close any street or public alley, the
11 council shall first adopt a resolution declaring its intent to close the street or alley and
12 calling a public hearing on the question. The resolution shall be published once a week
13 for four successive weeks prior to the hearing, a copy thereof shall be sent by registered
14 or certified mail to all owners of property adjoining the street or alley as shown on the
15 county tax records, and a notice of the closing and public hearing shall be prominently
16 posted in at least two places along the street or alley. If the street or alley is under the
17 authority and control of the Department of Transportation, a copy of the resolution shall
18 be mailed to the Department of Transportation. At the hearing, any person may be heard
19 on the question of whether or not the closing would be detrimental to the public interest,
20 or the property rights of any individual. If it appears to the satisfaction of the council
21 after the hearing that closing the street or alley is not contrary to the public interest, and
22 that no individual owning property in the vicinity of the street or alley or in the
23 subdivision in which it is located would thereby be deprived of reasonable means of

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

5 (b) Any person aggrieved by the closing of any street or alley including the
6 Department of Transportation if the street or alley is under its authority and control,
7 may appeal the council's order to the General Court of Justice within 30 days after its
8 adoption. ~~The court shall hear the matter de novo, and shall have full jurisdiction to try the~~
9 ~~issues arising and to order the street or alley closed upon proper findings of fact by the jury.~~ In
10 appeals of streets closed under this section, all facts and issues shall be heard and
11 decided by a judge sitting without a jury. In addition to determining whether procedural
12 requirements were complied with, the court shall determine whether, on the record as
13 presented to the city council, the council's decision to close the street was in accordance
14 with the statutory standards of subsection (a) of this section and any other applicable
15 requirements of local law or ordinance.

16 No cause of action or defense founded upon the invalidity of any proceedings taken
17 in closing any street or alley may be asserted, nor shall the validity of the order be open
18 to question in any court upon any ground whatever, except in an action or proceeding
19 begun within 30 days after the order is adopted. The failure to send notice by registered
20 or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

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

27 The provisions of this subsection regarding division of right-of-way in street
28 closings may be altered as to a particular street closing by the assent of all property
29 owners taking title to a closed street by the filing of a plat which shows the street
30 closing and the portion of the closed street to be taken by each such owner. The plat
31 shall be signed by each property owner who, under this section, has an ownership right
32 in the closed street.

33 (d) This section shall apply to any street or public alley within a city or its
34 extraterritorial jurisdiction that has been irrevocably dedicated to the public, without
35 regard to whether it has actually been opened. This section also applies to unopened
36 streets that are shown on plats but that have not been accepted or maintained by the city.

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

39 (f) A city may reserve its right, title, and interest in any utility improvement or
40 easement within a street closed pursuant to this section. Such reservation shall be stated
41 in the order of closing. Such reservation also extends to utility improvements or
42 easements owned by private utilities which at the time of the street closing have a utility
43 agreement or franchise with the city.

1 (g) The city may retain utility easements, both public and private, in cases of
2 streets withdrawn under G.S. 136-96. To retain such easements, the city council shall,
3 after public hearing, approve a 'declaration of retention of utility easements' specifically
4 describing such easements. Notice by certified or registered mail shall be provided to
5 the party withdrawing the street from dedication under G.S. 136-96 at least five days
6 prior to the hearing. The declaration must be passed prior to filing of any plat or map or
7 declaration of withdrawal with the register of deeds. Any property owner filing such
8 plats, maps, or declarations shall include the city declaration with the declaration of
9 withdrawal and shall show the utilities retained on any map or plat showing the
10 withdrawal."

11 Sec. 2. This act applies to any street closing order adopted on or after July 1,
12 1993, but does not apply to pending litigation.

13 Sec. 3. This act does not affect any local modifications to G.S. 160A-299
14 which are not in conflict with the amendments made to G.S. 160A-299 by this act. If
15 the local modification to G.S. 160A-299 conflicts with the amendments made to G.S.
16 160A-299 made by this act, the amendments made by this act prevail to the extent of the
17 conflict.

18 Sec. 4. This act is effective upon ratification.