

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 912*
Second Edition Engrossed 5/14/91

Short Title: Housing Violation Closings.

(Public)

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

Referred to: Commerce.

April 18, 1991

A BILL TO BE ENTITLED

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

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

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

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

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

21 b. If the repair, alteration or improvement of the dwelling cannot
22 be made at a reasonable cost in relation to the value of the
23 dwelling (the ordinance of the city may fix a certain percentage
24 of this value as being reasonable), requiring the owner, within
25 the time specified in the order, to remove or demolish such
26 dwelling. However, notwithstanding any other provision of
27 law, if the dwelling is located in a historic district of the city
28 and the Historic District Commission determines, after a public
29 hearing as provided by ordinance, that the dwelling is of
30 particular significance or value toward maintaining the
31 character of the district, and the dwelling has not been
32 condemned as unsafe, the order may require that the dwelling
33 be vacated and closed consistent with G.S. 160A-400.14(a).

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

43 (5) That, if the owner fails to comply with an order to remove or demolish
44 the dwelling, the public officer may cause such dwelling to be

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

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

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

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

1 shall be indexed in the name of the property owner in the grantor
2 index. If the owner fails to comply with this ordinance, the public
3 officer shall effectuate the purpose of the ordinance.

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

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

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

1 tenant of the owner may not be in the nature of a summary ejectment
2 proceeding pursuant to this paragraph unless such occupant was served
3 with notice at least 30 days before the filing of the summary ejectment
4 proceeding that the governing body has ordered the public officer to
5 proceed to exercise his duties under paragraphs 4 and 5 of this section
6 to vacate and close or remove and demolish the dwelling."

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