



## Legislation Text

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**File #:** 21-35, **Version:** 1

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**TITLE:**

Request to set a public hearing on the permanent closing of a portion of the Maple Avenue Right of Way

**PURPOSE:** The purpose of this agenda item is to set a public hearing on a request to permanently close a portion of the Maple Avenue right-of-way.

**DEPARTMENT:** Planning, Public Works

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**INFORMATION:** Town staff reported in July 2020 that utilization of a portion of the right of way of Maple Avenue extension would likely be needed to accommodate the 203 Project building program, particularly the parking deck dimensions. The Town Council authorized moving forward with schematic design that included such a change. As the Town proceeds in the design process, action to partially abandon a portion of the right of way is needed for the site plan compliance to be determined.

In accordance with General Statute 160A-299, the following would be required to permanently close a portion of the Maple Avenue right of way, reducing it in width from 40 to 20 feet:

- 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 of the resolution shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records.
- A notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley.
- 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 to his property, the council may adopt an order closing the street or alley.
- A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.
- Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

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

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

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

- The Town may reserve a right, title, and interest in any improvements or easements within a street closed pursuant to this section. An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

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

A proposed hearing date of March 9th is included in the attached resolution of intent. Notice will be published four consecutive weeks following the Town Council's adoption of the resolution of intent.

**FISCAL & STAFF IMPACT:** A public hearing on the action involves notice costs and staff time

**RECOMMENDATION:** Staff recommends that the Town Council consider setting a public hearing and adopting resolution of intent to abandon a portion of the Maple Avenue right of way provided as Attachment A.