

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 1060
HOUSE BILL 1192

AN ACT AMENDING AND REWRITING THE CHARTER OF THE CITY OF
WILMINGTON.

The General Assembly of North Carolina do enact:

Section 1. The Charter of the City of Wilmington, North Carolina, is hereby revised and reorganized as follows:

THE CHARTER

Article 1. In General.

Sec. 1.1. Incorporation; corporate name; corporate powers and liabilities generally. The inhabitants of the City of Wilmington shall be, and continue as they have been, a municipal body politic and corporate, and the corporation shall bear the name and style of City of Wilmington, and have perpetual succession, and under such name and style shall have all franchises, powers, property and rights of property which now belong to the corporation, under any other name or names heretofore, and be subject to all its present liabilities; and by this name may acquire and hold all such estates as may be devised, bequeathed, sold, or in any manner conveyed to it, and from time to time, as it shall be deemed advisable by the proper authorities of the corporation, invest, sell, or dispose of the same; and under this name shall have power to contract and to be contracted with, to sue and be sued, and shall have all the rights, powers, privileges, franchises, and immunities necessary or belonging to or usually appertaining to municipal corporations.

Sec. 1.2. Boundaries of Wilmington Township. The boundaries of Wilmington township in New Hanover County shall be the same as the boundaries of the City of Wilmington as now constituted or hereafter changed. The Board of Commissioners of New Hanover County are hereby directed to change the limits of the townships adjoining the City of Wilmington which are affected by any change in the boundaries of Wilmington township, to conform to such change.

Sec. 1.3. Corporate Seal. The corporate seal of the City of Wilmington heretofore used by the City shall be and remain the corporate seal of the City of Wilmington under this Charter unless changed by the city council by ordinance. Such seal shall be lodged in the custody and keeping of the City Clerk of the City of Wilmington for preservation and safekeeping and shall be affixed by him to all proper documents.

Sec. 1.4. Notice prerequisites to action against City for damages – For personal injury. No action for damages against the City of Wilmington for personal injury shall be instituted against the City unless within three hundred and sixty-five days after the

happening or infliction of the injury complained of, the complainant, his executors or administrators, shall have given notice to the city council of such injury, in writing, stating in such notice the date and place of happening or infliction of such injury, the manner of such infliction, the general nature of the injury, and the amount of damages claimed therefor; but this shall not prevent any time of limitation prescribed by law from commencing to run at the date of the happening or infliction of such injury, or in any manner interfere with its running.

See 1.5. Same – For property damage. No action for damages against the City of any character whatever to property shall be instituted against the City unless within six months after the happening or infliction of the injury complained of, the complainant, his executors or administrators, shall have given notice to the city council of such injury, in writing, stating in such notice the date and place of happening or infliction of such injury and the manner of such infliction, the character of the injury, and the amount of damages claimed therefor; but this shall not prevent any time of limitation prescribed by law from commencing to run at the date of happening or infliction of such injury or in any manner interfere with its running.

Sec. 1.6. Levy on city property, etc.; payment of city debts by taxation. No levy shall be made on any property belonging to the City nor shall any levy be made upon the property of any individual for any debt due by the City, but all such debts shall be paid only by taxation upon subjects properly taxable by the City.

Sec. 1.7. Place of payment of bonds and coupons. All municipal bonds and coupons shall be payable at such place or places as may be designated in the ordinance authorizing the issuance of such bonds.

Sec. 1.8. Bond may be required of certain persons contracting with City. The city council may require every person contracting to furnish material or supplies or do work for the City of Wilmington to give bond with good surety in some licensed and approved surety company and of sufficient amount to protect the City. Where the security in any such bond shall become insufficient or insolvent, the city council may require additional security. If the amount of such bond shall, at any time during the performance of such contract, be deemed by the City to be insufficient to protect the City, the City may require additional bond.

Article II. Corporate Limits.

Sec. 2.1. Described. The corporate limits of the City shall be as follows: Beginning at the intersection of the eastern bank of the Cape Fear River and the southern bank of Smith's Creek, and runs thence up said Smith's Creek and along said southern bank thereof to its intersection with the southern line of New Bern Street, if same were extended in a westerly direction to Smith's Creek; thence in an easterly direction and along the line above referred to and along said southern line of New Bern Street to its intersection with the western bank of Green's Mill Creek (Burnt Mill Creek); thence up said Green's Mill Creek (Burnt Mill Creek) and along said western bank to the southern right-of-way line of the New Bern Branch of the Atlantic Coast Line Railroad, where said railroad crosses said creek; thence in an easterly direction and along said southern right-of-way line to its intersection, where a line running midway between Thirty-First Street (formerly Hamilton Avenue) and Montgomery Avenue, and parallel thereto

would intersect said right-of-way line, said line being the rear line of lots facing on above streets in the Montgomery Place Subdivision; thence southward and along the above described line to a point two hundred (200) feet South of the southern line of Market Street Road; thence westward and parallel with Market Street Road to the eastern line of East Mercer Place; thence South and along said eastern line of East Mercer Place to its intersection with the southern edge of the run of Burnt Mill Creek, said point being also the corner of Colonial Village Subdivision; thence up said creek to the mouth of a small branch just East of Colonial Village; thence up said branch in a southerly direction to a point on said branch where it intersects the northern line of the old Wrightsville Turnpike (Wrightsville Avenue); thence crossing said Wrightsville Turnpike to the dividing line between Lots Two and Three in Block "G" of Highwood Park, as recorded in Map Book 2, page 4, Records of New Hanover County; and runs thence in a southerly direction and along said dividing line between Lots Two and Three and Lots Nine and Ten, Block "G", and Lots Two and Three and Nine and Ten in Block "N", to a point in the northern line of Clarendon Street; thence crossing said street to the dividing line between Lots Seven and Eight and Ten and Eleven in Block "S"; thence along this line to its intersection with the western boundary line of Highwood Park; thence along said boundary line of Highwood Park in a southerly direction to a point in the northern line of the old Tide Water Power Company right-of-way, or Park Avenue; thence crossing said right-of-way to a point in the southern line of Park Avenue six hundred and seventy-five (675) feet East of the eastern line of Hawthorne Road; thence southwardly and parallel with Hawthorn Road and six hundred and seventy-five (675) feet therefrom to a point two hundred (200) feet South of the southern line of Mayfair Drive extended (formerly Merritt Street or Pine Street) ; thence along a line parallel with, and two hundred (200) feet South of the southern line of Mayfair Drive, in a northwesterly direction to its intersection with the southern line of Magnolia Place Subdivision; thence westwardly and along said southern line of Magnolia Place Subdivision to the southwest corner of said Magnolia Place Subdivision, said corner being in the eastern line of the Cape Fear Country Club property; thence northwardly and along the division line between the Magnolia Place Subdivision and Cape Fear Country Club property to a point in the southern line of the Oleander Subdivision; thence in a westerly direction along the southern line of the Oleander Subdivision to a point two hundred (200) feet West of the western line of Country Club Road, as measured perpendicular thereto; thence in a northerly direction and parallel with Country Club Road, and two hundred (200) feet therefrom, to a point two hundred (200) feet South of the southern line of Oleander Drive (formerly Hydrangea Place) as measured perpendicular thereto; thence along a line parallel with and two hundred (200) feet South of the southern line of Oleander Drive in a northwesterly direction to a concrete monument in the division line of Lots Two and Three, Pine Court Subdivision; thence along the southern line of Pine Court Subdivision the following courses: South 62 degrees, 34 minutes West two hundred and sixty-four one-hundredths (200.64) feet to a concrete monument; thence South 74 degrees, 39 minutes West, one hundred ten and five-tenths (110.5) feet to a concrete monument; thence North 60 degrees, 52 minutes West nine hundred and twenty-three and ninety-two one-hundredths (923.92)

feet to a concrete monument; thence departing from the southern line of Pine Court Subdivision, and running with a line of the Cape Fear Country Club tract South 8 degrees, 54 minutes West two hundred and fifty-six one-hundredths (200.56) feet to a concrete monument; thence South 47 degrees, 22 minutes West with a line of said Club Tract one hundred sixty-nine and nine-tenths (169.9) feet to a concrete monument; thence South 76 degrees, 16 minutes West, with another line of said Club Tract, eight hundred forty-nine and twenty-five one-hundredths (849.25) feet to an old stone, the southwestern corner of the Love Tract; thence North 4 degrees, 25 minutes East with the western line of said Love Tract one thousand and eight one-hundredths (1,000.08) feet to an old stone in the southern line of the Atlantic Coast Line Railroad Belt Line right-of-way (50.0 feet in width); thence in a southwardly direction and along said southern line of the Atlantic Coast Line Railroad Belt Line right-of-way to a point in the eastern line of Seventeenth Street (the above call following the southern line of the Atlantic Coast Line right-of-way as it widens from 50.0 feet to 100.00 feet); thence South along the eastern line of Seventeenth Street, extended, to the northern bank of Jumping Run Branch; thence down said branch to the western edge of Lake Shore Drive; thence along the edge of said drive as it meanders to a point one hundred fifty (150) feet South of the southern line of Pinecrest Terrace; thence westward and parallel with said Pinecrest Terrace, and crossing the Carolina Beach Road, to a point in the eastern line of Sunset Park, said point being two hundred (200) feet, more or less, East of the eastern line of Adams Street; thence in a southerly direction and along said eastern line of Sunset Park to a point one hundred and fifty (150) feet North of the northern line of Delaware Avenue; thence in a westerly direction and parallel with Delaware Avenue, and one hundred and fifty (150) feet therefrom to the eastern right-of-way line on the Atlantic Coast Line Railroad; thence in a northerly direction and along said eastern right-of-way line of the Atlantic Coast Line Railroad to the northern edge of Greenfield Creek; thence along said northern edge of Greenfield Creek to the United State harbor line in the Cape Fear River; thence up the said Cape Fear River, and along said harbor line to a point opposite the mouth of Smith's Creek; thence to the point of BEGINNING.

Article III. Precincts and Wards.

Sec. 3.1. Establishment of boundaries. The boundaries of the wards and precincts of the City shall be as established from time to time by the board of elections.

Article IV. Council Generally.

Sec. 4.1. Terms of office. Present members of the city council shall continue in office until the expiration of the respective terms of office for which they were elected and until their successors are duly elected and qualified.

Upon the expiration of the respective terms of office of members of the city council, their successors shall be elected to hold office for terms of four years and until their successors are elected and qualified.

Sec. 4.2. Access to council minutes, etc. Any citizen of the City shall have access to the minutes and records of the city council at all reasonable times.

Sec. 4.3. Rules and order of business; journal of proceedings. The city council shall determine its own rules and order of business and shall keep a journal of its proceedings.

Sec. 4.4. Other public employment prohibited; eligibility of councilmen for office created by council. No member of the city council shall hold any other office or employment during the term for which he was elected, compensation for which is paid out of the public moneys, nor be entitled or appointed to any office created by or the compensation of which was increased or fixed by the city council while he was a member thereof. Any person violating this Section shall be guilty of a misdemeanor.

Sec. 4.5. Appointment of special committees. Special committees of the city council shall be appointed as provided by the city council or State law.

Sec. 4.6. Investigation of departmental, etc., transactions, etc. The city council, or any committee thereof duly authorized by the city council so to do, may investigate the transactions of any office or department of the City government and the official acts and conduct of any City official and by similar investigations may secure information upon any matter within its province. In conducting any such investigations, the city council, or any committee thereof may compel the attendance of witnesses and administer oaths and compel the production of books, papers and other evidence and, for that purpose, may issue subpoenas or attachments, to be signed by the presiding officer of the city council or chairman of such committee, as the case may be, which shall be served and executed by an officer authorized by law to serve subpoenas and other process. If any witness shall refuse to testify to any facts within his knowledge, or to produce any papers or books in his possession or under his control, relating to the matter under inquiry before the city council, or any such committee, the city council shall have the power to commit the witness to prison for contempt. No witnesses shall be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against him in any criminal prosecution, except for perjury. Willful false swearing in any such investigation and examination shall be perjury, and punishable as such.

Sec. 4.7. Control of finances and property. The city council shall have control of all the finances and all the property, real and personal, belonging to the City.

Sec. 4.8. Annual audit and financial report. The city council shall cause an audit to be made of the books of account, records and transactions of the administrative departments of the City at least once each year. Such audit shall be made by one or more competent accountants to be selected by the city council. Such report shall include a general balance sheet, exhibiting the assets and liabilities of the City, supported by departmental schedules; summaries come and expenditures, supported by detailed schedules; and also comparison, in proper classification, with the last previous year. Such report, or a condensed summary thereof, shall be printed for distribution, or published, as the city council may direct.

Sec. 4.9. Exercise of corporate powers conferred upon City. All of the corporate powers conferred upon the City of Wilmington shall be exercised by the city council subject to the provisions of this Charter and consistent with the powers granted in this Charter.

Sec. 4.10. Naming of streets, parks, etc. The naming of all streets, parks and public places shall be subject to the approval of the city council.

Sec. 4.11. Enumeration of certain specific powers. The city council, among the powers granted, shall have power and authority:

(1) Payment of debts. To provide for the payment of any existing indebtedness and of any lawful obligation that may from time to time be made by the City and to appropriate funds for that purpose.

(2) Establishment, etc., of parks, etc. To establish and regulate public parks and grounds.

(3) Establishment, maintenance, etc., of streets, etc. To establish, construct, open, close, grade and keep in repair streets, sidewalks, public alleys, bridges, culverts, drains and conduits in the City, and regulate the construction and use of the same.

(4) Obstructions and encroachments on streets, etc. To abate any obstructions and encroachments on streets, sidewalks, public alleys, bridges, culverts, drains and conduits in the City and to punish those causing or responsible for such obstructions or encroachments.

(5) Excavations in streets, etc. To prevent excavations on any street, sidewalk, public alley, park or public ground, unless by permission of the city council, to prescribe and exact fees for such privileges and to require satisfactory bonds or deposits in cash or securities as guarantee for the proper restoration of such street, sidewalk, park, public alley or public ground.

(6) Lighting of streets, etc., generally. To provide for the lighting of the streets, public grounds, parks and public buildings.

(7) Lighting of streets used by railroads. To require all railroads to light the streets over or across which their trains are operated where such lighting is deemed necessary by reason of the operation of such trains and to prescribe the kind of light to use for such lighting.

(8) Speed of trains, etc. To regulate the speed of all railroad trains and locomotives within the City, subject to the provisions of Section 62-60 of the General Statutes of the State.

(9) Assessments against railroads for street improvements. To levy special tax assessments upon railroads for street improvements in the same manner as against abutting property owners as provided for in this Charter.

(10) Gates, etc., at railroad crossings. To require railroad companies to maintain gates or watchmen at street crossings when deemed necessary.

(11) Railroad tracks, turnouts, switches, etc. To regulate and control the laying and construction of railroad tracks, turnouts and switches, and to regulate, change or alter the grades of same and to require that railroad tracks, turnouts and switches be constructed and so laid as to interfere as little as possible with the ordinary travel and use of streets, and to require railroad companies of all kinds to construct, raise, lower, alter, widen or enlarge, at their own expense, such tracks, bridges, turnouts, culverts crossings and other things as the city council may deem necessary.

(12) Power engines and boilers. To control and regulate the erection and use of steam and other power engines and boilers in the City, and to adopt such rules and regulations in relation thereto as may be deemed best for the public safety and comfort.

(13) Transportation, etc., of explosives and flammables. To regulate the transportation, storage and use of gasoline, benzine, dynamite and other substances which are explosive or highly flammable and dangerous to the public safety.

(14) Use of bicycles and motor vehicles. To regulate the use of bicycles and motor vehicles.

(15) Permits for bicycles. To issue permits for the use of bicycles and to require the same to be numbered.

(16) Inspection, etc., of dairies, milk and foodstuffs. To provide for inspection of all dairies doing business within the City, and to regulate and maintain a standard for milk sold in the City, to provide for and regulate the inspection of all foodstuffs offered for sale in the City of Wilmington, and to impose license fees on all persons engaged in any such businesses.

(17) Slaughterhouses and meat markets. To regulate, license or prohibit the business of slaughtering animals and to regulate the selling of fresh meats in the City limits, to revoke such license for malconduct in business and to regulate and prescribe plans and specifications and conduct of slaughterhouses and abattoirs where animals are slaughtered and where fresh meats are kept or stored for use or sale within the City.

(18) Cleaning, etc., dairies, groceries, restaurants, etc. To require any owner or occupant of a dairy, grocery, meat, fish or other market place, any restaurant or eating place or stable, to cleanse or operate same in such manner as may be necessary for the health, comfort and convenience of the inhabitants.

(19) Markets and market places. To establish markets and market places and provide for the government and regulation thereof.

(20) Horses, cattle, dogs, etc., running at large. To regulate, restrain and prohibit the running at large of horses, cattle, sheep, swine, goats, dogs and other animals in the City, to authorize the impounding and sale of the same for the cost of proceedings and the penalty incurred, to order the destruction of such thereof as cannot be sold or are not reclaimed and to impose penalties on the owners or keepers thereof for violating any ordinance. At all such sales the purchaser of any animal shall be deemed to acquire a good and valid title thereto if the provisions of the ordinance have been complied with.

(21) Sunday observance; order near churches, etc. To provide for the due observance of Sunday and the maintenance of order in the vicinity of churches, schools and hospitals.

(22) Fire stations and equipment. To establish and own stations and equipment for extinguishing fires and to provide everything necessary for the efficient operation of same.

(23) Fire prevention and extinguishment. To establish such regulations for the prevention and extinguishment of fires as it may deem expedient.

(24) Fire limits and buildings therein. To establish fire limits and to regulate or prohibit the erection, building, placing, moving or repairing of wooden buildings within such fire limits.

(25) Theaters, tenement houses, etc. To regulate the size, arrangement and construction of theaters, tenement houses, audience rooms, public halls and all buildings used for the gathering of a number of people, hereafter to be built.

(26) Dilapidated buildings. To declare as nuisances all dilapidated buildings which may be deemed dangerous by the city council and to require the same to be removed in such manner as the city council may direct.

(27) Building inspection. To provide for the inspection of all buildings in the City, and to prescribe and enforce proper regulations in regard thereto.

(28) Poles and wires. To regulate and locate the erection of all poles in the City and cause the same to be changed or removed and all wires to be placed underground, whether telegraph, telephone, light, power or otherwise.

(29) Fire escapes. To require the construction of suitable fire escapes on or in hotels, boardinghouses, factories, schoolhouses and other buildings, whether now built or hereafter built.

(30) Construction of chimneys, boilers, furnaces, etc. To prevent dangerous construction of chimneys, fireplaces, hearths, stoves, stovepipes, flues, boilers, furnaces and other heating apparatus, and cause the same to be removed and made safe.

(31) Dense smoke. To prevent nuisances on account of dense smoke from boilers or furnaces.

(32) Right of entry of City Officers, etc.; correction of defects. To authorize one or more officers, agents, or employees of the City to enter in and upon all buildings and premises within the City to inspect and discover whether such buildings and premises are dangerous on account of fire hazard or otherwise or in an unclean state, and to cause the defects to be remedied and filth and trash to be removed.

(33) Nuisances generally. To define what shall be nuisances in the City, to abate them by summary proceedings and to punish the authors by penalties, fines or imprisonment.

(34) Incinerators. To establish one or more incinerators and to provide for the removal of all filth, carcasses of dead animals and other unhealthful substances for incineration.

(35) Condition of premises. To require the owners and occupants of all premises to keep such premises in a cleanly condition.

(36) Burial of dead. To regulate the burying of the dead in the City.

(37) Sewerage and drainage systems. To establish, enlarge or extend systems of sewerage and drainage and to require persons owning property within a reasonable distance to connect therewith.

(38) Sewage disposal plants. To establish works or plants for sewage disposal and to extend or build the same beyond the corporate limits of the City when deemed necessary,

(39) Private drains, sinks and privies, To require the owners of private drains, sinks, and privies to fill up, cleanse, drain, relay, repair, remove or fix and improve the same; provided, that if necessary, the City can have such work done, and the cost of the same shall be a lien on the property and taxed up against it and collected in such manner as the City council may determine.

(40) Waterworks system. To own, maintain and operate a system of waterworks for the furnishing of a supply of water to the City and its inhabitants.

(41) Transportation facilities. To supervise all transportation facilities in the City.

(42) Fares of taxicabs, etc. To regulate fares for transportation by all taxicabs and other vehicles for hire in the streets of the City.

(43) Protection of taxicab drivers, hotel keepers, etc., against fraud, etc. To protect drivers of taxicabs and other vehicles for hire, chauffeurs, keepers of restaurants, boardinghouses, motels, tourist courts, hotels or lodgingshouses or places from being cheated, defrauded or deprived of just compensation for services rendered or accommodation furnished.

(44) Theatricals, circuses, carnivals, etc. To provide for regulating and restraining theatricals, circuses, carnivals and other public performances within the City and levy license taxes thereon and to enforce such provisions.

(45) Docks, wharves and warehouses. To regulate the use of docks, wharves and warehouses and to regulate and fix the charges for the use thereof.

(46) Leases on streets bordering river. To make temporary leases of any portion of the streets of the City bordering on the river not necessary to the public use; provided, however, that: (1) No such lease shall be for a longer term than two years; (2) the city council may terminate such lease upon thirty-days' notice to the lessee, notwithstanding the term shall not have expired.

(47) Penalties, etc., for breach of ordinance enacted under Charter. To prescribe penalties and forfeitures for the breach of any ordinance enforcing the powers granted in this Charter and to provide for the recovery of such fines and forfeitures.

(48) Other powers and functions. To exercise any other powers and functions granted to municipalities by the general laws of the State, not inconsistent with any specific provisions of this Charter.

Article V. Nominations and Elections.

Sec. 5.1. City board of elections: Composition; chairman; terms of office. The city board of election shall be composed of the Register of Deeds of New Hanover County, the Clerk of the Superior Court of said county, the chairman of the board of elections of New Hanover County, who shall be chairman of said board, and two other members to be selected by the council of the City of Wilmington. Their terms of office shall expire each two years next after their appointment, or until their successors are elected and qualified.

Sec. 5.2. Same: Establishment of voting precincts; eligibility of persons to register and vote. The city board of elections of the City of Wilmington shall establish and name the necessary voting precinct or precincts and define the territory covered by each precinct. Each bona fide resident within the corporate limits of the city as defined in this Charter, possessing all of the qualifications now prescribed by law, shall be entitled to register and vote in any primary and general or special municipal election held in the city after the passage of this Charter.

Sec. 5.3. Same: Duties generally. The city board of election shall perform all duties pertaining to holding elections, provided for in this Charter, which duties are not otherwise provided for herein.

Sec. 5.4. Use of election books of Wilmington Township. It shall be lawful for the City of Wilmington, by and through its proper election officials, to use the general election books of Wilmington Township, as its official election registration books, in all elections held, or authorized or required to be held within the City of Wilmington; and the said city election officials are hereby authorized and permitted to so use the aforesaid registration books, except for elections hereafter to be held under the Municipal Finance Act requiring a special registration.

The county board of elections for New Hanover County is hereby authorized, empowered and directed, under the supervision and control of the chairman of the county board of elections, to make available to the City of Wilmington, by and through the proper election officials of the said city, the general election books of Wilmington Township for the uses and purposes set out in this Section.

Sec. 5.5. When elections of councilmen to be held; electorate; qualifications of candidates generally. On the first Tuesday in May of each odd-numbered year, there shall be held a municipal election in the City of Wilmington, for the purpose of electing such number of councilmen for said city as there may be whose terms expire in that year. The councilmen shall be nominated and elected by the qualified voters of the city, and each of such councilmen must be a qualified voter of some ward of the city.

Sec. 5.6. Candidates for office of councilman to be nominated in primary; when names to be printed on ballot. Candidates for the office of councilman at the first election following the adoption of this Charter, and biennially thereafter, shall be nominated at a primary election, which shall be held not earlier than sixty days nor later than the second Tuesday preceding such general election in May. The name of any candidate for councilman of the city shall be printed upon the primary ballot; provided, that there is filed with the chairman of the city board of elections, at least ten days prior to such primary election, a written notice giving the name of the candidate and the office for which he is a candidate.

Sec. 5.7. Publication and printing of primary ballots. Immediately upon the expiration of the time for filing the statement and petitions for candidacy, the chairman of the city board of elections shall cause to be published for three successive days in all the daily papers published in the city, in proper forms, the names of the persons as they are to appear upon the primary ballots and such chairman shall thereupon cause the primary ballot to be printed, authenticated with a facsimile of his signature. Upon such ballots the names of the candidates shall be arranged alphabetically, with a square at the left of each man.

The ballots shall be printed as provided in Section 160-155 of the General Statutes of North Carolina.

Sec. 5.8. Manner of conducting primary generally. Candidates to be voted for at all general municipal elections at which councilmen are to be elected under the provisions of this Charter, shall be nominated by primary election and no other names shall be placed upon the general election ballot than those selected in the manner prescribed. The judges and pollholders of election appointed for the general election shall be the judges and pollholders of the primary election, and it shall be held at the same place, so

far as possible, and the polls shall be opened and closed at the same times as in the general election.

Having caused the primary ballots to be printed, the chairman of the city board of elections shall cause to be delivered at each of the polling places a number of such ballots equal to twice the number of votes cast in such polling precinct at the last general municipal primary election. The persons who are qualified to vote at the general municipal election shall be qualified to vote at such primary election. Challenges can be made by not more than two persons at each voting precinct, who shall serve without compensation, one to be appointed by the city board of elections and the other by the council of the city. All challenges shall be qualified voters of the precinct in which they serve, and the law applicable to challengers at the general municipal election shall be applicable to challengers at such primary election; and all laws, rules and regulations in force at the time of the adoption of this Charter, except as herein changed, shall be observed in the methods of challenging. The judges and pollholders of elections shall immediately upon closing of the polls, together with one representative for each candidate, if such representation be requested, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city board of elections, upon proper blank to be furnished by the city board of elections, within six hours of the closing of the polls. On the day following such primary election, the city board of elections shall canvass such returns so received, from all the polling precincts, and shall make and publish in all the newspapers of the city, at least once, the results thereof. The canvass by the city board of elections shall be publicly made.

Sec. 5.9. Method of breaking ties in primary. In case of any tie in the primary in the vote of the candidates for councilman between those who would be entitled to run for such office in a second primary, such tie may be decided by agreement of the candidates in the presence of the city board of elections, or, in case of their inability to do so, such tie shall be determined and decided at a second primary to be held on Friday of the same week as the first primary, and in the same manner.

Sec. 5.10. Applicability of general law. All electors of the City of Wilmington who would be entitled to vote for the election of officers at any general municipal election, shall be qualified to vote at all elections under this Charter, and the ballots at the general municipal election shall be in the same general form as for such primary elections, so far as applicable, and in all elections in the city, the election precinct, voting places, methods of conducting the elections and canvassing the vote and announcing the result shall be the same as by law provided for the election of officers of the City of Wilmington in force at the time of the adoption of this Charter, so far as the same are applicable and not inconsistent with the provisions of this Charter.

Sec. 5.11. Initiative ordinances generally. Any proposed ordinance may be submitted to the council by petition signed by electors of the city equal in number to the percentages hereinafter required. The signatures, verification, inspection, certification, amendment and submission of such petition shall be the same as provided for by general law. If the petition accompanying the proposed ordinance be signed by electors equal in number to thirty-five per centum of the votes cast for all candidates for mayor at the last

preceding general primary election and contains a request that such ordinances be submitted to a vote of the people if not passed by the council, such council shall either:

(a) Pass such ordinance without alteration within twenty days after attachment of the clerk and treasurer's certificate to the accompanying petition, or,

(b) Forthwith, after the clerk and treasurer shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless a general municipal election is fixed within six months thereafter, and at such special or general election, if one is so fixed, such ordinance shall be submitted without alteration to the vote of the electors of the city.

But if the petition is signed by not less than ten nor more than thirty-five per centum of the electors, as above defined, then the council shall, within twenty days, pass such ordinance without charge, or submit the same at the next general election occurring not more than six months after the clerk and treasurer's certificate of sufficiency is attached to the petition.

The ballots used when voting upon such ordinance shall contain these words: "For the ordinance" (Stating the nature of the proposed ordinance), and "Against the ordinance" (Stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition or which shall be adopted by a vote of the people cannot be repealed or amended except by a vote of the people.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this Section; but there shall not be more than one special election in any period of six months for such purpose.

The Council may submit a proposition for the repeal of any ordinance or for amendments thereto, to be voted upon at any succeeding general or special election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this Act to be submitted to the voters of the city at any election, the city clerk and treasurer shall cause such ordinance or proposition to be published once in each of the newspapers published daily in the City of Wilmington; such publication to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted upon.

Sec. 5.12. Submitting councilmanic ordinance to vote on receipt of protest petition. No ordinance passed by the council, except when otherwise required by the general laws of the State or by the provisions of this Charter, except an ordinance for the immediate preservation of the public peace, health or safety, which contains the statement of its urgency and is passed by a two-thirds vote of the council, shall go into effect before ten days from the time of its final passage; and if during such ten days a petition signed by electors of the city equal in number to at least thirty-five per centum of the entire vote cast for candidates for mayor at the last preceding general primary election at which a mayor was nominated; protesting against the passage of such ordinance, be presented to the council; such ordinance shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such

ordinance; and if the same is not entirely repealed, the council shall submit the ordinance as provided in subsection (b) of the preceding Section; to the vote of the electors of the city either at the general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified voters voting on the same shall vote in favor thereof.

Sec. 5.13. Form and contents of petition for referendum on ordinances. The petitions provided for in the two preceding Sections shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioners reside, his age and length of residence in the city and a statement as to whether he has paid his poll tax as required by the laws of North Carolina. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of the signing, legal voters of the city, and stating the number of signers at the time the affidavit was made.

Sec. 5.14. Unlawful acts related to elections; Generally. Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided for in this Charter, or any elector entitled to vote at any such election receiving or accepting any such bribe or other consideration; or any person making false answer to the provisions of this Charter relative to his qualifications to vote at any election; or any person willfully voting or offering to vote at such election who has not been a resident of this State for two years, or of the County of New Hanover for six months or of the precinct of which he offers to vote for four months, or who has not paid his poll tax as provided for by the law of North Carolina, or who is not twenty-one years of age, or who is not a citizen of the United States, or knowing himself not to be a qualified voter of such precinct where he offers to vote; or any person knowingly procuring, aiding or abetting any violation hereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), and be imprisoned not less than ten days nor more than ninety days.

Sec. 5.15. Same; Promising employment, etc. It shall be unlawful for any candidate for office or any officer of the city, directly or indirectly, to give or promise any person or persons in the office positions, employment, benefit, or anything of value, for the purpose of influencing or obtaining the political support, aid or vote of any person or persons; any such person committing a breach hereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or be imprisoned in the county jail not less than ten days nor more than ninety days, or both.

Sec. 5.16. Statement of campaign expenses to be filed. Every elective officer of the city shall, within thirty days after qualifying, file with the city clerk and treasurer, and publish at least once in a daily paper of the city, his sworn statement of all his election and campaign expenses, showing by whom such was contributed, to whom the same were paid, and what was the consideration for such payment. Any violation of the provisions of the preceding paragraph shall be a misdemeanor, and be a grounds for removal from office.

Sec. 5.17. Same; City officers and employees exerting influence on other city officers and employees; campaign contributions by city officers and employees. Any officer or employee of the city who by solicitation or otherwise shall exert his influence, directly or indirectly, to cause other officers or employees of the City of Wilmington to adopt his political view, or to favor any particular person or candidate for office, or who shall in any manner contribute money, labor, or other valuable to any person for election purposes, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding three hundred dollars (\$300.00) or by imprisonment in the county jail not exceeding thirty days.

Article VI. Ordinances and Resolutions.

Sec. 6.1. Introduction in written or printed form; limitation as to subject matter. Each proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject, which shall be clearly stated in the title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated, general and special improvement resolutions may contain the various improvements to be made and ordinances adopting a revision and codification of ordinances may contain the various subjects contained in any or all of the ordinances of the city.

Sec. 6.2. Reading. No ordinance, unless it be declared an emergency measure in the opinion of the city attorney, shall be passed until it has been read on two separate days, or the requirement of reading on two separate days has been dispensed with by a unanimous vote of the members present; provided, that the requirement of reading on two separate days shall never be dispensed with on ordinances making a grant, renewal or extension of a franchise. The first reading of all ordinances shall be in full; except, that the reading of the title of an ordinance adopting a technical code as authorized by Section 20.5 of this Charter or an ordinance adopting a revision and codification of the ordinances of the city shall be sufficient.

Sec. 6.3. Recordation, authentication and attestation. Every ordinance or resolution, except an ordinance adopting a revision and codification of the ordinances of the city, upon its final passage, shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the mayor and attested by the city clerk and treasurer.

Sec. 6.4. Revision and amendment. No ordinance or resolution or Section or subsection thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or Section or subsection revised or amended, and the original ordinance, resolution, Section or subsection so amended shall be repealed.

Article VII Mayor.

Sec. 7.1. As official head of city. The mayor shall be the official head of the city, for the service of process, for ceremonial purposes, and so considered by the Governor of the State in connection with the military law.

Sec. 7.2. Oaths and affidavits. The mayor shall have power to administer oaths and take affidavits.

Sec. 7.3. Mayor pro tempore. At their first meeting the city council shall elect one of their members mayor pro tempore, to preside in the absence of the mayor and to act as

mayor in the absence of the mayor from the city or during the disability of the mayor by reason of sickness or otherwise and, in the event of a vacancy in the office of mayor, the mayor pro tempore shall act as mayor until a mayor is elected by council to fill the unexpired term pursuant to Section 160-345 of the General Statutes of the State.

The term of the mayor pro tempore shall be two years.

Sec. 7.4. Signing of written contracts. The mayor shall sign all written contracts entered into by the city council on behalf of the city and all other contracts and instruments executed by the city which by law are required to be in writing, except such contracts as are required to be made or signed by the city manager.

Article VIII. Officers and Employees Generally.

Sec. 8.1. Failure to turn over property, etc., of city to successor. Any officer of the City of Wilmington who shall, on demand, fail to turn over to his successor in office the property, books, moneys, seals or effects of such city shall be deemed guilty of a misdemeanor, and imprisoned for not more than two years and fined not exceeding one thousand dollars (\$1,000.00), at the discretion of the court.

Sec. 8.2. Forfeiture of office upon conviction of bribery, etc. Any member of the council or other officer or employee of the City of Wilmington convicted of bribery or of any crime amounting to malfeasance in office shall forfeit his office and the emoluments thereof.

Sec. 8.3. Personal interest in contracts; Generally. It shall be unlawful for any member of the city council, or other officer of the city, directly or indirectly, to become a contractor for work done for the city, or to become, directly or indirectly, personally interested in or receive profit from any purchase of supplies for any department of the city. Any person violating this Section shall be guilty of a misdemeanor.

Sec. 8.4. Same; City manager. The city manager shall not at the time of his appointment, or at any time during his tenure of office, have any personal interest, direct or indirect, in any contract made by the city.

Article IX. Civil Service.

Sec. 9.1. Civil service commission – Created; composition; appointment, terms and eligibility generally of members; filling vacancies; completion of term by incumbents. There is hereby created a civil service commission for the fire and police departments of the City of Wilmington to consist of five members, each of whom shall be a citizen and resident of the municipality from which such member is appointed. The civil service commission shall consist of one member to be appointed by the majority action of the members of the fire department, one member to be appointed by the majority action of the members of the police department, one member to be appointed by the majority action of the governing body of the New Hanover County Medical Society and one member to be appointed by the majority action of the governing body of the Wilmington Ministerial Association, and one member to be appointed by the governing body of the City of Wilmington. The members of such civil service commission previously appointed in the manner aforesaid shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Every three years following the date of the appointment of the original members of such commission, members of such commission shall be named and appointed in the

aforesaid manner for a term of three years and any member of such commission shall be eligible for reelection and re-appointment by any of the parties designated for naming members of such commission. In the event of a vacancy occurring in the membership of such commission by the death, resignation or disqualification, which disqualification may be caused after notice and removal by two-thirds vote of all members of the agency appointing any such member, such vacancy shall be filled by the action of the agency or agencies originally authorized to name such deceased or resigned, or disqualified member of such commission; provided, however, if any of the appointing agencies herein referred to shall fail to act as herein provided within the time prescribed, then the resident judge of the eighth judicial district is empowered and directed to appoint immediately to the civil service commission such members as have not been appointed by the agencies herein designated; provided, however, that the present five members of the civil service commission now in office are authorized to complete their respective terms.

Sec. 9.2. Same – Qualifications of members; oath. The members of the civil service commission, in addition to the requirements set forth in the foregoing Section, shall possess the general qualifications now or hereafter required of other officers of the municipality and shall take a similar oath (or affirmative) of office.

Sec. 9.3. Same – Powers and duties generally; promulgation of rules and regulations; certain powers retained by governing body. The civil service commission shall have full charge of passing upon the qualifications and certifying the eligibility of all persons to be appointed as employees for the fire department and police department of such municipality. No person or applicant shall be eligible for employment as a member of the fire department or the police department except by the majority action of the civil service commission. The civil service commission shall make all necessary rules and regulations relating to the requirements of the applicants and applications for positions in such departments. Such rules and regulations governing all applicants and applications, as aforesaid, shall be printed and made available for public inspection and for the use of applicants for employment in such departments; provided, that all administrative and other powers and authority over such departments as are not specifically delegated in this Article to the civil service commission are and shall be retained by the governing body of the City of Wilmington.

Sec. 9.4. Same – Office, etc., space; operating expenses. The governing body of the City of Wilmington shall provide suitable space for the civil service commission and shall allow such reasonable use of public buildings for holding examinations and hearings by such commission as may be necessary. The municipality shall also pay all necessary expenses of the civil service commission incident to its operation; provided, no such expense shall be incurred by the commission unless the same shall have been approved in advance by the governing body of the city.

Sec. 9.5. Same – Organization; duties and compensation of secretary; members to serve without compensation. The civil service commission shall meet as soon as practical and organize by electing one of its members chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the civil service commission and shall be custodian of all papers pertaining to the business of the civil

service commission. He shall keep a record of all examinations held and perform such duties as the civil service commission shall prescribe, for which he shall be paid compensation to be fixed by the governing body of the municipality in an amount not less than two hundred dollars (\$200.00) nor more than four hundred dollars (\$400.00) a year to be paid out of the general fund of the city. The members of the civil service commission other than the secretary shall serve without pay.

Sec. 9.6. Same – Annual report. The civil service commission, at the end of the fiscal year shall make an annual report of its actions for the preceding year, which annual report shall be kept in the files of the civil service commission and a copy delivered to the governing body of the city,

Sec. 9.7. Examination of applicants for positions in fire and police departments – Required; nature of examination; regulations as to moral character of applicants; credit for prior experience and service; age of applicants. All applicants for positions in the fire department and police department of the City of Wilmington shall be subjected to written examination by the civil service commission, which shall be competitive and free to all persons possessing the right of suffrage and meeting all requirements prescribed by such commission, subject to reasonable and proper limitations as to residence, age, health, and moral character, which examinations shall be practical in their character, and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge the duties of the position to which they seek employment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning his or her political or religious opinions or affiliations. The civil service commission shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all applicants for positions in the fire department and police department of such municipality, to the end that all persons certified by the civil service commission as eligible for employment in such departments shall be persons of good character as well as possessing necessary mental and physical qualifications. The civil service commission shall provide in its system of grading applicants who have served continuously for three or more years in the fire or police departments of North Carolina towns or cities having populations of thirty thousand or more, or who have actively served three or more years in the United States Army, Navy, or Marine Corps, shall be allowed or given five per cent credit upon the mental or intelligence examination on account of such former service and experience; provided, however, that no applicant shall be allowed such credit for such former experience if he shall have been dismissed from such former service on account of incompetence, moral unfitness, or because of any violation of any regulations incident to such former employment; provided, that no person shall be appointed to the fire department whose age is less than twenty-one or exceeds thirty-two years, or the police department whose age exceeds thirty-five years, except in case of former employees of either the fire department or the police department of the city who, prior to the adoption of this Charter, served continuously for three years or more in either of such departments of such city, and who had good records in such departments and were not dismissed therefrom for cause, the commission may, in its discretion, waive the aforesaid age limits as to such former

employees who served in such departments prior to the adoption of this Charter; provided, however, that no such former employee shall be employed for the fire department who is over forty years of age or for the police department who is over forty-five years of age.

Sec. 9.8. Same – Notice. Notice of the time and place of every examination shall be given by the civil service commission by publication for once a week for two weeks immediately preceding such examination in one of the newspapers circulated in such municipality, and such notice shall be posted in a conspicuous place in the office of the civil service commission and on the bulletin board of the city for at least two weeks preceding such examination.

Sec. 9.9. Same – Register of applicants passing examination; appointments to be made from successful list. The civil service commission shall prepare and keep as a permanent record of the commission a register of all persons successfully passing such examination, accurately reflecting grades made by such applicants. Appointments to positions in the police department and in the fire department shall be made only from the list of successful applicants as certified by the commission. The order of priority for appointment to such positions shall be determined under such rules and regulations as shall be made by the civil service commission. Whenever any appointment is to be made to either of such departments, the commission shall certify from such registered list of successful applicants three names, if available, for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the commission and in the order of priority as determined by the civil service commission.

Sec. 9.10. Same – Not required of present fire and police department members. All members of the fire department and police department of the City of Wilmington at the time of adoption of this Charter shall be continued in such employment without being required to take the examinations required of applicants for such positions under this Article; subject, however, to discharge and demotion as in this Article provided.

Sec. 9.11. Appointment of chief of fire department and chief of police department. The chief of the fire department and the chief of the police department shall be appointed by the governing body of the City of Wilmington and from the personnel of such departments; provided, however, that the governing body of the City of Wilmington may employ a person to serve as chief of police of Wilmington other than from the personnel of the police department; provided, that the person so selected for chief of such department shall have had at least two years' training in the Federal Bureau of Investigation and be recommended for such position by the Director of the Federal Bureau of Investigation; or the governing body of the City of Wilmington may employ a person to serve as chief of police of the city who has had at least five years' experience as a police officer in a city of not less than twenty-five thousand inhabitants, and who is recommended for the position by the Director of the Federal Bureau of Investigation; provided further that the person so appointed, who shall be outside of the personnel of the Wilmington police department, shall not hold such position as chief of police for a period of more than eighteen months from the adoption of this Charter. All promotions in the fire department and police department in the city shall be made from

time to time by the governing body with due consideration being given to fitness and qualifications for promotions and seniority in the time of service.

The governing body of the City of Wilmington may demote the chief of the fire department or the chief of the police department for cause, but in the event of demotion of either or both of the chiefs of such departments such demotions shall be to a rank not lower than the rank from which such chiefs held when they were respectively appointed to the office of chief. In the event a member of either of such departments commits any offense he may be immediately suspended by the chief of such department for a period not exceeding thirty days; provided, however, that the chief of either of the departments so suspending a member shall file with the city manager a written complaint of the charge or charges against such member within three days after such suspension; and provided, further, that the person or persons so suspended upon demand shall be furnished by the chief a signed written copy of the complaint or charges preferred and the suspended member shall be entitled to a hearing before the governing body of the City of Wilmington. If upon such hearing the governing body of the City of Wilmington does not sustain the suspension, the suspended member shall be immediately reinstated and receive compensation according to his rating, and from the date of such suspension.

Sec. 9.12. Participation of members of police department and fire department in political activities. No officer or employee of the fire department or police department shall participate or take part in any election, primary, or any political contest in any manner other than that of exercising his or her right as a citizen to vote, and any officer or employee of the fire department or police department who shall violate this provision shall be dismissed from service in such department. The members of such departments shall not make any donations to any political party, faction or cause, under penalty of dismissal.

Sec. 9.13. Discharge or demotion of members of fire department and police department. No officer or employee of the fire department or the police department of such municipality, who shall be in good standing at the time of the passage of this Charter, or who shall thereafter be appointed under the rules and regulations provided herein, shall be discharged or demoted except as provided in Section 9.11 with respect to the demotion of the chiefs of such departments, and except for cause and upon written complaint and after he or she shall have been given a reasonable opportunity for an open hearing by the civil service commission in defense of such charges; and in the event the charges preferred against such officer or employee shall be sustained, the civil service commission, in the exercise of its discretion, may demote or discharge such officer or member from the service. In the conduct of such hearing or investigation the members of the civil service commission shall have the right and power to compel by subpoena both the attendance and testimony of witnesses, together with the production of books and papers relevant to such investigation; provided, however, that any decision of the civil service commission with respect to the matters contained in this Section shall be subject to review by the Superior Court of New Hanover County; provided, further, that such person who may wish to appeal to the Superior Court shall file with the secretary of the commission a bond in the amount of one hundred dollars (\$100.00), with sufficient surety conditioned that he will pay the cost of such appeal in the event

such cost shall be taxed against him, and he shall pay to the secretary the necessary fee for entering such appeal in the Superior Court within ten days after entry of such order or decree appealed from, and upon appeal, the secretary of the civil service commission shall forthwith transmit to the Superior Court a complete transcript of all papers and proceedings concerning the order or decree or action of the civil service commission appealed from, together with the appeal bond and fee.

Sec. 9.14. Seniority rights of fire and police department members retained during military service. Any member of the police or fire departments of the City of Wilmington, in the event of his having been drafted; volunteered, enlisted, conscripted, or in any manner called to service under the National Defense Act, or any other Act of Congress shall retain during the time of such service all rights of seniority and shall, upon his honorable discharge from such service, be immediately reinstated to his former position in the fire department or police department, provided, however, that his physical condition has not been impaired.

Sec. 9.15. Governing body to fix compensation of fire and police department members. Nothing in this Article contained shall be so construed as to deprive the governing body of such municipality of its control over the finances of such city. The salaries of all officers or members of the police department and the fire department shall be fixed by the governing body of the city.

Article X. City Manager.

Sec. 10.1. City manager pro tempore. During the absence or disability of the city manager, the city council may designate some properly qualified person to execute the functions of the office of the city manager.

Sec. 10.2. Employment by city to be exclusive. The city manager shall devote his entire time to the affairs of the city and shall not actively engage in any other business.

Sec. 10.3. Establishment of departments for administration of city government. The city manager shall establish and organize such departments for the administration of the affairs of the city as he may deem proper or necessary for the efficient and economical administration, subject to the approval of the city council.

Sec. 10.4. Enforcement of compliance with public utility franchise. The city manager shall see that all terms and conditions imposed in favor of the city or its inhabitants in any public utility franchises are faithfully kept and performed and, upon knowledge of any violation thereof, shall call the same to the attention of the city council and shall take such steps as are necessary to enforce the same.

Sec. 10.5. Superintendence of public works. The city manager, or such person as he shall designate, shall superintend the construction, operation and maintenance of all public works, including streets, sidewalks, sewers, waterworks, public grounds, parks, etc.

Sec. 10.6. Revocation, etc., of licenses. The city manager may revoke or suspend licenses or permits pending action by the city council.

Sec. 10.7. Supervision of performance of contracts. The city manager shall supervise performance of all contracts of the city.

Sec. 10.8. Examination of departmental records, books, etc. The city manager shall examine personally, or by duly designated deputy, all records, books and accounts of each department of the city government.

Sec. 10.9. Department financial reports, The city manager shall require that reports shall be made to him by each department of the city government, showing the receipt of all moneys by such departments and the disposition thereof, at least once a month and oftener if he desires.

Sec. 10.10. Purchase of supplies, etc. The city manager, or the purchasing agent designated by him, shall purchase all supplies and materials used by the city, subject to the provisions of Section 143-129 of the General Statutes of the State as amended by Session Laws 1951, Chapter 881 and subject to the provisions of Section 143-131 of the General Statutes of the State.

Sec. 10.11. Furnishing financial information to council. The city manager shall keep the city council fully advised as to the financial condition and needs of the city.

Sec. 10.12. Additional powers and duties. The city manager shall, in addition to the powers and duties set forth in this Charter and the State law, exercise such other powers and perform such other duties as may be authorized by the city council, not inconsistent with this Charter or with the State law.

Article XI. City Attorney.

Sec. 11.1. Appointment. The city council shall at its organizational meeting, or as soon thereafter as practicable, appoint or elect a city attorney.

Sec. 11.2. Compensation. The compensation of the city attorney and any assistant to the city attorney shall be fixed by the city council.

Sec. 11.3. Qualification for, The city attorney shall be an attorney at law admitted to practice in the State of North Carolina.

Sec. 11.4. Designation of assistants. The city attorney may designate such assistant city attorneys as the city council may authorize.

Sec. 11.5. Legal adviser for city, etc. The city attorney shall be the legal adviser of and attorney and counsel for the city and for all officers thereof, in matters relating to their official duties.

Sec. 11.6. Prosecution and defense of suits. The city attorney shall prosecute or defend all suits for and in behalf of the city.

Sec. 11.7. Preparation, etc., of contracts, bonds, etc. The city attorney shall prepare all contracts, bonds and other instruments in writing in which the city is concerned and shall endorse on each his approval of the form, correctness and validity thereof.

Article XII. Fiscal Control.

Sec. 12.1. Applicability of Fiscal Control Act. Fiscal control practices in the city shall be subject to the provisions of the Fiscal Control Act of the State.

Sec. 12.2. Disbursements generally. All disbursements from the city treasury shall be made by warrant drawn on the city treasurer by the city auditor pursuant to such rules and regulations as may be established by the city manager. Such warrants shall be signed by any two of the following:

- (a) City treasurer
- (b) City auditor

(c) City manager

Sec. 12.3. Duties of city auditor generally. The city auditor, under the supervision of the city manager, shall prescribe the accounting procedures for all departments of the city and require such reports as may be necessary to reflect the financial condition of the city. He shall make such financial reports as may be required of him by the city manager and shall perform such other duties not in conflict with the Fiscal Control Act as may be required of him by the city manager.

Article XIII. Public Library.

Sec. 13.1. Annual appropriation; furnishing quarters. The city council shall appropriate annually a sum of money for the maintenance and support of the libraries for the free use of the people of the city, such sum to be not less than one thousand two hundred dollars (\$1,200.00), and shall be included in the annual budget of expenses for each and every year, beginning June first, and shall be paid out on warrant of the city. The board of aldermen of the City of Wilmington shall furnish rooms for the accommodation of the free libraries.

Sec. 13.2. Board of public library trustees. Appointment of members. The city council shall, at its first meeting in May after their election and qualification, or as soon thereafter as practicable, elect three members of the board of public library trustees.

Sec. 13.3. Same-Residence of members. In the selection of trustees for the public library, the city council may, in its discretion, select one or more residents of New Hanover County as trustee or trustees for such library, although such person or persons may not reside within the limits of the City of Wilmington.

Sec. 13.4. Same-Term of members. The three persons elected as members of the board of public library trustees by the city council, as provided in Section 13.2, shall hold office for two years from and after their election, and until their successors are elected.

Sec. 13.5. Same-Filling of vacancy. In case of a vacancy occurring in the board of public library trustees, by death or otherwise, the city council shall fill the same.

Sec. 13.6. Same-Compensation. The members of the board of public library trustees shall serve without compensation.

Sec. 13.7. Same-Organization; quorum; chairman and vice-chairman. The members of the board of public library trustees shall meet together as soon as practicable after their election and organize themselves into a board of trustees, two of whom shall constitute a quorum, for the transaction of business, by electing one of their number chairman and another vice-chairman.

Sec. 13.8. Same-Management, etc., of library. Subject to the provisions of Section 13.10, the board of public library trustees shall take full charge of all books, magazines, periodicals, maps and all other papers, desks, tables, bookcases and other furniture belonging to the City of Wilmington and used by the public library of the City, and manage and control the same.

Sec. 13.9. Same-Acquisition of books, furniture, etc. The board of library trustees shall have power, subject to the provisions of Section 13.10, to acquire, by purchase, donation or otherwise, books, magazines, periodicals, maps, desks, tables, chairs,

bookcases and any other furniture as may be needed for the use of the public library of the city.

Sec. 13.10. Same-Limitation on Expenditures. Expenditures by the board of public library trustees shall not exceed the amount appropriated by the city council, as provided in Section 13.1.

Sec. 13.11. Same-Rules and regulations. The board of library trustees shall have the power to make such rules and regulations for the government of the free library of the city as it may deem best.

Sec. 13.12. Same-Election and compensation of librarian, etc. The board of public library trustees shall elect a suitable person to act as librarian and such assistant librarians as it may deem necessary and shall fix their salaries.

Sec. 13.13. Same-Librarian as secretary. The librarian, elected as provided in Section 13.12, shall act as secretary of the board of public library trustees.

Article XIV. Port Facilities.

Sec. 14.1. Authority of city to acquire, construct, etc. The City of Wilmington, a municipal corporation in the County of New Hanover, is hereby authorized to acquire, by purchase or otherwise, construct, improve, enlarge, extend and equip any property or properties relating to or deemed to be necessary or advisable for the promotion, development, maintenance or operation of port facilities of the city, including, but without limitation, warehouses, docks and loading facilities, conveyor equipment, and other storage, terminal and handling facilities, and to lease any such property or properties to a public agency or instrumentality or to any private person, firm or corporation and under such terms and conditions and for such period or periods as the governing body of the city shall deem to be in the best interests of the city.

Sec. 14.2. Authority of city to issue revenue bonds to pay for acquisition, construction, etc. The city is hereby authorized to issue revenue bonds under and pursuant to the provisions of Sections 160-413 to 160-421.1, both inclusive, of the General Statutes of North Carolina, to pay all or any part of the cost of any acquisition, construction, improvement, enlargement, extension or equipment of any property or properties pursuant to Section 14.1.

Sec. 14.3. Powers under Sections 14.1 and 14.2 to be additional. The powers granted by Sections 14.1 and 14.2 are in addition to and not in substitution for any other powers heretofore or hereafter granted to the city.

Article XV. Health.

Sec. 15.1. City board of health not required; powers and duties of county board of health. It shall not be necessary for the City of Wilmington to create, establish and maintain a board of health for the city, but all matters and things relating to the health department of the city shall remain and be under the supervision and control of the board of health of the County of New Hanover, under and by virtue of Chapter 62 of the Public Laws of 1911 and Chapter 316 of the Public-Local Laws of 1913, as amended by the acts of the Public-Local Laws of the Extra Session of 1913, Chapter 236, and the general laws of the State of North Carolina regulating county boards of health and the county board of health of the County of New Hanover shall have supervision of and do and perform all necessary acts and things for the promotion and preservation of the

health of the City of Wilmington, including all sanitary acts and measures and the enforcement of all rules and regulations which may be adopted or enacted: Provided, however, that nothing herein contained, or in any of said Acts of the Legislature contained, shall prevent the City of Wilmington from exercising any municipal rights and powers in keeping the streets of the city in an orderly and clean condition, nor from removing therefrom any and all dirt, waste or other casual obstructions to such streets, nor from the performance of any act or thing in the preservation of the condition of the streets or the health of the city which may be rendered necessary and urgent by any epidemic or the sudden and unforeseen acts of nature or the elements.

Sec. 15.2. Power of council as to sanitation. The city council may take over, assume and perform any of the sanitary work within the city under contract, arrangement or agreement with the board of health of New Hanover County for any stipulated term or period, and pay for the same out of the city's funds and provide any and all necessary means and machinery for the purpose, whenever such arrangement or agreement shall, in the joint opinion of the board of health of New Hanover County and the city council, better promote the efficiency of the work and the interests and welfare of the city.

Sec. 15.3. Power of city to create, etc., hospitals generally. The City of Wilmington is hereby authorized and empowered to create, organize and establish any and all necessary hospitals and to support and maintain the same.

Article XVI. Water Supply and Sewage Disposal.

Sec. 16.1. Authority of city council to extend, etc., water mains and pipes connected with waterworks system. The city council shall have authority to extend, construct, maintain, change the location of or discontinue the water mains and water pipes connected with its present waterworks system.

Sec. 16.2. Authority of council as to distribution, etc., of water and as to water rates. The city council by ordinance shall have authority to regulate and control the introduction, distribution and use of water in the city, and fix the rate at which water shall be furnished to consumers, and prescribe the time of payment, and may grant a rebate for payment of such rates within a designated time, and provide for the collection of all rents, rates, forfeitures or emoluments from the operation of the waterworks system and require the payment in advance of the water rates for water furnished in or to any building, place or premises and, after five days' notice, may cause the water to be shut off from any building, place or premises on account of the non-payment of such rates or rent.

Sec. 16.3. Authority of city council as to interference with water supply to building, etc., and as to turning on water when shut off for failure to pay water rent. The city council shall have authority to prescribe penalties against any person who shall interfere with the water supply of any building, place or premises or who shall turn on the water in or to any building, place or premises after the same shall have been cut off and before payment of arrears in water rents.

Sec. 16.4. Authority of city council to require connection with water mains and fix rates for connection with and use of water mains. The city council may require the owners of real property upon which residences or other buildings are located

abutting upon the streets in which any water mains are located, or within a reasonable distance thereof, to connect such residences or other buildings with water mains connected with the waterworks system of the city, under such rules and regulations and upon such conditions as the city council shall by ordinance fix and establish. The city council shall have the right to fix reasonable fees to be charged property owners for the privilege of connecting with such water mains and the subsequent use thereof.

Sec. 16.5. Authority of city council as to collection of rates established pursuant to Section 16.4. The city council shall have the right and power to pass such ordinances as shall be necessary to enforce the collection of fees and charges established, pursuant to Section 16.4, relative to the privilege of connecting with water mains and subsequent use thereof.

Sec. 16.6. Authority of city council to extend, etc., sewers connected with sewerage system. The city council shall have authority to extend, construct, maintain, change the location of or discontinue the sewers connected with its sewerage system.

Sec. 16.7. Authority of council as to regulation of sewerage system, etc., and as to rates for use thereof; advance payment of connection charges or charges for use. The city council by ordinance shall have authority to regulate and control the sewerage system and all extensions thereof or additions thereto, and fix the rate at which the same may be used by the citizens of the City of Wilmington. The city council shall prescribe the time of payment and may grant a rebate for payment of such rates within a designated time, and provide for the collection of all rates, forfeitures or emoluments from the operation of the sewerage system, and require payment in advance of the rates for connecting therewith or for using the same, in any building, place or premises.

Sec. 16.8. Authority of council as to interference, etc., with sewerage system. The city council may prescribe penalties against any person who shall interfere with any part of the sewerage system or connections with any building, place or premises, or who shall obstruct, disconnect or interfere with the same or any part thereof.

Sec. 16.9. Authority of council to require sewer connections and to establish connection and use charges. Upon the giving of a reasonable notice in writing, which shall not be less than thirty days, the city council may require the owners of any real property upon which residences or other buildings are located abutting on the streets in which any sewers are located or within a reasonable distance thereof, to connect such residences or other buildings, with such public sewers under such reasonable rules and regulations, and upon such conditions, as the city council shall by ordinance fix and establish, in which shall be included the right to fix reasonable fees and rates to be charged such property owners for the privilege of connecting with such sewers and the subsequent use thereof.

Sec. 16.10. Failure to make sewer connections when required by council. Any person who shall fail to make a sewer connection with the sewer main or mains as required in the written notice of the city council served on such person or his agent, within the time or period designated in the notice, shall forfeit and pay a penalty of one dollar (\$1.00) per day for each day that the premises thereafter remain unconnected with the sewer main or mains, which penalty may be collected in any court of competent jurisdiction.

Sec. 16.11. Authority of council to enforce collection of sewerage connection and use charges. The city council shall have the right and power to pass such ordinances as shall be necessary to enforce the collection of all such fees and charges provided for in Sections 16.6 to 16.10 as to connection with and use of sewerage system and extensions of and additions thereto.

Sec. 16.12. Examination of premises when waste of water is known or suspected. Where unnecessary waste of water is known or suspected, the city council shall have the authority to cause entry to be made, at reasonable hours, after demand and refusal, into and upon any building, place or premises where such water is taken and used, and examine and inquire into the cause of the waste thereof, and may prescribe penalties for any person who refuses to permit such examination or obstructs the performance of this duty. The supply of water may be cut off until such examination is made.

Sec. 16.13. Accounts of receipts, etc., on account of operation of waterworks and sewerage systems. Accurate account shall be kept of all receipts and disbursements and expenditures on account of the operation of the waterworks and sewerage systems separate from the other funds of the city.

Sec. 16.14. Diversion of water; pollution of water; injuring, destroying, etc., water or sewerage systems. if any person shall maliciously or willfully divert the water, or any portion thereof, from the city waterworks, or shall corrupt or render the same impure, or shall destroy or injure any canal, aqueduct, pipe or other property used or acquired for procuring or distributing the water, or connected with the sewerage system of the City of Wilmington, or any part of same, or shall otherwise interfere with, injure, destroy or change either the water or sewerage systems, or any part of the same, the person shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars (\$500.00) or shall be imprisoned not exceeding two years, at the discretion of the court.

Sec. 16.15. Use of ground within railway right-of-way, street, etc., for extending, etc., waterworks or sewerage systems. The city council shall have the right to use the ground or soil within the right-of-way of any railway, highway, public lane or alley, for the purpose of extending or improving, enlarging or adding to the waterworks or sewerage systems and may carry pipes under any railroad or highway for such purposes, under condition that such property shall not be permanently injured and shall be restored to its original condition or damages done thereto repaired as expeditiously as may be reasonable and with as little inconvenience to the owners of such disturbed property as may be actually necessary.

Sec. 16.16. Enforcement of connections with water system; record book for water and sewerage connections. Whenever it shall become necessary, in the opinion of the city council that any premises now occupied or which may hereafter be occupied should be connected with the water system of the city, and the owner or agent of such premises shall fail to make such connection voluntarily, at his own expense, or neglect to do so, the city council of the city shall have the right and power to enforce such connection in manner and form following: The city council shall cause a notice in

writing to be served upon the owner of such building or premises or his agent, and if neither the owner nor agent can be located, then a notice placed conspicuously upon the premises itself shall be sufficient for such purpose, designating a time within which such owner is required to make such connection with the waterworks system of the city, and if at the expiration of the time designated in such notice such owner or agent shall have failed, refused or neglected to make such connection or to give satisfactory proof to the city council of his purpose and intention so to do within a reasonable time, the city council may cause such connections with the waterworks system of the city to be made by and under the supervision and direction of the city engineer of the City of Wilmington, subject to the supervision and control of the city manager as to cost of the same, and shall pay the cost of making such connection and the cost thereof, furnished by the city manager, shall be entered by the city clerk and treasurer in a book to be designated "Water and Sewerage Connections," which book shall be kept by him and be preserved as a record in his office for public examination, and the amount of such costs from the time of the completion of such work and the entry thereof on such book shall be and constitute a lien upon the property whereon such connections were made, of equal dignity to taxes, and shall be collected in manner and form as hereinafter provided.

Sec. 16.17. Making water and sewer connections when property owner is nonresident, infant, etc. Whenever and wherever, for reasons satisfactory to the city council, it shall be made to appear that the owner or owners of premises cannot be found, nor any representatives of them can be located in the City of Wilmington, or that such owners are infants, incompetents, indigents or prisoners, the city council may cause the work of making connections with either the water or sewerage system, or both, to be done by the City of Wilmington under the supervision of the city engineer, subject to the supervision of the city manager as to the cost of same, and may provide the material and cost of doing the work at its own expense, and in the cost thereof may include an item of five dollars (\$5.00) to reimburse the city for the services of its officers and time expended by them in making the same. The total cost of the work shall be entered upon the book provided for in Section 16.16, and shall be a lien upon the premises of equal dignity to taxes, and shall be collected as hereinafter provided.

Sec. 16.18. Interest on and procedure for collection of connection costs. The total cost against each property owner entered upon the book provided for in Section 16.16 shall bear interest from the date of entry at the rate of six per cent per annum and the time of payment thereof shall be fixed and determined by the city council and, upon default in the payment thereof by such owner within the time therein prescribed, the same shall be collected by the City of Wilmington by an action to be brought in any court of competent jurisdiction. The service of the summons in such action shall be as provided by State law. In such action and on the trial thereof the entry in the book so provided for, or a certified copy thereof under the head of the city clerk, with the corporate seal of the City of Wilmington attached thereto, shall be prima-facie evidence of all the facts and things therein stated and the only defense which the defendant in such action may set up in opposition thereto shall be a denial of the fact that the costs therein set forth were incurred or that the same have been paid.

A certificate of the city clerk under seal of the city, wherein the City of Wilmington shall be recited as the plaintiff and the name of the owner or owners of the premises recited as the defendants, together with a sufficiently definite recital of the premises to identify the same, and the amount of costs incurred in the making of the connections, and when the same was paid by the city, shall constitute a sufficient complaint in such an action.

And judgment shall be entered by the court condemning such property to sale and a date fixed for such sale. Notice of such sale shall be given by publication once a week for four weeks in a daily newspaper published in the City of Wilmington and the first publication thereof shall be thirty days prior to such sale. Such sale shall be made by and under the supervision and control of the court who shall appoint a commissioner for such purpose. Such commissioner shall report to such court all his acts and doings in the premises for confirmation and, upon confirmation, the judgment of the court shall provide for all the costs and expenses of such action, including an allowance of ten per cent to the commissioner, and any balance which may remain after the payment of the costs and expenses of such action and the judgment in favor of the city shall be paid into the office of the Clerk of the Superior Court for the benefit of the owner or owners of the property.

In all such cases either party shall have the right of appeal from a final judgment entered therein, upon giving bond, with sufficient security, the amount of which shall be fixed by the court and the surety to be approved by the clerk thereof, conditioned for the performance and payment of such judgment on the part of the defendant, if the defendant shall appeal, together with the costs of the action, the amount of which bond shall be at least double the amount of judgment rendered in favor of the city and one half as much more, to cover the costs of the action. If the city appeals, no bond shall be required. On such appeal a transcript of the record in the trial court, duly certified by the clerk of such court, shall constitute the record in the court to which such action is appealed, and such appeal shall be heard in such court as similar actions. All judgments and decrees entered in any such action shall be entered upon the records in the office of the clerk of the trial court and docketed in like manner as judgments of such are required to be entered and docketed by law and shall have like force and effect of such judgments.

Article XVII. Streets Generally; Eminent Domain; Local Improvements.

Division 1. In General.

Sec. 17.1. Closing streets generally. (a) The city council shall have the power to close any street or portion thereof that is now or may hereafter be opened or dedicated, either by the recording of a subdivision plat or otherwise. Upon receipt of a sufficient petition signed by the owners of the majority of the property abutting a street, requesting that it be closed, and after an investigation of the sufficiency of the petition by the city attorney, the city clerk shall publish a notice of a public hearing to be held by the council, such publication to be once a week for four successive weeks in some newspaper published in the city which is qualified to carry legal notices, or if there be no such newspaper, by posting a notice at three public places in the city. Any

individuals owning property abutting a street who do not join in the request for closing this street shall be notified by registered mail letter of the time and place of public hearing. If it appears to the satisfaction of the city council that the closing of the street is not contrary to the public interest, and that no individual owning property in the vicinity of the street or in the subdivision in which it is located will thereby be deprived of reasonable means of ingress or egress to his property, the city council may order the closing of the street; provided, that any person aggrieved may appeal within thirty days from the order of the council to the Superior Court of New Hanover County, where the question shall be heard de novo. Upon such an appeal, the Superior Court shall have full jurisdiction to decide the matter upon the issues arising and to order the street closed on proper finding of fact by a jury. A certified copy of the order of the council, or the judgment of the Superior Court of New Hanover County in cases where an appeal was taken, shall be recorded in the register of deeds office. Upon the closing of a street in accordance with the provisions of this Section, all right, title, and interest in the portion of the street closed shall be conclusively presumed to be vested in the owners of the lots or parcels of land abutting the portion of the street closed, and the title of each of such owners shall, for the width of the abutting land owned by such persons, extend to the center of the street. Copies of the registered letters giving the notice required by this Section, and the return receipts or other good and sufficient evidence of the giving of the required notice, shall be recorded in the register of deeds office, together with the resolution of the council, or with the judgment of the Superior Court in cases where an appeal was taken. No final action shall be taken by the city council to close a street until the matter has been referred to the Wilmington planning board for study and recommendations, but no public hearing shall be necessary before the Wilmington planning board.

(b) The resolution ordering the closing of the street may provide for utility rights-of-way to be retained by the city or public utility company, if needed.

Division 2. Establishment of Proposed Street Lines.

Sec. 17.2. Authorized; notice and hearing. Whenever, in the opinion of the city council, it is for the best interest of the city that any street should be widened or extended, or both, or that a new street should be opened, the council may pass an ordinance declaring that such street should be widened or extended, or both, or that such new street should be opened, and shall lay out in the ordinance the lines within which such streets should be widened, extended, or opened. If any street under the provisions of such ordinance is to be widened, it need not be widened on both sides; and, if it is to be widened on both sides, the distance to be widened on both sides need not be the same. Any ordinance introduced for the purpose of widening, extending, or opening any street under the provisions of this Charter, may not be adopted until the proposed ordinance is published in the newspaper published in the city and qualified to carry legal notices at least two times, on separate days, at least ten days before the passage of the ordinance, or, if there be not such newspaper, posted in three public places in the city. There shall be posted or published with the ordinance a notice stating when property owners may be heard by the council. A public hearing on the question of the adoption of such ordinance shall be held prior to the passage of the ordinance.

Sec. 17.3. Notice to city prerequisite to improvement in proposed street lines. After the passage of such ordinance, it shall be unlawful for any land within the proposed street lines established by such ordinance to be built upon or improved, or for any part of any existing building within such lines to be repaired or otherwise improved until the city shall have been given an opportunity to purchase or otherwise acquire such property for street purposes as provided in this Charter. To that end any person proposing to build upon such land or to make repairs or improvements to that part of any existing building situated thereon shall, in writing, notify the city council of the nature and estimated cost of such building, repairs, or improvements. The council shall then determine whether it will take the necessary steps to acquire such property prior to the construction of such building or the making of such repairs or improvements and if it fails from sixty days from date of receipt of such notice to acquire, or to institute condemnation proceedings to acquire, such property, the owner or other person giving such notice may proceed to erect the building in accordance with the ordinances and regulations of the city, or to make the repairs or improvements described in such notice.

Sec. 17.4. Same-Failure to give notice bars recovery for improvements. If any person, firm, or corporation builds upon any land included within proposed street lines, or repairs or otherwise improves that part of any existing building within the proposed street lines without giving the city an opportunity to acquire such land free from such improvements, as provided in the preceding Section, the city shall not be required to pay for the value of the building, repairs, or improvements in any proceedings subsequently brought to acquire such land for the purpose set out in the preceding Section.

Sec. 17.5. Acquisition of land prior to improvement. If upon receiving a notice in compliance with Section 17.3 the city council determines to acquire such land immediately, it may acquire the same by grant, purchase, or condemnation. In no case shall an effort to purchase such land be necessary to the institution of condemnation proceedings. If the council determines to proceed by condemnation, the condemnation shall be as set forth in this Charter.

Sec. 17.6. Cost of land acquired to be assessed as part of improvements. After any land has been purchased or condemned for the purpose of widening, extending, or opening any street, and land purchased or condemned lies within the limits of an improvement directed in such proceedings, then the amount paid by the city for the land purchased or condemned, together with the cost of the condemnation proceeding and interest on such amount paid and costs at the rate of six per cent per annum from the date of payment, shall be included in the cost of such improvement and shall be assessed as provided by law against the property to be assessed for the improvements.

Sec. 17.7. Exercise of condemnation power after failure of city to acquire following notice of improvement. The failure of the city to acquire any land within sixty days after receiving notice that the same is to be built upon, or that a building thereon is to be repaired or otherwise improved, or its failure within such time to institute proceedings to condemn same, shall not limit the right of the city at any subsequent time to condemn the same; but in such case the owner shall be entitled to compensation as now provided by law for the building, repairs, or improvements made after the giving of the required notice and the failure of the city to acquire such land free of such improvements.

Division 3. Eminent Domain.

Sec. 17.8. Authority of city generally; interest acquired; proceedings against infants, etc. The City of Wilmington shall possess the power of eminent domain, and may acquire, either by purchase or condemnation, any land, right of access, right-of-way, water right, privilege, easement, or any other interest in or relating to land or water, including the dwelling house, yard, kitchen, garden or burial ground of any person, without regard to the limitations of Section 40-10 of the General Statutes of the State, either within or beyond the city limits, including and limited to a right-of-way in and across lands owned and held as right-of-way by a railroad or other public utility company; provided, that the operation of such railroad or other public utility company may not be impaired unreasonably thereby, for any lawful public use or purpose. Unless otherwise expressly provided in the condemnation resolution a fee simple title shall pass to the city upon the condemnation of any such interests. In any case where the owner of land to be condemned or any interest therein is a minor, an insane person, or otherwise under any disability, any notice hereinafter required by this division to be served upon such owner shall be served upon his guardian, and service upon such guardian shall be sufficient without service on the minor, insane person, or person under disability. Thereafter such guardian may exercise, on behalf of his ward with respect to such condemnation proceeding, all the powers conferred upon such person as owner. Water rights, or other interests relating to water, may be condemned under the procedure set forth in this division for the condemnation of land, and the interests therein.

Sec. 17.9. Effort to purchase not prerequisite to condemnation. It shall not be necessary to the condemnation by the city of any land or interest therein, whether pursuant to this division or otherwise, that the city shall have attempted to acquire the needed land by grant or purchase prior to the commencement of the condemnation proceedings.

Sec. 17.10. Resolution proposing condemnation. (a) When any land required by the city for any purpose allowed by this Charter, or the general law of the State is proposed to be condemned under the specific provisions of this Charter, the city council shall adopt a resolution which shall contain substantially the following provisions:

(1) A description of the land proposed to be condemned in fee or of the interest or easement proposed to be condemned.

(2) If there is any building or other property situated wholly, or partly upon the land to be condemned, the determination of the city council as to whether the owner shall be allowed to remove such property, or whether the same shall be condemned.

(3) A statement of the purpose for which said land or easement is proposed to be condemned.

(4) The name and address of the owner, or owners, of said land and of any other person or persons interested therein whom it is necessary to make a party to the proceeding.

(5) The name of a disinterested freeholder of the city, appointed as appraiser by the city council.

(6) A notice that the owner, or owners, of such land, or interest therein or a majority in interest of such owners, may, within fifteen days of service of such

resolution upon all of them, appoint one appraiser, who shall be a disinterested freeholder of the city to represent them, the name of which appraiser shall be reported in writing to the city clerk within such fifteen days.

(7) A notice that the appraiser appointed by the city, and the appraiser appointed by the owner or owners, or if the owner or owners fail to appoint, then the two appraisers appointed by the city, shall appoint a third appraiser, and the three thus appointed shall constitute a board of appraisers, whose duty it shall be to determine the damages and benefits which will result from the condemnation of such land or easement or interest therein.

(8) A notice of the time fixed for the first meeting of the appraisers, and if such meeting will be held upon the premises to be condemned.

(b) It shall not be necessary to institute separate condemnation proceedings against the several owners of tracts or parcels of land affected by proposed local improvements.

Sec. 17.11. Same-Service. A copy of the resolution proposing condemnation shall be personally served upon each of the owners of land proposed to be condemned; provided, that if the resolution cannot be personally served upon any of the owners then it may be served by publication once a week, for two successive weeks in some newspaper published in the city, which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the city.

Sec. 17.12. Failure of owners to appoint appraiser. If within fifteen days after service of the resolution upon all of the owners, they, or a majority in interest of them, fail to appoint an appraiser and to report his name to the city clerk, the city council shall appoint a disinterested freeholder of the city to represent them.

Sec. 17.13. Appointment of third appraiser; oath of appraisers. The appraiser appointed by the city council and the appraiser appointed by the property owner, or owners, or if the owner, or owners, fail to appoint, then the two appraisers appointed by the city council, shall appoint a third appraiser, who shall be a disinterested freeholder of the city, and shall report his name to the city clerk. Each appraiser shall take an oath or affirmation that he will fairly and impartially discharge his duties as an appraiser.

Sec. 17.14. First meeting of appraisers. At the time fixed by the resolution of condemnation, the appraisers shall meet on the premises to be condemned. If, for any reason the meeting cannot be held at the time fixed by the city council, then a meeting shall be held at another time fixed by the appraisers, in which case notice of the time and place of the meeting shall be personally served upon each of the owners of the land or easement proposed to be condemned, or if the notice cannot be personally served, then it may be served by publication once a week for two successive weeks in some newspaper published in the city which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the city. The notice, whether given personally, by publication, or by posting, shall be served not less than five days prior to the date of the hearing. At the first meeting the appraisers shall view the premises affected by the proposed condemnation; and shall hear, but need not reduce to writing, any evidence as to damages and benefits that will result from the proposed

condemnation presented by the owners or by the city. The appraisers shall make their report at, or after the hearing, or they may, in their discretion, hold subsequent meetings.

Sec. 17.15. Subsequent meetings of appraisers; when notice required. Subsequent meetings of the appraisers shall be held at such times and places as may be determined by them. Of such meetings no notice need be given, either to the owners or to the city, unless such meetings are to be public and for the purpose of hearing evidence. If held for such purpose, then unless such meeting is held at a time and place to which a former meeting of the parties had lawful notice was adjourned, notice of the meeting shall be personally served upon all parties, or, if such notice cannot be personally served, it may be served by publication once a week for two successive weeks in a newspaper published in the city, which is qualified to carry legal notices, or, if there be no such newspaper, by posting in three public places in the city. The notice shall be served, or publication or posting thereof completed not less than five days prior to the time fixed for the meeting.

Sec. 17.16. Determination of damages and benefits; report. Determining the compensation to be paid by the city for the land or easement condemned, the appraisers shall take into consideration both the loss or damage which will result to the owners from the condemnation of the land or easement and the benefits that will result to any remainder of such land from the improvement for which the land or easement is to be condemned, the benefits to include both benefits for advantages special to the land, and benefits or advantages to the land, in common with other lands affected by the improvement. The appraisers shall also take into consideration the value of any building or other property situated upon the land proposed to be condemned, if the owner is to be allowed to remove the building or other property, and the value thereof shall not be included in the compensation award. Having determined damages and benefits, the appraisers shall make their report to the city council, in which report the appraisers shall show separately the amount of damages, the amount of benefits, and the amount which shall be paid by the city if it finally condemns the land or easement. In the event the property condemned is subject to a recorded lease, or leases, the appraisers shall apportion the award between, or among, the person or persons owning fee or fees and the person or persons owning the sole interest or interests; but in no event shall the total of the amount so apportioned exceed the value of the property were it not subject to a recorded lease or leases. The report shall be sufficient if it is concurred in by two of three appraisers. In the event that no two of the three appraisers can agree upon an appraisal, three new appraisers may be appointed in the same manner as the original appraisers, and the new appraisal board shall follow the same procedure as required of the original appraisal board.

Sec. 17.17. Action of council on report of appraisers. Within thirty days after the report of the appraisers is submitted to the city council, the council shall determine what action it will take thereon. If the council determines to abandon the proposed condemnation, it shall adopt a resolution to that effect; but the abandonment of the condemnation shall not prevent the city council from thereafter instituting a proceeding to condemn the same land or easement. If the council determines to condemn the land or easement, it shall adopt a resolution which shall contain substantially the following:

(1) A recital that a board of appraisers has been appointed to determine the compensation to be paid for the land or easement, as provided by this Charter, and that the appraisers have submitted a report to the council.

(2) A statement of the amount of damages and benefits as fixed by the appraisers and of the compensation to be paid by the city for the land or easement condemned as fixed by the appraisers.

(3) The determination of the council as to the condemnation of the land or easement.

(4) A description of the land condemned in fee, or of the easement condemned.

(5) A statement of the purpose for which the land or easement is condemned.

(6) The name of the owner or owners of the land and of other persons interested therein who were made parties to the proceeding.

(7) The determination of the council as to the time when the city will take possession of the land or easement condemned, and a direction that such premises shall be vacated by such time, and, in case the owner is allowed to remove any building or part thereof, or any other property on the premises, a direction that such property shall be removed before said date and that if the owner fails to remove the same within such time, the council will have the same removed and the cost thereof shall be a lien upon the remainder of the property.

Sec. 17.18. Vesting of title in city. The adoption by the city council of a final resolution of condemnation, as provided in the preceding Section shall have the effect of a judgment against the City of Wilmington for the amount of compensation fixed by the appraisers, and shall vest in the city title to the land or easement condemned.

Sec. 17.19. Appeal to Superior Court. If, upon the adoption by the city council of a final resolution of condemnation, either the owner of the land or easement condemned or the city council itself is dissatisfied with the amount of the compensation to be paid for such land or easement as fixed by the appraisers, such owner, or the city, or both may, within ten days after the date of the adoption of such resolution, appeal to the Superior Court of New Hanover County. The party, or parties, appealing shall, within such ten days, give notice of appeal to the other party by personal service if practicable and, if not, by publication of a notice one time in a newspaper published in the city, which is qualified to carry legal notices. The appeal, or appeals shall not interfere with the vesting in the city of the title to the land or easement condemned or hinder the city in any way in proceeding with the improvements for which such land or easement was condemned, except that if the land or interest therein is owned by another public or quasi-public body, or by a railroad or public utility company, the vesting of title in the city shall not become effective until the court has rendered final judgment on the question of whether the condemnation by the city is in the public interest, and has determined the amount of compensation to be awarded for the condemnation, in which case the court may, in its discretion, reduce the amount of land, or interest therein, which it shall allow to be condemned.

Sec. 17.20. Record upon appeal. Upon an appeal taken by either party, the city clerk shall certify a copy of the record in the condemnation proceeding to the Superior Court of New Hanover County, and such appeal shall be tried as other actions at law. The

record upon appeal shall be composed of the preliminary resolution of condemnation, the oath of appraisers, the report of appraisals, the final resolution of condemnation, and the notice, or notices of appeal. The record upon appeal, or any part thereof, shall be competent as evidence upon the trial of an appeal.

Sec. 17.21. Condemnation before determination of compensation. When, in the judgment of the city council, the public interest requires that the city enter into immediate possession of any land, it shall adopt a resolution stating such necessity, and the reason therefor, and condemning the required land or easement, and providing for the determination of the compensation to be paid by the city for the land or easement. The procedure therefor with respect to determination of such compensation shall follow as closely as practical the provisions of this Article, or of the provisions of general law concerning "Eminent Domain". This Section shall not apply to land, or interest therein, owned by another public or quasi public party, or railroad or public utility company.

Sec. 17.22. Registration of condemnation proceedings. In any case where any land or easement therein has been, or may hereafter be condemned by the city council, a copy of so much of the condemnation proceedings as may be necessary to show the land or easement therein condemned and the condemnation thereof shall be certified by the city clerk and the same, upon being probated by the clerk of the Superior Court, or other person authorized by law to probate instruments for registration, shall be registered in the office of the register of deeds of New Hanover County.

Sec. 17.23. Sale or other disposition of land condemned. When any land condemned in fee by the city is no longer needed for the purpose for which it was condemned, the same may be used by the city for any other public purpose, or may be sold or otherwise disposed of according to law.

Sec. 17.24. Removal by city of structures on condemned land; lien. When any property upon which any building or other structure is wholly or partly located, is condemned by the city under the provisions of this Charter, or any other law, and the owner is allowed to remove such building or structure, or part thereof, the city council may, after the report of the appraisers has been made, name the time within which the owner may remove the building or structure, or part thereof, and if the owner fails to remove the same within such time, the council may remove the same and the cost thereof shall be a lien upon the remainder of the land, or such cost may be recovered by the city in any court of competent jurisdiction.

Sec. 17.25. Procedure not exclusive. The condemnation procedure set forth in this division shall not be exclusive, but shall be in addition to any other procedure provided by law.

Sec. 17.26. Procedure not applicable outside New Hanover County. The condemnation procedure set forth in Article 2 of Chapter 40 of the General Statutes of North Carolina, and not the procedure set forth in this division, shall be applicable to the exercise of the power of eminent domain by the city for the condemnation of any land, right of access, right-of-way, water right, privilege, easement, or any other interest in or relating to land or water which is, or are, located outside of the geographic boundaries of New Hanover County.

Division 4. Local Improvements.

Sec. 17.27. Definitions. Certain words and phrases will be used with the following meanings with reference to local improvements, unless some other meaning is plainly intended:

Lateral. A "lateral" is a pipe connecting a storm or sanitary sewer or water main with the line of adjacent property or the curb line, being either a sewer lateral or water lateral, but does not include a building connection, that is, a pipe extended from a lateral at the property line or curb line to the house of plumbing fixture to be served.

Roadway. A "Roadway" is the part of a street which is used, or to be used, for vehicular traffic.

Sanitary sewer. A "sanitary sewer" is an underground conduit for the passage of sewage and may include a pumping station and outlet.

Sewer. The word "sewer" includes both sanitary and storm sewers unless a contrary intention is shown.

Sidewalk. A "sidewalk" is the part of a street which is used, or to be used, for pedestrian traffic.

Storm sewer. A "storm sewer" is a conduit above or below ground for the passage of storm water, and may include a pumping station and outlet where deemed necessary, and may also include the building of culverts over or the enclosing of streams where needed to carry off storm water.

Street. A "street" is the entire width between property lines of every way or place, of whatever nature, when any part thereof is dedicated or opened to the use of the public as a matter of right for the purpose of vehicular or pedestrian traffic. The term "street", when used herein, shall include any street, alley, highway, avenue or public place or square, bridge, viaduct, tunnel, causeway, and sidewalk lying within a public right-of-way, dedicated or devoted to public use.

Water main. A "water main" is a pipe for the passage of city water for public hydrants and private and public use and consumption.

Sec. 17.28. Authority of city generally. The city council of the City of Wilmington shall have authority to make local improvements described in this Charter, to undertake same without assessment, or to assess the cost of such local improvements against the benefited property. The procedure set forth in this division shall not be exclusive, but shall be in addition to any other procedure provided by law, specifically that procedure contained in Article 9, Local Improvements, Sections 160-78 through 160-105 of the General Statutes of North Carolina, as they now exist or may hereafter be amended.

Any procedure not specifically covered in this Charter shall be accomplished in accordance with Article 9, Local Improvements, General Statutes of North Carolina, insofar as this division is applicable to the particular proceeding.

Petitions for street improvements which have been submitted in accordance with the provisions of Article 9, Local Improvements, General Statutes of North Carolina, and have, prior to the date of enactment of this Charter, been approved by the city council shall be executed in accordance with the provisions of Article 9, and under the conditions of submission by the property owners and approval by the council.

The city council shall have full power and authority, by ordinance, to grade, pave, repave, and otherwise permanently improve for travel and drainage any street, sidewalk,

or public alley of the city; to put down curbing, cross-drainage, and crossings on the same; and to lay out and bound new streets, or widen those already bounded, and make such improvements thereon as the public convenience may require. The city council shall also have full power and authority by ordinance to construct, reconstruct, extend or alter sanitary sewers, water mains, or storm sewers, or to make such other public improvements as it shall deem to be in the public interest,

The city council shall have authority to make the following local improvements:

(a) Roadway paving improvements, which include the grading, regrading, paving, repaving and widening of roadways, or the improvement thereof with any treatment designed to provide an improved wearing surface, with necessary drainage, sewer inlets, manholes and catch basins and the construction or reconstruction of retaining walls made necessary by any change in grade incident to such improvement, and in any case where the improvement is made upon petition if the petition so requests, or in any case where the improvement is made without petition if the council so directs, it may include the construction or reconstruction of curbs, gutters, drains, and sidewalks.

(b) Water main improvements, which include the laying or construction of water mains, the relaying where necessary of parts of paved roadways and sidewalks torn up or damaged by the laying or construction of such mains, and, in any case where the improvement is made upon petition and the petition so requests, or in any case where the improvement is made without petition and the council so directs, the laying of water laterals.

(c) Sanitary sewer improvements, which include the laying or construction of sanitary sewers, the relaying, where necessary, of parts of roadways and sidewalks torn up or damaged by the laying of or construction of such sewers, and in any case where the improvement is made upon petition and the petition so requests, or in any case where the improvement is made without petition and the city council so directs, the laying of sanitary sewer laterals.

(d) Storm sewer improvements, which include the laying or construction of storm sewers, the relaying, where necessary, of parts of paved roadways and sidewalks torn up or damaged by the laying of or construction of such sewers, and in any case where the improvement is made upon petition and the petition so requests, or in any case where the improvement is made without petition and the council so directs, the laying of storm sewer laterals.

(e) Sidewalk improvements, which include the grading, regrading, construction, reconstruction and repair of paved or other improved sidewalks, the construction or reconstruction of retaining walls made necessary by and incident to such improvements, and, in any case where the improvement is made upon petition, if the petition so requests, or in any case where the improvement is made without petition if the council so directs, it may include the construction or reconstruction of curbs, gutters and drains, and the construction and reconstruction of all such portions of driveways as in the judgment of the council ought to be laid within the street area.

(f) Grass plot improvements, which include the grading and planting of grass plots in a street.

Sec. 17.29. Land subject to assessment generally. No lands in the city, including railroad company lands and rights-of-way, and property of the State of North Carolina, its agencies or subdivisions, shall be exempt from special assessments except the lands belonging to the United States, which are exempt under the provisions of Federal Statutes, and the city council and the officers, trustees or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any local improvements.

Sec. 17.30. Inclusion of more than one improvement in single proceeding. (a) Any proceeding may include one or more local improvements on one or more streets, but all improvements included in one procedure shall be practically uniform in cost and kind. A petition may include the improvements on only one side of a street.

(b) The petition may provide for making any one or more local improvements in or on a street or streets and for the assessment of the cost thereof, except the city's portion, wholly against the property abutting one side of such street or streets or otherwise against such abutting property as may be designated in the petition in any of the following cases:

(1) Any case where there is park land or unimproved land abutting one side, or a part of one side, of a street.

(2) Where the land abutting one side, or a part of one side of a street, is of such a nature or is devoted to such a purpose that special assessment against it cannot be made, or, if made would probably exceed the value of the land assessed.

(3) Where the owners of all the property to be assessed agree thereto.

Sec. 17.31. Petition generally, certificate of sufficiency. (a) Except as otherwise provided in Subsection (b) of this Section, the petition for any local improvements shall designate by a general description the improvements proposed, and shall request that such proportion of the cost of each of such improvements as may be specified in the petition be specially assessed against the abutting property on the street or streets or part thereof in which or on which such improvements are proposed to be made. The petition shall be filed with the city attorney.

(b) (1) In any case where the improvement is to be made on one side of a street only, the petition shall request that the assessment be made only against the property abutting that side of the street whereon the improvement is to be made.

(2) In any case where it is proposed to assess the cost of any local improvement covering the entire width of a street against the land abutting one side of the street only or against any lands less than all of those abutting the improved portion of the street, such petition shall designate the lands to be assessed.

(c) Except as otherwise provided in the Subsection (d) of this Section, the petition shall be signed by at least a majority in number of the owners, which majority must own at least a majority of all the lineal feet of frontage, of the lands abutting the street or streets or part of a street or streets proposed to be improved, excluding the street intersections.

(d) (1) A petition for the making of local improvements on one side of the street only need be signed only by a majority in number of the owners of land abutting the

side of the street whereon such improvement is to be made, which majority must own at least a majority of all the lineal feet of the frontage of the land abutting such side of the street, excluding street intersections.

(2) Any petition for the making of any improvements covering the entire width of the street and the assessment of the costs thereof against the land abutting one side of the street only or against any lands less than all of those abutting the improved portion of the street shall be signed by all of the owners of the lands thus proposed to be assessed.

(e) (1) For the purpose of the petition, all of the owners of undivided interests in any lands shall be deemed and treated as one person and such lands shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interest,

(2) For the purpose of this Section the word "owner" shall be considered to include the owners of any life estate, of any estate by entirety, or of the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders, or persons having inchoate rights of courtesy or dower.

(f) Upon the filing of such petition, the city attorney shall investigate the sufficiency of the petition, and if it is found to be sufficient, he shall certify the same to the council.

Sec. 17.32. When petition unnecessary. (a) City to pay cost. No petition shall be necessary for the making of any local improvements for which the city bears the entire cost without assessment.

(b) Benefit at least equal to assessment. If, in the judgment of the city council, the abutting property to be assessed will be benefitted in an amount at least equal to the assessment, no petition for local improvement shall be necessary in the cases set forth in Subsections (c) through (g) of this Section.

(c) Street paving improvements. When, in the judgment of the council:

(1) Any street or part of a street is unsafe; or

(2) The improvement of a street or part of a street not more than three blocks in length is necessary to connect streets already paved; or

(3) The improvement of a street or part of a street is necessary to connect a paved street, or portions thereof within the city with a paved highway beyond the city limits;

or

(4) The improvement of a street or part of a street is necessary to provide a paved approach to a railroad or street grade separation or any bridge; or

(5) Any street or part of a street should be widened.

(d) Water main improvements. When, in the judgment of the council, any street or part of a street, or any property within the city, is without a public water supply and can be served, and water service should be provided in the public interest.

(e) Sanitary sewer improvements. When, in the judgment of the council, any street or part of a street or any property within the city is without a public sanitary sewer and can be served, and sanitary sewer service should be provided in the public interest.

(f) Storm sewer improvement. When, in the judgment of the council, any street or part of a street, or any property within the city, is without storm sewer facilities, and can be served, and storm sewers should be provided in the public interest.

(g) Sidewalk improvements. When, in the judgment of the council, any street or part of a street is without sidewalks and sidewalks should be provided in the public interest, or that any existing sidewalk is unsafe and should be repaired.

Sec. 17.33. Public hearing; notice. (a) Upon the presentation of a sufficient petition for local improvements, or when it is proposed to make without petition any improvements authorized to be made without petition, a notice shall be prepared by the city attorney which shall contain substantially the following:

(1) That a sufficient petition has been filed for the making of the improvements, or, if it is proposed to make the improvements without petition, a statement of the reasons proposed for the making thereof.

(2) A brief description of the proposed improvements.

(3) The proportion of the cost of the improvements to be assessed and the terms of payment.

(4) A statement of the time and place of the public hearing on the proposed improvements.

(5) A statement that all objections to the legality of the making of the proposed improvements shall be made in writing, signed in person or by attorney, and filed with the city clerk at or before the time of the hearing, and that any objections not so made will be waived.

(b) The notice shall be published one time in a newspaper published in the city which is qualified to carry legal notices, or if there be no such newspaper, the city clerk shall cause it to be posted in three public places in the city, the date of publication or posting to be not less than ten days prior to the date fixed for the hearing. A copy of the notice shall be served upon the owners of the lands subject to assessment for such improvements if such owners can be found with reasonable diligence within the city. If any such owner cannot with reasonable diligence be found within the city, then a copy of the notice shall be mailed to his address as nearly as the same can be ascertained with due diligence. The certificate of the person designated to serve or mail the notices that such notices were served or mailed shall be conclusive in the absence of fraud. The serving or mailing of notices shall be completed not less than five days prior to the date fixed for the hearing. The word "owners" as used herein has the same meaning as in Section 17.31.

(c) At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the council shall consider objections to the legality of the improvements made in compliance with paragraph (5) of Subsection (a) of this Section, together with objections to the policy or expediency of the making of the improvements, and the council shall thereafter determine whether it will order the making of the improvements. Any objections to the legality of the making of the improvements not made in writing, signed in person or by attorney, and filed with the city clerk at or before the time or adjourned time of the hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the council, the adoption

of the resolution ordering the making of the improvements shall be final adjudication of the issues presented, unless within ten days after the adoption of the resolution proper steps shall be taken in a court of competent jurisdiction to secure relief.

Sec. 17.34. Resolution ordering improvements; publication. (a) After the public hearing, if the council determines to make the improvements proposed, it shall adopt a resolution which shall contain:

(1) If the improvements are to be made by petition, a finding by the council as to the sufficiency of the petition, which finding shall be final and conclusive.

(2) If the improvements are to be made without petition, a finding of the council of such facts as are required in order to authorize improvements without petition.

(3) A general description of the improvements to be made and the designation of the street or streets or parts thereof where the work is to be done.

(4) If the improvement directed to be made is the paving of a roadway or part thereof wherein a railroad company has tracks, a direction that such company pave that part of the street occupied by its tracks, the rails of the tracks, and eighteen inches in width outside such tracks, with such material and in such manner as the city council may prescribe, and that unless such paving be completed on or before a day specified in the resolution, the city council will cause the same to be done and direct that assessment be made against the owning railroad company for the cost of such work.

(5) If the improvement directed to be made includes the construction of water mains or sewers, and in order to provide the mains or sewers in the street or streets to be improved it is necessary to extend them beyond the limits of the street or streets, the resolution shall contain a provision for the necessary extension of such mains or sewers and a further provision that the cost of such extension shall eventually be assessed against the lots or parcels of land abutting the street or streets in which such extensions are made but that assessments shall not be made until such time as the council shall thereafter determine by appropriate resolution.

(6) If the improvement directed to be made is the paving of a roadway or part thereof, or the construction of sidewalks, the resolution may, but need not, contain a direction that the owner of each lot abutting the part of the street to be improved, connect his lot by means of laterals with water mains, gas or sewer pipes, or any one or more thereof located in the street adjacent to his premises in accordance with the requirements governing the laying of laterals, and that unless the owners cause laterals to be laid on or before a date specified in the resolution, the date to be not less than thirty days after the date of the resolution, the council will cause the same to be laid.

(7) A designation of the proportion of the cost of the improvements to be assessed against abutting property, and of the number of equal annual installments in which assessments may be paid.

(b) The resolution after its passage shall be published at least once in some newspaper published in the city which is qualified to carry legal notices, or, if there be no such newspaper, the resolution shall be posted in three public places in the city for at least five days; except, that in any case where the council directed that the notice should be served or mailed instead of being published, the resolution ordering the improvements need not be either published or posted.

Sec. 17.35. Details of construction; contracts for construction. The city council shall have power to determine the character and type of construction and of material to be used and to determine any other details of plan or construction necessary to be determined in making any local improvements and to determine whether any work to be done by the city shall be done by contract or by city forces. The council shall have power also, unless otherwise limited, to determine the number of water, sewer and gas laterals that shall be laid to any lot on any street to be improved. If the work, or any part thereof, is to be done by contract, the council may let all of the work in one contract, or it may divide it into several contracts, and may let contracts separately.

Sec. 17.36. Determination as to cost of improvements. Upon completion of the improvements, the city council shall ascertain the total cost. In addition to other items of cost, there may be included therein the cost of all necessary legal services, the amount of interest paid during construction, the amount of damages paid or to be paid for injury to property by reason of any change of grade or drainage, including court costs and other expenses incidental to the determination of damages, and the cost of retaining walls, sidewalks or fences built or altered in lieu of cash payment for property damage, including the cost of moving or altering any building, and the cost of acquisition of right-of-way which is necessary for the improvement. The determination of the council as to the total cost of any improvement shall be conclusive.

Sec. 17.37. Preliminary assessment.

(a) Having determined the total cost, the council shall make a preliminary assessment. The preliminary assessment shall be advisory only and shall be subject to modification. Except as otherwise provided in Subsection (b) of this Section, the preliminary assessment shall be as follows:

(1) Roadway paving. The total cost of any roadway paving improvement, excluding (A) the cost incurred at street intersections, and (B) with respect to streets abutting residential property, that cost of pavement in excess of thirty feet, exclusive of curb and gutter, which costs shall be borne by the city, shall be specially assessed against the lots and parcels of land abutting the street containing the roadway paved, according to the frontages thereon, by an equal rate per foot of frontage, except that, where the petition so requested, the cost shall be assessed against the lands on one side of the street only or against such lands as were designated in the petition. For the purpose of assessing for roadway pavement on a residential street, a thirty-foot wide street (exclusive of the width of curb and gutter) shall be deemed sufficient for ingress and egress to residential property. An assessment covering the cost of construction, reconstruction, or widening of a street abutting residential property shall not be greater than would have been necessary to provide this thirty-foot wide street. In computing the assessment, the property owner shall be charged with the cost of the curb and gutter plus the roadway construction costs for a thirty-foot wide pavement. This provision has no application to the assessment of the cost of sidewalks and driveways, the cost of which improvements are to be assessed entirely to the abutting frontage, or to storm or sanitary sewers or water mains which costs are to be assessed as provided under paragraph (2) of Subsection (a) of this Section.

(2) Water mains and sewers. The cost of not exceeding a six inch water main, and an eight inch sanitary sewer main, and not exceeding a thirty inch storm sewer main shall be assessed against the abutting property, Such costs shall be assessed against the lots and parcels of land according to their respective frontages thereon by equal rate per foot of such frontage. If the water main in excess of six inches, a sanitary sewer main in excess of eight inches in size, or a storm sewer in excess of thirty inches in size is laid, the excess cost shall be borne by the city. If the resolution ordered the construction of any pumping station, outfall, septic tank or disposal plant, no part of the cost of the same shall be specially assessed. Nothing contained herein shall be construed to limit the power of the council to contract with any property owner or owners for the construction of any pumping station, outfall, septic tank or disposal plant or for the construction of water mains or storm or sanitary sewers and for the assessment of the cost thereof according to the terms of such contract. The entire cost of each water and sewer lateral shall be specially charged against the particular lot or parcel of land for or in connection with which it was constructed, except that assessments shall be calculated as if the lateral were laid from the center of the street, The cost of installing storm sewers may, however, be assessed as part of the cost of roadway paving.

(3) Sidewalks. The total cost of constructing or reconstructing sidewalks shall be assessed against the lots and parcels of land abutting that side of the street upon which the improvement is made according to their respective frontages thereon by an equal rate per foot of such frontage, the lots within a block being deemed to abut upon a sidewalk although the latter extends beyond the lot to the curb line of an intersecting street. The total cost of constructing portions of driveways within the street area shall be assessed against the lots for which they are constructed.

(4) Grass plots. The entire cost of grading or otherwise improving or of planting the grass plots in any street or part thereof shall be assessed against the lots and parcels of land abutting the street or part thereof where or whereon the improvements are made by an equal rate per front foot of such frontage; provided, that this subsection shall be construed to mean that when a grass plot in any street is graded or planted or otherwise improved, the cost thereof shall be assessed against all of the property abutting the street within the block where such grass plot is located.

(b) If the petition (or the resolution in those cases where the improvement was ordered made without petition) specified that there should be specially assessed against the abutting property a smaller portion of the cost of any improvement than that set forth in paragraph (2) of Subsection (a) of this Section, there shall be assessed against the abutting property only a proportion of the cost as was specified in the petition or in such resolution. No restriction or denial of access to an abutting street shall affect the levy or collection of any assessment for local improvements.

(c) The cost of paving, water, sewer, and sidewalk improvements upon, in, or to any portion of a right-of-way or any property owned by the State of North Carolina, any agency or subdivision thereof, shall be assessed against the right-of-way or property and shall be paid by the State, its agency or subdivision.

Sec. 17.38. Corner lot exemptions. The council shall have authority to determine the amount and applicability of assessment exemptions for corner lots, and to distinguish

between different classifications of property uses. The exemptions for paving sidewalk, and storm sewer improvements shall not exceed sixty feet and shall be limited to residential uses, and the exemptions for water mains and sanitary sewers shall not exceed one hundred and fifty feet for residential uses and one hundred feet for business uses. If the corner formed by two intersecting streets is rounded into a curve or is foreshortened for the purpose of providing sight distance or for any other purpose of construction, the frontage for assessment purposes shall be calculated to the midpoint of the curve or foreshortened corner.

Sec. 17.39. Preliminary assessment roll. The city council shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot, the name or names of the owner or owners of each lot, as far as the same can be ascertained; provided, that a map of the improvements on which is shown frontage and location of each affected lot, together with the amount assessed against each lot and the name or names of the owner or owners thereof, as far as the same can be ascertained, shall be a sufficient assessment roll. If the resolution directed the making of more than one improvement, a single preliminary assessment roll for all the improvements authorized by such resolution shall be sufficient, but the cost of each improvement to each lot affected shall be shown separately. After the preliminary assessment roll has been completed, it shall be filed in the office of the city clerk, and there shall be published in some newspaper, published in the city, which is qualified to carry legal notices, or if there be no such newspaper, the city clerk shall cause to be posted in three public places in the city, a notice of the completion of the assessment roll, setting forth a description in general terms of the improvements, the amount of each assessment, and stating the time fixed for the meeting of the city council for the hearing of objections to the special assessments, such meeting to be not earlier than ten days after the first publication, or from the date of posting of such notice. Any number of assessment rolls may be included in one notice. In any case where the preliminary notice was served or mailed, instead of being published, this notice need not be published or posted, but may be served or mailed. The serving or mailing of notices shall be completed not less than five days prior to the date fixed for the bearing of the assessment roll, and the return of the person serving or mailing the same shall, in the absence of fraud, be conclusive that the same was served or mailed.

Sec. 17.40. Hearing, revision and confirmation of preliminary assessment roll; lien. At the time appointed for that purpose, or at some other time to which it may adjourn, the city council shall hear objections to the preliminary assessment roll of all persons interested who may appear and offer proof in relation thereto. Then, or thereafter, the council shall either annul or sustain or modify in whole, or in part, the assessment, either by confirming the preliminary assessment against any or all lots or parcels described thereon, or by cancelling, increasing or reducing the same, according to the special benefits which the council decides each of the lots or parcels has received or will receive on account of the improvements, except that assessments against a railroad or railroads, because of contract or franchise obligations shall be in accordance with such obligations. If any property is omitted from the preliminary roll, the council may place it on the roll and levy the proper assessment, The council may thereupon confirm the

assessment roll, and the assessment so confirmed shall be in proportion to the special benefits, except in the case of franchise obligations of railroads. Whenever the city council shall confirm assessments for local purposes, the city clerk shall enter on the council minutes and on the assessment roll the date, hour, and minute of confirmation, and from the time of confirmation the assessment shall be a lien on the property assessed, of the same nature and to the same extent as county and city taxes, and shall be superior to all other liens and encumbrances. After the assessment roll is confirmed, a copy of the same shall be delivered to the city-county tax collector,

Sec. 17.41. Appeal to Superior Court. If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within ten days after the confirmation of the assessment roll, give written notice to the city council that he takes an appeal to the Superior Court of New Hanover County, in which case he shall, within twenty days after the confirmation of the assessment roll, serve on the mayor or city clerk a statement of facts upon which he bases his appeal. The appeal shall be tried as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he is the owner, or in which he is interested, shall be exclusive.

Sec. 17.42. Power to correct error in assessment. If it shall appear, after confirmation of any assessment roll, that an error has been made, the city clerk shall cause to be published one time in some newspaper published in the city, or if there be no such newspaper, the city clerk shall cause to be posted at three public places in the city, a notice referring to the assessment roll in which the error was made, naming the owner or owners of the lot or parcel of land affected by the error, if the same can be ascertained, and naming the time and place fixed for a hearing by the council for the correction of the error, such meeting not to be earlier than ten days from the publication or from the date of the posting of the notice. At the time fixed in the notice or at some subsequent time to which the council may adjourn, the council, after giving the owner or owners of the property affected, and other persons interested therein, an opportunity to be heard, may proceed to correct the error, and the assessment then made shall have the same force and effect as if it had originally been properly made. No notice and hearing shall be necessary if the correction does not increase an assessment against any property not owned by the city, or if all of the property owners affected by the correction waive notice in writing.

Sec. 17.43. Reassessment. The city council shall have the power, when in its judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon make a reassessment. In such case there shall be included, as part of the cost of the improvements involved, all interest paid, or accrued on notes or certificates of indebtedness, or bonds issued by the city to pay the expenses of such improvement. The proceedings shall, as far as practical, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made.

Sec. 17.44. Publication of notice of confirmation of assessment roll. After the expiration of twenty days from the confirmation of assessment roll, the city clerk shall cause to be published one time in some newspaper published in the city, which is qualified to carry legal notices, or, if there be no such newspaper, shall cause to be posted in at least three public places therein a notice that any assessment contained in the assessment roll may be paid at any time before the expiration of thirty days from the date of publication or posting of notice, without interest from the date of confirmation of the assessment roll, but that if such assessment is not paid in full within said time, all installments thereof shall bear interest at the rate of six per centum per annum from the date of confirmation of the assessment roll.

Sec. 17.45. Payment of assessments in cash or by installments. The property owner or railroad company assessed shall have the option of paying for improvements in cash or in not less than two, nor more than ten equal annual installments, as may be determined in the resolution ordering improvements. If paid in installments, installments shall bear interest at the rate of six per centum per annum from the date of confirmation of the assessment roll. If any assessment is not paid in cash, the first installment, with interest, shall become due and payable thirty days after the publication or posting of the notice of confirmation, and one subsequent installment and interest shall be due and payable on the same day of the same month in each successive year until the assessment is paid in full; provided, however, that if the city council shall so direct, installments shall become due and payable on the same date when property taxes of the city are due and payable. If any installment with interest is not paid when due, it shall be subject to the same penalties as are now prescribed by law for unpaid taxes, in addition to the interest herein provided for. The whole assessment may be paid at any time by the payment of the full amount due with accrued interest.

Sec. 17.46. Enforcement of payment of assessments. Upon the failure of any property owner to pay any installment when due and payable, all of the installments remaining unpaid shall immediately become due and payable, and property and rights-of-way may be sold by the city under the same rules, regulations, rights of redemption and savings as are now prescribed by law for the sale of land for unpaid taxes. Unpaid assessments, interests, and penalties owed by railroad companies and the State of North Carolina, its agencies or subdivisions, may be collected by writs of mandamus issued by the Superior Court of New Hanover County. Collection of assessments with interest and penalties may also be made by the city of proceedings to foreclose the lien of assessments as a lien for mortgages is, or may be, foreclosed under the laws of the State, and it shall be lawful to join in any bill for foreclosure any one or more lots or parcels of land, by whomsoever owned, if assessment for an improvement ordered by the same resolution after default in payment of any installment. The payment of such installment, together with interest and penalties due thereon, before the lot or parcel of land, against which the same is a lien, is sold, or such lien is foreclosed, shall bar the right of the city to sell land or to foreclose lien by reason of default.

Sec. 17.47. Assessment of cost of water mains and sewer extensions. If the resolution ordering the making of any improvement, or improvements, included a provision for any necessary extension of a water main or sewer or sewers, beyond the

limit of a street, or streets, at such time after the completion of such extension, or extensions, as, in the judgment of the city council, circumstances justify the assessment of the cost thereof, the council shall cause a preliminary assessment to be made and the procedure thereafter to be followed with respect to such assessment, and the force and effect thereof shall be as already prescribed for other assessments.

Sec. 17.48. Apportionment of assessments. In any case where one or more special assessments have been made, and property has been, or is about to be, subdivided, and it is desirable that the assessments be apportioned among the subdivisions of such property, the city council may, upon application by the owner or owners, apportion the assessments among the subdivisions. Thereafter, each subdivision shall be relieved of any part of the original assessment except the part apportioned to the subdivision, and the part of the original assessment apportioned to any subdivision shall be of the same force and effect as the original assessment.

Sec. 17.49. Effect of change of ownership on proceedings. No change of ownership of any property or interest therein after the passage of a resolution ordering the making of a local improvement shall affect subsequent proceedings, and the improvement may be completed and assessments made therefor as if there had been no change in ownership.

Sec. 17.50. Proceedings in rem. All proceedings for special assessments shall be proceedings in rem and no mistake or omission as to the name of any owner or persons interested in the lot or parcel of land affected thereby shall be regarded as a substantial mistake or omission.

Sec. 17.51. Council may hold in abeyance certain water and sewer assessments. (a) The city council may provide by resolution that assessments levied against abutting lots or parcels of land for water main improvements, or sanitary sewer improvements, when in its opinion such improvements may not presently be used by the owner or owners of the abutting lots or parcels of land, may be held in abeyance without the payment of any interest thereon until such time as the council shall determine that any such assessment shall be paid in accordance with the terms set out in the confirming resolution. A part of the assessments, levied for the improvements herein set out on a street or streets, or portion thereof, may be held in abeyance as herein provided without holding all of such assessments in abeyance.

(b) All statutes of limitations, and particularly the statute of limitations provided for in Section 160-93 of the General Statutes of the State are hereby suspended during the time that any assessment is held in abeyance without the payment of interest as provided in Subsection (a) of this Section. Such time shall not be a part of the time limited for the commencement of action for the enforcement of the payment of any such assessment, and such action may be brought at any time within ten years from the date of the adoption of a resolution by the council, determining that such assessment shall be paid in accordance with the original resolution confirming it.

(c) Nothing herein shall be construed to revive any right of action which has heretofore been barred by the statute of limitations.

Sec. 17.52. Assessment of abutting property outside the city. If any lots or parcels of land abutting any local improvements are located outside the city limits, the city council

may continue and delay the levy of assessments against such property until the city limits are extended to include such property, or the council may provide that no water or sewer service connections shall be made to such property, pending the annexation thereof, until all assessments thereon are paid. Upon annexation, if not paid prior thereto, the council may levy assessments for such local improvements against such property, and the procedure therefor shall be the same as provided in this Charter. Nothing contained in this Section shall be construed to prohibit or restrict the city council and a property owner from entering into an agreement for payments in lieu of assessments.

Sec. 17.53. Procedure for street improvement and assessment of property abutting but located without the city limits. In cases where the city limit line of the City of Wilmington runs along a street or road so that property on one side of the street or road lies within the corporate limits of the city, and the property on the other side of the street or -road lies outside of such corporate limits, and a majority of all such property owners, owning a majority of the property abutting such street or road present a petition meeting the requirements of Article 9, Chapter 160, of the General Statutes of North Carolina, requesting the improvement of such street or road, the city council may approve such petition, make the improvements requested, and assess the costs thereof against the property abutting both sides of such street or road in like manner, and to the same extent that it would be authorized to do if such street or road, and the property abutting thereon lay wholly within the corporate limits of the city.

Sec. 17.54. Intervals of at least ten years for permanent street improvements on particular property. Where permanent street improvements are made, the property bearing such assessments shall not be assessed for permanent street improvement again until after the expiration of ten years from the date of the last preceding assessment.

Sec. 17.55. Special procedure with regard to sidewalk and driveway repairs. (1) It shall be the duty of every property owner in the City of Wilmington to maintain the sidewalk and driveways abutting his property in good repair and in safe condition.

(2) The entire cost of the repair or reconstruction of sidewalks and driveways shall be paid by the abutting property owner.

(3) When a sidewalk or driveway is found to be in poor repair and of unsafe condition, the city manager, through the city engineer, shall notify the abutting owner thereof, and in such notice direct the owner to make the repair specified in the notice within thirty days after such notice has been personally served upon or sent by registered mail to such owner at his last known address, or published once in a newspaper of general circulation in the City of Wilmington if the owner's address is unknown. The owner, upon the receipt of such notice, may appeal to the city council from the direction of the city manager, or his agent; provided, that such appeal is taken within the thirty day period during which the repair is required to be made; and in event of appeal, no repair of the property shall be required until the city council has heard and acted upon the appeal. If the property owner shall fail to appeal to the city council or fail to make the required improvement within the time set out in the notice, the city manager shall report such fact to the city council, and the city council may, by resolution, require the repair to be made and the cost thereof assessed against the abutting property, and

such assessment shall constitute a lien upon the property superior to all other liens. Appeals to the Superior Court may be taken by any interested property owner within thirty days after the adoption of the resolution, but if no appeal is taken, the action of the city council shall be conclusive of the necessity of such repair.

If the cost of the improvement shall exceed one hundred dollars (\$100.00), assessment against abutting property shall be made and collected in the same manner that assessment would be made for local improvements as provided by Article 9, Chapter 160, of the General Statutes of North Carolina. If the cost of the repair shall be less than one hundred dollars (\$100.00), the assessment against abutting property shall be collected as taxes are collected and such assessments shall bear interest at the rate of six per cent per annum from the date of the assessment until paid.

Sec. 17.56. Grass plot and driveway maintenance. It shall be the responsibility of the abutting property owner to maintain any grass plot or driveway between the property line and the curb of a paved street.

Article XVIII. Franchises, etc.

Sec. 18.1. Franchises for use of streets, etc. Limitation on period for which granted, etc. No franchise for the use of streets, sidewalks, highways or other public property of the city shall be hereafter granted, extended or renewed for a longer period than thirty years.

Sec. 18.2. Same: Publication and reading of ordinance. No ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the city shall be passed until the full text thereof shall have been published for three weeks in a daily newspaper of the city, at the expense of the applicant applying for such franchise, before the second reading of such ordinance. All such ordinances shall be read at three separate regular monthly meetings of the city council and an "aye" and "nay" vote shall be taken and recorded on the second and third readings. The rules shall not be suspended so as to pass any such ordinance in a shorter time.

Sec. 18.3. Same: Ordinance to provide reasonable time for completion of work. No ordinance granting any franchise for the use of the streets, sidewalks, highways or other public property of the city shall be passed unless some reasonable time limit shall be provided therein for the commencement and completion of the work authorized.

Sec. 18.4. Same: Terms and conditions of grant. The city council shall have the right to fix such terms and conditions upon which a franchise for the use of the streets, sidewalks, highways or other public property of the city shall be granted.

Sec. 18.5. Franchise for construction, etc., of railroad on street conditioned on street maintenance. No franchise to construct and operate any railway upon any street in the city shall be granted except on the condition that the company owning and operating such railway shall keep up and maintain the street between and at least eighteen inches on each side of every line of such railway and all space between tracks where such railway is double tracked.

Sec. 18.6. Renewal of grants for construction or operation of utilities. The city council may, by ordinance and in the manner hereinbefore specified for granting franchises, renew any grant for the construction or operation of any utility not earlier

than two years prior to its expiration, upon such terms as may be conducive to the public interest.

Sec. 18.7. How franchises, etc., for occupation of streets construed. All franchises or privileges for the occupation of the streets shall be strictly construed in favor of the city and no franchise or privilege shall be held to have been granted unless granted in clear and unmistakable terms.

Sec. 18.8. Grant or renewal of franchise, etc., subject to certain rights of city. The grant of every franchise or privilege as well as the renewal of every franchise or privilege shall be subject to the right of the city, whether in terms reserved or not, to make all regulations which shall be necessary to secure in the most ample manner the safety, welfare and accommodation of the public, including among other things the right to enact and enforce ordinances to acquire proper and adequate extensions of service and to protect the public from danger and inconvenience in the operation of any work or business authorized by the grant of the franchise, and the right to make and enforce all such regulations as shall be necessary to secure adequate, sufficient and proper service and accommodations for the people, and to insure their comfort and convenience without discrimination.

Sec. 18.9. Revocable permits for laying spur tracks. Revocable permits for laying spur tracks across or along streets and public places to connect any steam, electric or other railroad with any warehouse, factory or other establishment needing switching facilities shall not be considered to be franchises, as that term is used in this Charter, but such permits may be granted and revoked by the city council from time to time, in accordance with such terms and conditions as may be prescribed by general ordinance.

Sec. 18.10. Grant for extension of public utilities. The city council may by ordinance grant to any individual, company or corporation operating a public utility or quasi-public utility the right to extend the appliances and service of such utility. All such extensions shall become a part of the aggregate property of the utility and shall be subject to all the obligations and reserved rights in favor of the city applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made, or any renewal thereof.

Sec. 18.11. Prohibition of exclusive or perpetual grants. No right to construct, maintain or operate any public utility in the City of Wilmington shall be exclusive or perpetual.

Article XIX. Parks, Public Buildings, etc.

Sec. 19.1. Vesting of title to parks, public buildings, etc. Except as otherwise provided in this Charter, the title to all parks, public buildings and other public property belonging to the city shall vest in the city.

Sec. 19.2. Control and custody of parks, public buildings, etc. All parks, public buildings and other public property belonging to the city shall be under the control and in the custody of the city council.

Sec. 19.3. Ordinances relative to regulation, use, etc., of parks. The city council shall have power to pass proper ordinances for the regulation and management of all parks within the corporate limits of the city and the use of such parks by the public.

Sec. 19.4. Appointment, term and compensation of officers, etc., responsible for parks, public buildings, etc. Such officials, servants and agents as shall be needed to care for, manage and look after the parks, public buildings and other public property belonging to the city shall be appointed and their terms of office and compensation fixed as elsewhere provided in this Charter.

Sec. 19.5. Control of trees on streets, etc. The city council shall have exclusive control of all trees upon the streets or public property of the city.

Article XX. Construction Requirements Generally.

Sec. 20.1. Inspection of buildings in course of erection or alteration. Subject to the provisions of this Charter, provision shall be made for the inspection, by the city manager or his deputies, of all buildings which may be in course of erection or alteration, according to the building ordinances of the city.

Sec. 20.2. Reports of condition of buildings in course of erection or alteration. Reports of the condition of buildings in the course of construction or alteration shall be made and kept by the city manager.

Sec. 20.3. Supervision and inspection of electrical work and appliances. All electrical works and appliances used and intended for the use of manufacturing, supplying or receiving electricity within the city either for light, heat, power, telephone, telegraph or signaling systems shall be supervised and inspected.

Sec. 20.4. Inspection, etc., of plumbing work, water fixtures and sewer connections. All plumbing work, water fixtures and sewer connections shall also be inspected and required to conform to the city ordinances.

Sec. 20.5. Authority of city council to adopt technical codes by reference. The city council be and it is hereby authorized to adopt building codes, gas codes, heating codes, electrical codes and fire prevention codes by reference rather than by printing the entire code into the ordinance adopting such code.

Article XXI. Police.

Sec. 21.1. Appointment of officials for exercise of police powers. The police powers of the City of Wilmington shall be exercised by such officials as may be appointed by the city manager of the city, subject to the approval of the city council.

Sec. 21.2. Execution of process by persons exercising police power. Persons exercising police power shall execute all processes directed to them by the mayor or the recorder or other lawful officer and shall have the same power in regard thereto as sheriffs and constables.

Sec. 21.3. Service of civil process by policemen. Policemen may serve all civil process or notices that may be directed to them by the mayor or by any court, under the same regulations and penalties as are or may be prescribed by law in the case of constables.

Sec. 21.4. Persons exercising police power to have power and authority of sheriffs and constables. Persons exercising the police powers shall have all the power and authority now or which may hereafter be vested in sheriffs and constables for the preservation of the peace of the city by suppressing disturbances and arresting offenders.

Sec. 21.5. Oath of members of force. The members of the police force shall take oath before the city manager for the faithful performance of their duties imposed by law and the ordinances of the city.

Sec. 21.6. Bonds of officers and members of force. Such officers and members of the police force as the city manager may designate shall give bond for the faithful accounting of all moneys that may come into their hands by virtue of their office.

Article XXII. Fire Protection.

Sec. 22.1. Council to provide for protection against fire. Authority is hereby conferred, subject to the provisions of this Charter, upon the city council, to make provisions for the protection of the lives and property of the people against loss or damage by fire.

Sec. 22.2. Destruction of houses to prevent spread of fire. In case of fire the city manager, or the person exercising the duties of chief of the fire department may order the blowing up, pulling down, or the destruction of any house in his judgment necessary for the prevention of the spread of fire and no person shall be held civilly or criminally liable for giving or obeying such order.

Sec. 22.3. Power of firemen to arrest during fires. Persons exercising the duties of firemen shall have power and are hereby authorized to make arrests during fires for interference with or obstruction of their operations.

Sec. 22.4. Interference with firemen, etc. Any interference with the operations of the firemen in the discharge of their duty or any of the apparatus of the fire department shall be unlawful.

Sec. 2. The purpose of this Act is to revise and reorganize the Charter of the City of Wilmington and to consolidate into it certain local acts concerning the property, affairs and government of the city. Unless expressly indicated to the contrary in the following Sections of this Act, it is not the intention to repeal but rather to re-enact with or without amendments and additions, as the ease may be, and to continue in force without interruption the provisions of such Charter so that all rights and liabilities that have accrued are preserved and may be enforced.

Sec. 3. This Act shall not be deemed to repeal, modify, nor in any manner to effect any of the following Acts, or amendments thereto, whether or not such Acts or amendments are not expressly set forth herein, except insofar as the same may be in conflict with the provisions of this Act:

- (1) Session Laws 1959, Chapter 89.
- (2) Session Laws 1959, Chapter 427.
- (3) Session Laws 1959, Chapter 648.
- (4) Session Laws 1959, Chapter 1044.
- (5) Session Laws 1959, Chapter 1047.
- (6) Session Laws 1959, Chapter 1048.
- (7) Session Laws 1957, Chapter 29.
- (8) Session Laws 1957, Chapter 460.
- (9) Session Laws 1957, Chapter 470.
- (10) Session Laws 1957, Chapter 602.
- (11) Session Laws 1957, Chapter 615.

- (12) Session Laws 1957, Chapter 1098
- (13) Session Laws 1955, Chapter 426.
- (14) Session Laws 1955, Chapter 1009
- (15) Session Laws 1955, Chapter 1356
- (16) Session Laws 1953, Chapter 69.
- (17) Session Laws 1953, Chapter 321.
- (18) Session Laws 1953, Chapter 553.
- (19) Session Laws 1953, Chapter 554.
- (20) Session Laws 1953, Chapter 581.
- (21) Session Laws 1953, Chapter 614.
- (22) Session Laws 1953, Chapter 676.
- (23) Session Laws 1951, Chapter 474.
- (24) Session Laws 1951, Chapter 880.
- (25) Session Laws 1951, Chapter 881.
- (26) Session Laws 1951, Chapter 906.
- (27) Session Laws 1951, Chapter 918.
- (28) Session Laws 1951, Chapter 973.
- (29) Session Laws 1951, Chapter 1124
- (30) Session Laws 1951, Chapter 1175
- (31) Session Laws 1951, Chapter 1225
- (32) Session Laws 1949, Chapter 395.
- (33) Session Laws 1949, Chapter 684.
- (34) Session Laws 1949, Chapter 687.
- (35) Session Laws 1949, Chapter 780.
- (36) Session Laws 1949, Chapter 1254
- (37) Session Laws 1947, Chapter 479.
- (38) Session Laws 1947, Chapter 691.
- (39) Session Laws 1947, Chapter 768.
- (40) Session Laws 1947, Chapter 883.
- (41) Session Laws 1945, Chapter 188.
- (42) Session Laws 1945, Chapter 374.
- (43) Session Laws 1945, Chapter 453.
- (44) Session Laws 1945, Chapter 456.
- (45) Session Laws 1945, Chapter 587.
- (46) Session Laws 1945, Chapter 602.
- (47) Session Laws 1945, Chapter 684.
- (48) Session Laws 1945, Chapter 841.
- (49) Session Laws 1945, Chapter 858.
- (50) Session Laws 1945, Chapter 921.
- (51) Session Laws.1943, Chapter 258.
- (52) Session Laws 1943, Chapter 544.
- (53) Session Laws 1943, Chapter 563.
- (54) Session Laws 1943, Chapter 618.
- (55) Session Laws 1943, Chapter 685,

- (56) Session Laws 1943, Chapter 708.
- (57) Public-Local Laws 1941, Chapter 476.
- (58) Public-Local Laws 1941, Chapter 223.
- (59) Public-Local Laws 1941, Chapter 364.
- (60) Private Laws 1941, Chapter 17.
- (61) Public-Local Laws 1941, Chapter 50.
- (62) Public-Local Laws 1941, Chapter 179.
- (63) Public-Local Laws 1941, Chapter 96.
- (64) Public-Local Laws 1941, Chapter 272.
- (65) Public-Local Laws 1941, Chapter 1.
- (66) Private Laws 1941, Chapter 10.
- (67) Public-Local Laws 1941, Chapter 441.
- (68) Public-Local Laws 1939, Chapter 224.
- (69) Public-Local Laws 1939, Chapter 268.
- (70) Public-Local Laws 1939, Chapter 324.
- (71) Public-Local Laws 1939, Chapter 470.
- (72) Public-Local Laws 1939, Chapter 513.
- (73) Public-Local Laws 1939, Chapter 520.
- (74) Public-Local Laws 1939, Chapter 521.
- (75) Public-Local Laws 1939, Chapter 616.
- (76) Public-Local Laws 1937, Chapter 8.
- (77) Public-Local Laws 1937, Chapter 70.
- (78) Public-Local Laws 1937, Chapter 447.
- (79) Public-Local Laws 1937, Chapter 471.
- (80) Public-Local Laws 1937, Chapter 483.
- (81) Private Laws 1937, Chapter 26.
- (82) Private Laws 1937, Chapter 31.
- (83) Public-Local Laws 1935, Chapter 316.
- (84) Public-Local Laws 1935, Chapter 310.
- (85) Public-Local Laws 1935, Chapter 170.
- (86) Public-Local Laws 1935, Chapter 73.
- (87) Public-Local Laws 1935, Chapter 510.
- (88) Public-Local Laws 1935, Chapter 352.
- (89) Public-Local Laws 1935, Chapter 42.
- (90) Public-Local Laws 1935, Chapter 503.
- (91) Public-Local Laws 1935, Chapter 407.
- (92) Public-Local Laws 1935, Chapter 389.
- (93) Public-Local Laws 1935, Chapter 390.
- (94) Private Laws 1935, Chapter 209.
- (95) Private Laws 1935, Chapter 97.
- (96) Private Laws 1935, Chapter 179.
- (97) Private Laws 1935, Chapter 246.
- (98) Private Laws 1935, Chapter 15.
- (99) Private Laws 1.935, Chapter 42.

- (100) Public-Local Laws 1933, Chapter 191.
- (101) Public Local Laws 1933, Chapter 94.
- (102) Private Laws 1933, Chapter 193.
- (103) Private Laws 1933, Chapter 167.
- (104) Private Laws 1931, Chapter 136.
- (105) Private Laws 1931, Chapter 180.
- (106) Private Laws 1931, Chapter 176.
- (107) Private Laws 1931, Chapter 17.
- (108) Private Laws 1931, Chapter 179.
- (109) Public-Local Laws 1929, Chapter 353.
- (110) Private Laws 1929, Chapter 136.
- (111) Private Laws 1927, Chapter 110.
- (112) Public-Local Laws 1925, Chapter 302.
- (113) Private Laws 1925, Chapter 118.
- (114) Private Laws 1925, Chapter 119.
- (115) Private Laws 1925, Chapter 176.
- (116) Private Laws 1925, Chapter 168.
- (117) Private Laws 1925, Chapter 9.
- (118) Public-Local Laws 1924, Chapter 135.
- (119) Public-Local Laws 1924, Chapter 190.
- (120) Private Laws 1924, Chapter 45.
- (121) Public-Local Laws 1923, Chapter 85.
- (122) Public-Local Laws 1923, Chapter 252.
- (123) Private Laws 1923, Chapter 224.
- (124) Private Laws 1923, Chapter 137.
- (125) Private Laws 1923, Chapter 189.
- (126) Private Laws 1923, Chapter 226.
- (127) Private Laws 1923, Chapter 214.
- (128) Private Laws 1923, Chapter 192.
- (129) Private Laws 1923, Chapter 118.
- (130) Private Laws 1923, Chapter 228.
- (131) Private Laws, Extra Session 1921, Chapter 4.
- (132) Private Laws, Extra Session 1921, Chapter 5.
- (133) Private Laws, Extra Session 1921, Chapter 73.
- (134) Private Laws, Extra Session 1921, Chapter 69.
- (135) Private Laws, Extra Session 1921, Chapter 148.
- (136) Private Laws 1921, Chapter 5.
- (137) Private Laws 1921, Chapter 2.
- (138) Private Laws 1921, Chapter 215.
- (139) Private Laws 1921, Chapter 157.
- (140) Private Laws 1921, Chapter 57.
- (141) Private Laws 1921, Chapter 209.
- (142) Private Laws 1921, Chapter 153.
- (143) Private Laws 1919, Chapter 141.

- (144) Private Laws 1919, Chapter 152.
- (145) Private Laws 1919, Chapter 154.
- (146) Private Laws 1919, Chapter 162.
- (147) Private Laws 1919, Chapter 157.
- (148) Private Laws 1919, Chapter 159.
- (149) Private Laws 1919, Chapter 164.
- (150) Private Laws 1919, Chapter 1.
- (151) Private Laws 1919, Chapter 149.
- (152) Private Laws 1915, Chapter 148.
- (153) Private Laws 1915, Chapter 27.
- (154) Public-Local Laws 1913, Chapter 316.
- 154a) Private Laws, Extra Session 1913, Chapter 2
- (155) Private Laws 1913, Chapter 473.
- (156) Private Laws 1913, Chapter 381.
- (157) Private Laws 1913, Chapter 355.
- (158) Private Laws 1911, Chapter 191.
- (159) Private Laws 1911, Chapter 461.
- (160) Private Laws 1911, Chapter 169.
- (161) Private Laws 1911, Chapter 184.
- (162) Private Laws 1911, Chapter 75.
- (163) Private Laws 1911, Chapter 257.
- (164) Private Laws 1909, Chapter 251.
- (165) Private Laws 1909, Chapter 283.
- (166) Private Laws, Extra Session 1908, Chapter 13
- (167) Private Laws 1907, Chapter 244.
- (168) Private Laws 1907, Chapter 241.
- (169) Private Laws 1907, Chapter 138.
- (170) Private Laws 1907, Chapter 38.
- (171) Private Laws 1905, Chapter 9.
- (172) Private Laws 1905, Chapter 4.
- (173) Private Laws 1905, Chapter 8.
- (174) Private Laws 1905, Chapter 6.
- (175) Private Laws 1905, Chapter 7.
- (176) Private Laws 1903, Chapter 310.
- (177) Private Laws 1901, Chapter 403.
- (178) Private Laws 1901, Chapter 367.
- (179) Private Laws 1897, Chapter 155.
- (180) Private Laws 1893, Chapter 382.
- (181) Private Laws 1891, Chapter 5.
- (182) Private Laws 1891, Chapter 25.
- (183) Private Laws 1891, Chapter 242.
- (184) Private Laws 1889, Chapter 196.
- (185) Private Laws 1885, Chapter 41.
- (186) Private Laws 1885, Chapter 75.

- (187) Private Laws 1885, Chapter 77.
- (188) Private Laws 1880, Chapter 6.
- (189) Private Laws 1876-77, Chapter 17.
- (190) Private Laws 1876-77, Chapter 18.
- (191) Private Laws 1874-75, Chapter 43.
- (192) Private Laws 1874-75, Chapter 101.
- (193) Private Laws 1874-75, Chapter 134.
- (194) Private Laws 1874-75, Chapter 148.

Sec. 4. (a) All existing city ordinances and resolutions, and all existing rules and regulations of city departments or agencies, not inconsistent with the provisions of this Act shall continue in full force and effect until repealed, modified, or amended.

(b) All contracts, orders, leases, bonds, and other obligations or instruments entered into by the city or for its benefits prior to the effective date of this Act shall continue in full force and effect. Public improvements initiated prior to such date may be carried to completion in accordance with existing laws or with the provisions of this Act.

(c) No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this Act by or against or before the city or any of its departments or agencies shall be abated or otherwise affected by the adoption of this Act.

(d) Nothing in this Act, except as otherwise specifically provided, shall impair the rights of those who are city officers or employees upon its effective date. All persons then holding city offices or positions shall continue therein and in the performance of their duties until provision shall have been made for the performance of such duties or the discontinuance of their offices or positions.

(e) Any office, position, department, or agency provided for in this Act with a name or with powers and duties the same or substantially the same as those heretofore existing shall be deemed to be a continuation thereof. Any provision of any law, ordinance, resolution, regulation, rule, contract, grant, or other document relating to such a formerly existing office, position, department, or agency provided for in this Act with a name or with powers and duties the same or substantially the same as those heretofore existing, so far as not inconsistent with this Act, shall apply to those provided for in this Act.

(f) All extensions and purported extensions of the corporate limits of the City of Wilmington are hereby declared to be valid.

(g) All proceedings of the City Council of the City of Wilmington relating to local improvements, all work carried out according to such proceedings, and all assessments based thereon, are hereby declared to be valid.

Sec. 5. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 6. General Repeal. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 7. This Act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 20th day of June, 1961.