

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 664
SENATE BILL 301

AN ACT TO CONTINUE THE INCORPORATION OF THE TOWN OF GARNER
AND TO REVISE, AMEND AND CONSOLIDATE THE STATUTES THAT
CONSTITUTE THE CHARTER OF THE TOWN OF GARNER.

The General Assembly of North Carolina do enact:

Section 1. Corporate name; general powers. The inhabitants of the Town of Garner, North Carolina, within the boundaries as established in Section 3 of this Charter, or as hereafter established in the manner provided by law, shall be and continue, as they have been a body politic and corporate, and the corporation shall bear the name and style of the "Town of Garner", and under that name shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property within or without its boundaries for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, lease or condemnation and may sell, lease, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of North Carolina or restricted by this Charter, the Town of Garner shall have and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever. The following shall be deemed to be a part of the powers conferred upon the Town of Garner by this Section:

(1) To levy, assess and collect taxes and to borrow money within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred.

(2) To furnish all local public services; to purchase, hire, construct, own, maintain and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof.

(3) To make local public improvements and to acquire, by condemnation or otherwise, property within or without its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvements, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(4) To issue and sell bonds for said town, for any lawful purpose, as provided in the general law relating to municipal corporations.

(5) To organize and administer public libraries;

(6) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

Except as otherwise provided in this Act, the board of aldermen shall have authority to determine by whom and in what manner the powers granted by this Section shall be exercised.

Sec. 2. Enumerated powers not exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the Town of Garner shall have, and may exercise, all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate. All powers of the town, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, or the general laws relating to municipal corporations, or, if not prescribed therein, then in the manner provided by ordinance or resolution of the board of aldermen.

Sec. 3. Corporate limits. The corporate limits of the Town of Garner shall be as follows:

BEGINNING at a point in the eastern line of the town limits of Garner, North Carolina, said point being located 68.5 feet at right angle to and in a southern direction from the center line of the North Carolina Railroad and also being South 60 degrees 51 minutes East 3960 feet from the center of the Old Town Well near the intersection of Rand Mill Road and Main Street; thence for a first call South 29 degrees 09 minutes West 1320 feet to a point; thence North 60 degrees 51 minutes West 1560 feet to a point; thence South 29 degrees 09 minutes West 1650 feet to a point; thence North 60 degrees 51 minutes West 1987.34 feet to a point in the East line of W. A. Weston's original Whitaker tract of land; thence South 04 degrees 59 minutes West 297.42 feet to said W. A. Weston and M. M. Peacock land corner; thence along the original dividing line between W. A. Weston and M. M. Peacock lands North 85 degrees 33 minutes West 645.32 feet to the eastern right of way line of N. C. Highway No. 50; thence along the eastern right of way line of N. C. Highway No. 50, South 24 degrees 33 minutes East 435.54 feet to a point; thence North 86 degrees 18 minutes West 3091 feet to a point, the southwest corner of Meadowbrook Park Development; thence South 04 degrees 16 minutes West 187.1 feet to a point, a southeast corner of Forest Hills Development; thence along the southern line of Forest Hills Development North 86 degrees 09 minutes West 2284.28 feet to a point in Reedy Branch; thence continuing along the southern line of Forest Hills Development North 85 degrees 56 minutes West 1350.6 feet to a point in the northwest right of way line of Vandora Springs Road; thence along the said northwest right of way line of Vandora Springs Road the following courses: North 42 degrees 11 minutes East 1393.3 feet, North 38 degrees 45 minutes East 208.73 feet, North 33 degrees 23 minutes East 157.74 feet, North 28 degrees 30 minutes East 150.53 feet, North 24 degrees 42 minutes East 453 feet, North 25 degrees 02 minutes East 1956.6 feet, North 24 degrees 42 minutes East 330 feet, North 25 degrees 21 minutes East 102.5 feet, North 26 degrees 11 minutes East 100 feet, North 32 degrees 00 minutes East 100 feet, North 36 degrees 00 minutes East 68.6 feet to a point marking the southeast corner of Sunset Acres Development; thence along

the property lines of Sunset Acres Development the following courses: South 79 degrees 40 minutes West 222.2 feet to a point, North 11 degrees 00 minutes West 292.3 feet; North 83 degrees 45 minutes West 632 feet; North 11 degrees 30 minutes West 1115 feet; South 85 degrees 00 minutes West 632 feet, South 11 degrees 00 minutes East 434.3 feet, South 85 degrees 00 minutes East 814 feet to a point, the southeast corner of Victoria B. Williams land in the northern line of K. R. Benfield land, now Sunset Acres; thence North 10 degrees 45 minutes West 198.65 feet along the eastern line of Victoria B. Williams land to a point in the northern right of way line of U. S. Highway No. 70; thence along the northern right of way line of U. S. Highway No. 70, South 52 degrees 54 minutes East 387.4 feet to the intersection of the northern right of way line of Vandora Springs Road, being 60 feet wide; thence along the said right of way line of Vandora Springs Road the following courses: North 70 degrees 59 minutes East 50 feet, North 81 degrees 18 minutes East 50 feet South 87 degrees 04 minutes East 396.6 feet to the intersection of the western right of way line of Aversboro Road, being 60 feet wide; thence along the said western right of way line of Aversboro Road North 08 degrees 45 minutes West 271.25 feet to the southern line of a lot owned by the Town of Garner; thence North 85 degrees 00 minutes West 120 feet to a corner of said Town of Garner lot; thence North 10 degrees 45 minutes West 125 feet to a corner of Town of Garner lot; thence South 85 degrees 00 minutes East 120 feet to a point where the Town of Garner lot line intersects with the said western right of way line of Aversboro Road; thence along the western right of way line of Aversboro Road North 07 degrees 40 minutes West 720.9 feet to a point in the northern right of way line of U. S. Highway No. 70-A or Garner Road; thence along the said right of way of U. S. No. 70-A or Garner Road the following courses: South 27 degrees 33 minutes East 100 feet, South 37 degrees 26 minutes East 100 feet, South 48 degrees 19 minutes East 100 feet, South 57 degrees 31 minutes East 100 feet, South 61 degrees 00 minutes East 775.45 feet to a point in the eastern line of R. B. Kelly land; thence along the eastern line of R. B. Kelly land North 06 degrees 20 minutes East 1256.96 feet to a point; thence South 60 degrees 51 minutes East 953 feet to a point in the western line of W. R. Rand land known as Schoolacres; thence along the western line of said W. R. Rand land North 06 degrees 47 minutes East 590.75 feet to a point; thence along Mrs. D. D. Green and W. R. Rand land line North 3 degrees 50 minutes East 593.35 feet to a point marking the northeast corner of the said W. R. Rand land known as Schoolacres; thence along the northern line of Schoolacres, South 85 degrees 25 minutes East 2477.96 feet to a point the northeast corner of Schoolacres land; thence along the eastern line of said Schoolacres land South 02 degrees 38 minutes West 847.36 feet to a point; runs thence South 01 degrees 43 minutes West 1531.67 feet to the point of intersection with the original northern Town of Garner limit line; thence along the original northern Town of Garner limit line South 60 degrees 51 minutes East 5079.05 feet to a point; thence South 29 degrees 09 minutes West 1320 feet to the point and place of BEGINNING, and being all of the property within the corporate limits of the Town of Garner according to a map compiled by Sam Powell, Registered Surveyor, dated May 10, 1961.

Sec. 4. Creation, salary and compensation of Mayor and Board of Aldermen. Except as otherwise provided in this Charter, all powers of the town shall be vested in a

board of aldermen of five (5) members and a mayor nominated and elected front the town at large in the manner hereinafter provided. The term of office of the mayor and the board of aldermen shall be for two (2) years and until their successors are elected and qualified, and shall begin on the first day of July next following their election. If a vacancy occurs in the office of mayor or alderman it shall be filled for the remainder of the unexpired term by a majority vote of the remaining members of the board of aldermen. The mayor and each member of the board of aldermen shall receive such compensation and fees as may be allowed him by the board of aldermen and as provided for in the general laws, not exceeding fifteen dollars (\$15.00) for each regular and special meeting of the board of aldermen. The mayor and members of the board of aldermen shall be qualified electors of the town. When the mayor or a member of the board of aldermen cease to possess any of the qualifications specified in this Section, or is convicted of felony while in office, he shall immediately forfeit his office.

Sec. 5. Meeting of the Board of Aldermen. At 7:30 o'clock P. M. on the first Monday of July following a regular municipal election the board of aldermen shall meet at the usual place for holding its meetings and the newly elected members shall assume the duties of office. Thereafter the board of aldermen shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once each month. Special meetings shall be called by the clerk upon the written request of the mayor or two members of the board of aldermen. Any such notice shall state the subject to be considered at the special meeting and no other subject shall be there considered. All meetings of the board of aldermen and of committees thereof shall be open to the public, and the rules of the board of aldermen shall provide that citizens of the town shall have a reasonable opportunity to be heard at such meetings in regard to any matter considered thereat.

Sec. 6. Mayor and Mayor Pro Tem. At its first meeting in the month of July following a regular municipal election the board of aldermen shall choose one of its members as vice chairman, who shall act as mayor pro tem. The mayor shall preside at meetings of the board of aldermen and shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by the general laws of North Carolina, by this Charter and the ordinances of the town. He shall be recognized as the head of the town government for all ceremonial purposes, by the courts for serving civil processes, and by the Governor for purposes of military law. In time of public danger or emergency the mayor shall, if so authorized and directed by vote of the board of aldermen, take command of the police, maintain order and enforce the law. In case of the absence or disability of the mayor, the mayor pro tem shall act as mayor during the continuance of the absence or disability.

Sec. 7. Quorum. A majority of the members elected to the board of aldermen shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the board of aldermen shall be necessary to adopt any ordinances, resolutions, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present. No member

shall be excused from voting except on matters involving the consideration of his own official conduct or when his financial interests are involved.

Sec. 8. Introduction and passage of ordinances and resolutions. Ordinances and resolutions introduced in the board of aldermen shall be in written or printed form and shall immediately be recorded by the clerk to the board in the official minutes of the meeting. All ordinances, except budget ordinances and ordinances codifying or rearranging existing ordinances or enacting a code of ordinances, shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title. Budget ordinances shall be confined to the subject of budget matters as provided in the general law of fiscal control. The yeas and nays shall be taken upon the passage of all ordinances and resolutions and entered upon the journal of the proceedings of the board of aldermen. The enacting clause of all ordinances shall be: "Be it ordained by the Town of Garner".

Sec. 9. When ordinances and resolutions take effect; emergency measures. Budget ordinances, bond ordinances, ordinances and resolutions pertaining to local improvements and assessments, ordinances and resolutions providing for or directing any investigation of town affairs, resolutions requesting information from administrative officers or directing administrative action, and emergency measures shall take effect at the time indicated therein. Except as otherwise prescribed in this Charter, all other ordinances and resolutions passed by the board of aldermen shall take effect at the time indicated therein, but not less than five (5) days from the date of their passage. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, property, health or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least four members of the board of aldermen shall be required to pass any ordinance or resolution as an emergency measure. No measure making or amending a grant, renewal or extension of a franchise or other special privilege shall ever be passed as an emergency measure. No situation shall be declared an emergency by the board of aldermen except as defined in this Section, and it is the intention of this Charter that such definition shall be strictly construed by the courts.

Sec. 10. Authentication and publication of ordinances and resolutions. Upon its final passage each ordinance or resolution shall be authenticated by the signature of the mayor and the town clerk and shall be recorded in a book kept for that purpose. Immediately after final passage, all ordinances shall be posted at the Town Hall and two other public places in said town for five (5) days.

Sec. 11. Municipal elections. The regular election for the choice of mayor and members of the board of aldermen shall be held on Tuesday following the first Monday in May in odd-numbered years. The board of aldermen may by resolution order a special election, fix the time for holding the same, and provide all means for holding such special election.

Sec. 12. Regulations of elections. All elections shall be conducted in accordance with the general State laws relating to municipal elections, except as otherwise provided herein.

Sec. 13. Nominations. Any qualified elector of the town of Garner may file as a candidate for mayor or commissioner by formal notice of candidacy in substantially the following form:

"I, _____, hereby give notice that I am a candidate for election to the office of _____, to be voted upon at the election to be held on _____, and I hereby request that my name be printed on the official ballot for such office; I also certify that I am a resident and qualified elector of the Town of Garner, residing at _____ in said town.

Candidate

Date

WITNESS:

_____."

The notice of candidacy prescribed above must be filed with the town clerk not earlier than sixty (60) days nor later than twenty (20) days before the date of election. The town clerk shall preserve all such notices until expiration of the term of office for which the candidate filed. Any candidate may withdraw his notice of candidacy not later than the last day for filing by submitting written notice of withdrawal with the town clerk. No filing fee shall be required of candidates for office.

Sec. 14. Ballots. The names of candidates nominated for mayor and board of aldermen in accordance with the provisions of this Charter, except such as may have withdrawn, died or become ineligible, shall be printed on the official ballots, without any designation of political party. Voting machines meeting the requirements of the board of elections may be used in lieu of ballots.

Sec. 15. Election of Mayor and Board of Aldermen. All members of the board of aldermen shall be elected at large. Every voter shall be entitled to vote for one candidate for mayor and for five (5) candidates to be elected to the board of aldermen. All candidates up to the number to be elected, who receive the largest number of votes shall be declared elected.

Sec. 16. Judge of Recorder's Court. The Judge of the Recorder's Court of the Town of Garner shall be nominated and elected under the same rules and provisions for the office of mayor of the Town of Garner. Except as provided in this Section, the laws relating to the Recorder's Court of the Town of Garner are not altered by this Act.

Sec. 17. Appointment of Officers and Employees. The board of aldermen may appoint a town clerk, a treasurer, a tax collector, an accountant, a town attorney, a chief of police, a fire chief, a town manager, and such other officers and employees as may be necessary, none of whom need be a resident of the town at the time of appointment; provided, that the board of aldermen may appoint one person to fill any two or more such positions. Such employees or officers shall serve at the pleasure of the board of aldermen, and shall perform such duties as may be prescribed by the board of aldermen. The board of aldermen shall fix all salaries, prescribe bonds and require such oaths as they may deem necessary.

Sec. 18. Duties of Town Clerk. The town clerk shall keep the records of the board of aldermen and perform such other duties as may be required by law or by the board of aldermen, or by the town manager.

Sec. 19. Duties of Town Attorney. The town attorney shall be an attorney at law who is licensed to practice law in the State of North Carolina, and who shall be the chief legal advisor of and attorney for the Town of Garner in matters relating to official business of the town. He shall attend meetings of the board and give advice when requested to the mayor, board of aldermen or town manager; perform such other duties as shall be required of him by ordinance or resolution of the board of aldermen and duties imposed upon him as the chief legal officer by the general law.

Sec. 20. Duties of Town Accountant. The town accountant shall prepare the budget in accordance with the general local government laws of North Carolina relating to the preparation of municipal budgets. He shall have authority and shall be required: To maintain accounting control over the finances of the town government, for which purpose he is empowered to operate a set of general accounts embracing all the financial transactions of the town, and such subsidiary accounts and cost records as may be required by ordinance or by the board of aldermen for purposes of administrative direction and financial control; to prescribe the forms of receipts, vouchers, bills, or claims to be filed by all departments and agencies of the town government; to examine and approve all contracts, orders and other documents by which the town incurs financial obligations, having ascertained before approval that moneys have been duly appropriated and allotted to meet such obligations and will become available when the obligations have become due and payable; to audit and approve all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the town government and to determine the regularity, legality, and correctness of such claims, demands, or charges; to make monthly reports on all receipts and expenditures of the town government to the mayor and board of aldermen and to make monthly reports on funds, appropriations, allotments, encumbrances and authorized payments to the mayor, the board of aldermen, and the head of the department or agency directly concerned; to inspect and audit any accounts or records of financial transactions which may be maintained by any department or agency of the town government apart from or subsidiary to the general accounts; and to perform such other duties pertaining to the financial records of the town government as the board of aldermen may require by ordinance.

Sec. 21. Duties of Town Tax Collector. The tax collector shall collect all taxes, licenses, fees, and other moneys belonging to the town government, subject to the provisions of this Charter and ordinances enacted thereunder, and he shall diligently comply with and enforce the general laws of North Carolina relating to the collection, sale and foreclosure of taxes by municipalities. It shall be the duty of the tax collector to deposit daily in the town depository all money belonging to the town.

Sec. 22. Duties of Town Treasurer. The treasurer, if any, shall have custody of and shall disburse all moneys belonging to the town government subject to the provisions of this Charter and ordinances enacted thereunder; shall have custody of all investments and invested funds of the town or in possession of the town in a fiduciary

capacity, and shall keep a record of such investments, and shall have custody of all bonds and certificates of town indebtedness including such bonds and certificates unissued or cancelled, and the receipt and delivery of town bonds and certificates for transfer, registration, or exchange.

Sec. 23. Town Manager; appointment, duties. The board of aldermen, in its discretion, is authorized and empowered to appoint a town manager who shall hold office at the will and pleasure of the board of aldermen, and who shall receive such compensation as it shall fix. He shall be the administrative head of the town government and responsible for the administration of all departments of the town government. He shall be appointed with regard to merit only and he need not be a resident of the Town of Garner when appointed. His specific duties shall include the following:

- (1) Be the administrative head of the town government;
- (2) See that within the Town of Garner the laws of the State, and the ordinances, resolutions, and regulations of the board of aldermen are faithfully executed;
- (3) Attend all meetings of the board of aldermen and recommend for adoption such measures as he may deem expedient;
- (4) Make reports to the board of aldermen from time to time upon the affairs of the town and keep the board of aldermen fully advised of the town's financial condition and its future financial needs;
- (5) Appoint and remove all employees of the town, not including, however, the town attorney, the judge of the Recorder's Court, and the prosecuting attorney of said court, but said officers and employees shall continue to be appointed by the board of aldermen, or elected as by law provided;
- (6) Report to the board of aldermen each appointment or removal of an officer or employee, each such report to be made at the next meeting thereof following any such appointment or removal;
- (7) Perform such other duties as may be lawfully delegated to him by the board of aldermen.

Sec. 24. Custody of money. All moneys received by any department or agency of the town for or in connection with the business of the town government shall be paid promptly into the town depository. Such institution shall be designated by the board of aldermen in accordance with such regulations and subject to such requirements as to security for deposits and interest thereon as may be established by ordinance. All interest on moneys belonging to the town shall accrue to the benefit of the town government. All moneys belonging to the town government shall be disbursed only on vouchers signed by the town clerk or treasurer.

Sec. 25. Issuance of bonds. The town may issue bonds for the purpose and in the manner prescribed by the general laws of North Carolina for the issuance of bonds by municipalities.

Sec. 26. Purchase procedure. Before making any purchase for supplies, materials, equipment, opportunity shall be given for competition, under such rules and regulations, and with such exceptions as the board of aldermen may prescribe by ordinance. All expenditures for supplies, materials, equipment, involving more than two

thousand dollars (\$2,000.00) shall be made on a written contract, and such contract shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinances.

Sec. 27. Contracts for town improvements. Any town improvement costing more than thirty-five hundred dollars (\$3500.00) shall be executed by contract except where such improvement is authorized by the board of aldermen to be executed directly by a town department in conformity with detailed plans, specifications and estimates. All such contracts for more than thirty-five hundred dollars (\$3500.00) shall be awarded to the lowest responsible bidder after such public notice and competition as may be prescribed by ordinance, provided the board of aldermen shall have the power to reject all bids and advertise again. Alterations in any contract may be made when authorized by the board of aldermen.

Sec. 28. Independent audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all accounts of the town government by qualified public accountants, selected by the board of aldermen, who have no personal interest directly or indirectly in the financial affairs of the town government or of any of its officers. The results of this audit shall be published immediately upon completion.

Sec. 29. Publicity of records. All records and accounts of every office and department of the town shall be open to inspection by any citizen or by any representative of the press at all reasonable times and under reasonable regulations established by the board of aldermen, except records and documents the disclosure of which would tend to defeat the lawful purpose which they are intended to accomplish.

Sec. 30. Personal interest. Neither the mayor nor any member of the board of aldermen, nor any officer or employee of the town shall have a financial interest, direct or indirect, in any contract with the town, or be financially interested, directly or indirectly, in the sale to the town of any land, materials, supplies or services, except on behalf of the town as an officer or employee. Any willful violation of this Section shall constitute malfeasance in office and any officer or employee of the town found guilty thereof shall thereby forfeit his office or position. Any violation of this Section with the knowledge express or implied of the person or corporation contracting with the town shall render the contract voidable by the board of aldermen.

Sec. 31. Oath of office. Every officer of the town shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation to be filed and kept in the office of the town clerk:

"I solemnly swear (or affirm) that I will support the Constitution and will obey the laws of the United States and of the State of North Carolina, that I will, in all respects, observe the provisions of the Charter and ordinances of the Town of Garner and will faithfully discharge the duties of the office of _____."

Sec. 32. Continuance of contracts. All contracts entered into by the town, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws of charter provisions existing at the time this Charter takes effect may be carried to

completion in accordance with the provisions of such existing laws and charter provisions.

Sec. 33. Saving clause. If any part of this Charter shall be declared invalid by a court of competent jurisdiction, such judgment shall not invalidate the remainder of the Charter. The provisions of this Charter shall supersede all laws and ordinances not consistent herewith, insofar as the Town of Garner is affected thereby.

Sec. 34. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 35. This Act shall be in full force and effect from and after its ratification, provided the mayor and board of aldermen in office at the time this Charter takes effect shall continue in office until their successors are elected and qualified.

In the General Assembly read three times and ratified, this the 6th day of June, 1961.