

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 92
HOUSE BILL 188

AN ACT TO REVISE, REORGANIZE AND REWRITE THE CHARTER OF THE
CITY OF KINSTON.

The General Assembly of North Carolina do enact:

Section 1. The Charter of the City of Kinston is hereby revised, reorganized and rewritten to read as follows:

CHAPTER I. ORGANIZATION AND POWERS

ARTICLE 1. INCORPORATION; CORPORATE POWERS AND THEIR EXERCISE

Section 1-1. The inhabitants of the City of Kinston, in the County of Lenoir, shall continue to be and constitute a body politic and corporate, with a corporate seal, and shall have perpetual succession under the name and style of "City of Kinston," and as such shall have all franchises, powers, property and rights of property which now belong to the corporation under that or any other name or names, and shall be subject to all its present liabilities; and, under this name shall have, acting through its city council, among other things, the following authority and power:

- (a) To acquire and hold such estates as may be devised, bequeathed, sold, purchased or in any manner conveyed to it voluntarily or by condemnation, both within and without its city limits;
- (b) To manage, invest, sell, lease or dispose of such estates;
- (c) To contract or to be contracted with;
- (d) To sue or to be sued;
- (e) To levy, assess and collect all taxes and special assessments authorized herein and by the laws of North Carolina;
- (f) To purchase, hire, construct, own, maintain and operate or lease local public utilities and to furnish all local public services both within and without the city, and to grant public utility franchise and regulate the exercise thereof;
- (g) To provide for, construct, regulate and maintain all things in the nature of public works, buildings and local improvements;
- (h) To condemn land required for any governmental purpose both within and without the corporate limits and in such excess as may be required or needed to protect or preserve same under the same procedure as provided in the Chapter Eminent Domain, Article 2, General Statutes of North Carolina, and all amendments thereto, or at any other place therein provided;

(i) To issue and sell bonds on the security of any such excess property, public utility or the revenues therefrom;

(j) To adopt and enforce within its limits and within one mile thereof police, sanitary and other police power regulations not inconsistent with the General Statutes of North Carolina and all amendments thereto;

(k) To, except as otherwise provided herein, through its City Council determine by whom and in what manner the powers granted by this Section shall be exercised;

(l) To borrow money within the limits prescribed by law;

(m) To appropriate the money of the City for all lawful purposes, including the appropriation of such sums as in the discretion of the City Council may be deemed necessary or proper for the advertisement of the City or for the promotion of any movement which in their discretion will redound to the welfare of the City and its citizens.

Sec. 1-2. Exercise of Power.

All powers, functions, rights, privileges and immunities of the City, its officers, agencies, or employees, shall be carried into execution as provided by this Charter or, if this Charter makes no provision, as provided by ordinance or resolution of the City Council, and as provided by the general laws of North Carolina pertaining to municipalities and their officers, agencies, and employees.

Sec. 1-3. The enumeration of particular powers, rights, privileges, franchises and immunities by this Charter, or those by implication necessary or appropriate to the exercise thereof, shall not be held or deemed to be exclusive but shall be in addition to those which under the Constitution of North Carolina would be lawful to specifically enumerate herein and such are hereby granted together with all powers, privileges, franchises and immunities now conferred upon municipal corporations by the General Statutes of North Carolina and all future amendments thereto.

CHAPTER II. CITY BOUNDARIES

ARTICLE 1. EXISTING CITY BOUNDARIES

Section 2-1. Existing Boundaries.

The corporate limits of the City, until changed as by law provided, shall be as follows:

CORPORATE BOUNDARIES

(a) Beginning at a stake in the north bank of Neuse River, at a point that bears due south (magnetic 1952) from the intersection of the center line of Wake Avenue (in the Spence Subdivision) and the run of a branch that crosses Wake Avenue, a short distance southwardly from West Vernon Avenue, and runs thence from this beginning point due north (magnetic 1952) about 1220 feet to the intersection of the center line of Wake Avenue and the run of the branch which crosses said Wake Avenue;

(b) Thence northwestwardly up and along the run of said branch about 500 feet to its intersection with the southern boundary line of the right-of-way of U. S. Highway No. 70;

(c) Thence eastwardly along and with the southern boundary line of the right-of-way of U. S. Highway No. 70 to the point where it intersects the extension southwardly of a line drawn 230 feet westwardly (measured at right angles) from and parallel with the center line of Hardee Road;

(d) Thence northwardly along and with a line drawn 230 feet westwardly (measured at right angles) from and parallel with the center line of Hardee Road and the extension thereof northwardly to the point where such line intersects the westward extension of another line drawn 230 feet northwardly (measured at right angles) from and parallel with the center line of Sunset Drive;

(e) Thence eastwardly along and with a line parallel with and 230 feet northwardly (measured at right angles) from the center line of Sunset Drive and the same direction continued, crossing the Country Club Road, to the run of Catfish Branch, a total distance of about 2250 feet;

(f) Thence down and with the run of Catfish Branch to its intersection with a ditch which separates the Perry Property from the Country Club Property;

(g) Thence in a northern direction along and with the run of said ditch, the dividing line between the Country Club Property and the Perry Property, to the northeastern corner of the Country Club Property;

(h) Thence westwardly with the northern boundary line of the Country Club Property and along a ditch to the eastern boundary line of Lot No. 21, Section K, Club Pines Subdivision;

(i) Thence northwardly with the eastern boundary line of said Lot No. 21 to the northeastern corner of said lot in the southern boundary line of Stockton Road;

(j) Thence a direct line to a stake in the northern boundary line of Stockton Road, said stake being located 150 feet westwardly from the northwest corner of the intersection of Stockton Road and Dorcas Terrace;

(k) Thence northwardly 150 feet distant from (measured at a right angle) and parallel with Dorcas Terrace to the point where such course intersects a line drawn 120 feet (measured at a right angle) southwestwardly from Woodview Road;

(l) Thence northwestwardly 120 feet distant from (measured at a right angle) to the dividing line between the lands of the W. T. Hines heirs at law and Perry Park, Incorporated;

(m) Thence northwestwardly along said dividing line and such course continued to its intersection with the northern or northeastern boundary line of Jones Road;

(n) Thence southeastwardly along and with the northern boundary line of Jones Road until such boundary line intersects a line drawn 180 feet eastwardly from and parallel with the center line of Carey Road;

(o) Thence southwardly along a line drawn 180 feet eastwardly from and parallel with the center line of Carey Road to the intersection of such line with a line drawn 140 feet northwardly from and parallel with the northern boundary line of Parrott Avenue;

(p) Thence eastwardly along a line 140 feet northwardly from and parallel with the northern boundary line of Parrott Avenue until that line intersects another line drawn 130 feet eastwardly from and parallel with the center line of Heritage Street;

(q) Thence southwardly along a line 130 feet eastwardly from and parallel with the center line of Heritage Street 220 feet to a stake in the northern boundary line of the city limits as fixed by the annexation ordinance effective April 8, 1955, and of record in Minute Book I, pages 31 to 34, inclusive, office of the City Clerk of the City of Kinston, and then northeastwardly along the line of the city limits so fixed to the run of Adkin Branch;

(r) Thence up and with the run of Adkin Branch about one-eighth mile to the mouth of the branch which empties into Adkin Branch from the northeast and which leads from the ditch which separates the "Greenmead" Subdivision from the lands of Horace Taylor;

(s) Thence northeastwardly along and with the run of said branch to the point where it intersects the center line of the so-called Old Snow Hill Road, a corner of the Greenmead Subdivision;

(t) Thence along and with the northwestern boundary of the Greenmead Subdivision the courses and distances as follows: North 52 degrees 58 minutes East 296.4 feet, North 63 degrees 21 minutes East 225 feet, North 69 degrees 53 minutes East 167 feet, North 62 degrees 42 minutes East 149 feet, North 76 degrees 22 minutes East 200 feet, North 56 degrees East 351 feet, North 49 1/2 degrees East 322 feet, North 34 1/2 degrees East 185 feet, North 75 degrees 31 minutes East 535 feet, North 68 degrees 15 minutes East 654 feet, North 17 degrees 45 minutes West 234 feet to a stake, a corner of Lot No. 1 in Block "P" in the Greenmead Subdivision;

(u) Thence with the line of said Lot No. 1 about North 86 degrees East about 125 feet to a stake, the northernmost corner of said lot;

(v) Thence continuing with the line of Block "P" North 15 degrees East 526 feet to a stake in the center line of the paved highway, sometimes called the Cunningham Road;

(w) Thence continuing on the same course to the northern boundary line of the right-of-way of said Cunningham Road;

(x) Thence S. 61 1/2 degrees East along and with said boundary line 831 feet to a stake;

(y) Thence South 10 1/2 degrees West to a stake in the center line of said highway, a corner of said Greenmead Subdivision and also a corner of the Faulkner Property;

(z) Thence with the Greenmead and Faulkner line South 10 1/2 degrees West 438 feet and South 52 degrees East 497.5 feet to a stake in the line of the W. 1. Herring Property.

(aa) Thence with the Herring-Greenmead line South 36 degrees West 2680 feet and South 83 degrees West 217.7 feet to a stake, a common corner of said Herring and Steven R. Gooding in the Greenmead line;

(bb) Thence about South 27 degrees East along and with the Herring-Gooding line and the Herring-J. G. Taylor line about 1300 feet to the southeast corner of the said J. G. Taylor Property;

(cc) Thence along an extension of the southern boundary line of the J. G. Taylor Property eastwardly to a stake in the western edge of the right-of-way of Atlantic Coast Line Railroad;

(dd) Thence southwardly along the western edge of said right-of-way to the point where it would be intersected by the extension eastwardly of the center line of Stadiem Drive;

(ee) Thence westwardly along such extended line to and then along the center line of Stadiem Drive to the run of Long Branch;

(ff) Thence down and with the various courses of Long Branch, crossing Highland Avenue extended, and with the Stadiem-Pierce line, to the point where the run of said branch intersects the run of Adkin Branch;

(gg) Thence down and with the run of Adkin Branch in a southeastern direction to the intersection of the run of said branch to the southern boundary line of Tower Hill Road (Washington Street extended);

(hh) Thence along and with the southern boundary line of Tower Hill Road in an eastern direction about 1100 feet to the point where such southern boundary line intersects a line drawn 425 feet eastwardly from and parallel with the center line of Rochelle Boulevard in the C. L. Stricklin Subdivision;

(ii) Thence southwardly and southeastwardly along a line 425 feet eastwardly and northeastwardly from and parallel with the center line of said Rochelle Boulevard for a distance of 1500 feet to a stake;

(jj) Thence in a southeastern direction and parallel with the center line of Caswell Street as extended approximately 1900 feet to a stake in the western boundary of the Henry Duggins-E. K. Best Property;

(kk) Thence in a southwestern direction along the Duggins-Best line approximately 300 feet to its intersection with the center line of a farm road running about north and south across the Duggins-Best Property;

(ll) Thence in a southern direction along and with the center line of said farm road 1700 feet to a stake;

(mm) Thence in a southwestern direction and in a direct line approximately 2050 feet to a sewer manhole in the center of Sunshine Street, a short distance southwardly from the present city limits;

(nn) Thence in a southwestern direction a direct line to the northernmost portion of the top of the northern abutment of the Second Slough Bridge on South Queen Street extended between the city limits and the LaRouge Bridge and the same line extended to the nearest bank of Neuse River a total distance of approximately 6400 feet;

(oo) Thence up, along and with said bank of Neuse River its various courses to the beginning.

ARTICLE 2. EXTENSION OF CITY BOUNDARIES

Section 2-2. Extension of City Boundaries.

The General Statutes of North Carolina shall govern all extensions of the City boundaries.

Sec. 2-3. As soon as practicable after this Act becomes effective the City Council shall cause an accurate survey of the boundaries to be made by the city engineer, who shall accurately lay out and mark the boundary lines except where they follow natural boundaries, and he shall place suitable monuments of a permanent nature at such points as he shall deem necessary and in accordance with good engineering practice.

CHAPTER III. CHARTER AMENDMENTS

Section 3-1. Incorporation of Amendments.

(a) As soon as practicable after the adjournment of each General Assembly of North Carolina the city attorney shall present to the City Council copies of all local laws relating to the property, affairs and government of the City of Kinston which were enacted by such General Assembly, whether or not in terms amending this Charter which he recommends be incorporated into this Charter. Such recommendations may include suggestions for renumbering or rearranging the provisions of such laws, for providing titles and catch lines, and for such other changes in arrangement and form that make no change in the law as he may think necessary to implement the purposes of this Section.

(b) After considering the recommendations of the city attorney, the City Council may provide for the incorporation of such laws into this Charter.

(c) The purpose of this Section is to enable the City to maintain at all times a current and accurate City Charter organized in clear and orderly fashion and embracing all pertinent local laws relating to the property, affairs and government of the City.

CHAPTER IV. NOMINATIONS AND ELECTIONS

ARTICLE 1. PRIMARY AND GENERAL ELECTIONS

Section 4-1. Registration of Voters.

The regular registration books of the City used in general and special elections in the City shall be used in the primary election within the City. The joint registration now utilized by the City and Lenoir County shall remain the city registration and in force subject to the rights of the City or Lenoir County to maintain a separate registration system at the option of either the City or the Lenoir County Board of Elections and as further provided by law and by the agreement now existing between the City and the Lenoir County Board of Elections in regard to such joint registration. The agreement now existing between the City and said board shall continue in force until rescinded in the manner prescribed in the agreement.

Sec. 4-2. Nomination of Candidates.

All candidates for mayor or alderman to be voted for in a general election shall be nominated by a primary election to be held as herein provided and only those names of candidates so nominated in such primary, as herein provided, shall appear on the general election ballot. General elections of the City shall be partisan as provided for

general elections under the provisions of Chapter 163 of the General Statutes of North Carolina, and primary elections of the City shall be conducted for the purpose of selecting the nominees of each eligible political party. Political parties shall be determined and defined as provided in the general election laws of this State.

Sec. 4-3. Time and Manner of Holding Primary.

A primary election for such nominations and a general election following shall be held during the year 1961 and each two years thereafter as herein provided. The primary election for the year 1961 shall be held on Tuesday, April 18, 1961, and on each election year thereafter shall be held on Tuesday following the first Monday in April. Prior to each primary election, registration of qualified electors shall begin at 9:00 a. m. on the morning of the fourth Saturday next before the primary election and shall end at sunset on the second Saturday next before the primary election. Challenge day shall be from 9:00 a. m. until 3:00 p. m. on the last Saturday next before the primary. Registration and challenge shall be conducted and the polling places attended by the registrars of election as provided by the general election laws. The registration books shall not be open for registration and no challenge day will be held between the primary and general election.

Sec. 4-4. Notice of Candidacy.

Any person desiring to become a candidate for nomination by the primary for the office of mayor or alderman shall, during the period beginning at 9:00 o'clock a. m. on the fifteenth day next before the first registration day before the primary and ending at noon on the day before the first registration day, file with the city clerk a statement under oath of such candidacy declaring his party affiliation and complying with the general form prescribed by the general election laws and required for notices of candidacy for the office of House of Representatives in county elections. For the election year 1961 only, such filing period shall begin at 9:00 o'clock a. m. on the twenty-second day of March, 1961, and end at noon on the first day of April, 1961.

Sec. 4-5. Filing Fees and Publication of Names.

Each candidate for nomination shall, at the time of filing such notice of candidacy with the city clerk, pay to the city clerk as filing fee the sum of one per cent of the annual salary or compensation for such office, with a minimum filing fee of ten dollars (\$10.00) in all cases. Upon the close of the filing period, the city clerk shall prepare and have run on three successive days, beginning not less than four days after the close of such filing, a notice setting forth the names of each candidate for nomination and the office sought. Such notice shall be published in a newspaper having general circulation in the City of Kinston.

Sec. 4-6. Ballots Prepared.

The city clerk shall prepare all primary and general election ballots. The ballots shall conform as nearly as may be to the general form prescribed and used under the general election laws for primary and general elections for the office of House of Representatives in county elections, including the furnishing of separate ballots for each political party represented by the candidates who have filed. In lieu of the facsimile signature of the chairman of the county board of elections upon such ballots, the

facsimile signature of the city clerk shall appear thereon. The ballot shall indicate the number of aldermen to be voted for, which number shall be the number of aldermen to be elected in the general election.

Sec. 4-7. Ballots Counted and Returns.

The registrar, judges of election and such tallymen as may be provided shall upon closing the polls count the ballots and ascertain the vote cast for each candidate in the manner prescribed by the general election laws and shall complete the return form to be provided by the city clerk, which forms shall be substantially as prescribed for primary and general elections for the office of House of Representatives in county elections.

Sec. 4-8. Returns Canvassed.

On the day following such primary or general election, and at the hour of 11:00 o'clock a. m. at the city hall, the city clerk and the registrar of each precinct, or a judge appointed by the registrar to represent him, shall meet and constitute a board of canvassers to canvass and declare the results of such election and to perform all duties normally performed by a board of elections. The city clerk shall prepare an abstract of such canvass on a form corresponding generally to the form prescribed for use in the abstracting and reporting of county elections for the office of the House of Representatives. Such abstract shall be prepared in triplicate with all copies subscribed and sworn to by the city clerk and at least two registrars attending the canvass. One copy of such abstract shall be posted at the main entrance door of the city hall, one copy delivered to the mayor, and one copy permanently retained by the city clerk, who shall then record the results of the election in the minutes of the City. The canvass shall be publicly made.

Sec. 4-9. Votes Required.

Candidates in the primary for nomination to be placed on the general election ballot must receive a majority of the votes cast. Party nominees appearing on the general election ballot shall be the number to be elected to that office and if more candidates receive majority votes in the primary than the number to be elected in the general election, then those receiving the highest number of votes, beginning with the highest then the second highest and on down in the order of number of votes received, shall be placed on the general election ballot up to the number required to be so elected in the general election.

Sec. 4-10. Second Primary.

Eligibility for a second primary shall be determined in the same manner as provided by the general election laws. If a second primary is held, it will be conducted on the second Tuesday following the first primary. For the year 1961 only, such second primary will be conducted on April 25, 1961.

Sec. 4-11. Terms.

The term of office of mayor shall be for a period of four years upon election in the 1961 election, and each fourth year following the election of 1961, the mayor shall be elected for a four-year term. For the 1961 election, five aldermen shall be elected and the two receiving the highest and second highest number of votes,

respectively, shall each serve for a term of four years, and the remaining, three shall each serve for a term of two years. At the end of each two-year period thereafter, successors shall be elected to those whose terms are expiring – three in 1963 and quadrennially thereafter, and two in 1965 and quadrennially thereafter, so as to achieve a system of staggered terms.

Sec. 4-12. Tie Votes.

Where tie votes are cast for two or more candidates in a second primary or general election, and the tie must be resolved in order to determine the identity of the successful nominee or elected person, the result shall be determined by the drawing of lots to be publicly conducted by the incumbent City Council. Such drawing shall be made by placing the names involved on identical pieces of paper to be drawn from a suitable container by a child under the age of ten years.

Sec. 4-13. Notice of Election.

The City Council shall, by resolution posted at the courthouse door and published in a newspaper of general circulation, give notice of the primary and general election and of the opening of the books for registration. Such notice must be so posted and published not more than 60 days nor less than 15 days before the date of the opening of the books for registration prior to the primary election: Provided, however, for the 1961 elections only such notice may be posted and published at any time up to forty-eight hours next before the first day of registration for the 1961 primary election.

ARTICLE II. GENERAL PROVISIONS

Section 4-14. Precincts and Polling Places.

The seven (7) Kinston Township precincts designated and used by the Lenoir County Board of Elections in the 1960 general county elections to the extent that they respectively lie within the city limits of the City of Kinston, together with the designated polling places of each as used in said county election, shall be the City election precincts and polling places for the 1961 City primary and general election. The City Council may revise or change such precinct boundaries and polling places in the manner prescribed by the general election laws.

Sec. 4-15. Registrars and Judges of Election.

The City Council shall on the first Monday in February of each municipal election year appoint registrars and judges of election who shall be appointed for two-year terms and who shall serve in all primary, special and general elections held during such term of office. Written notice of such appointments shall be posted at the main entrance door of the city hall within twenty-four hours following such appointment and the names of each with the office held shall be recorded in the minutes of the City. During the continuation of joint registration between the City of Kinston and the County of Lenoir, the registrars appointed by the county board of elections for Kinston precincts shall act as registrars for City elections and the county board of elections shall supervise the use of the joint registration system and have the custody of such registration books except at such times as they may be lawfully in possession of the registrars.

Sec. 4-16. Miscellaneous.

(a) Wherever the term "general election laws" is used, the term means the general provisions of Chapter 163 of the General Statutes of North Carolina as now amended, or as may be amended.

(b) The provisions of Chapter 160 of the General Statutes of North Carolina shall not apply to elections of the City of Kinston.

(c) The City Council shall have authority to call a special election for the purpose of voting on the question of issuing bonds or for any other purpose authorized by law. No special election shall be held for any purpose unless notice thereof is published once a week for four successive weeks in some newspaper of general circulation in Lenoir County. Registrations made and elections held under the authority of the Municipal Finance Act shall be called, conducted, and canvassed as provided by said Act, and all other special elections shall be held under the rules and regulations as herein provided for general elections.

(d) In all respects not otherwise specifically provided for in this Chapter all elections held in the City of Kinston for municipal primaries or general elections or other municipal purposes shall be regulated and conducted as is prescribed for elections of the County of Lenoir and as provided and covered by Chapter 163 of the General Statutes of North Carolina, as now amended, or as it may be hereafter amended from time to time, and the provisions of said Chapter 163 of the General Statutes of North Carolina shall apply to all such municipal elections.

CHAPTER V. ADMINISTRATION

ARTICLE 1. GOVERNING BODY

Section 5-1. Governing Body; Mayor President of Council.

The government of the City and the general management and control of all its affairs shall be vested in a City Council to be composed of a mayor and five aldermen to be elected as set forth in Chapter IV of this Act. The Council shall exercise its powers in conformity with the provisions of this Act and the provisions of the general laws of North Carolina applicable to municipalities in those cases where no provision has been made in this Act in respect thereto. The mayor shall be ex-officio president of the Council and shall preside over its sessions, but he shall have no vote except in case of a tie vote of the aldermen.

Sec. 5-2. Qualifications and Terms of Mayor and Aldermen.

(a) No person shall be eligible to be nominated or elected to the office of mayor or alderman unless he is a qualified voter and resident of the City, and if any person holding the office of mayor or alderman shall become a nonresident his office shall ipso facto become vacant.

(c) On the first Tuesday after the first Monday in May, 1961, a general election shall be held at which there shall be elected a mayor and five aldermen. The term of office of the mayor shall begin on the day and at the time of the ensuing organizational meeting of the City Council, but he shall continue to serve until his successor has been elected and qualified. The term of office of alderman shall begin on the day and at the time of the ensuing organizational meeting of the City Council. Of those elected at the general election in 1961 the two receiving the highest and second

highest number of votes, respectively, shall each serve for a term of four years, and the remaining three shall each serve a term of two years. The term of office of mayor shall be four years and, except as in this Section otherwise provided, the term of each alderman shall be four years, the terms of the aldermen being staggered so that at the general municipal election to be held in 1963 and at the end of each four-year period thereafter three aldermen shall be elected for four-year terms and at the general municipal election to be held in 1965 and at the end of each four-year period thereafter a mayor and two aldermen shall be elected for four-year terms.

Sec. 5-3. Succession of Power.

Nothing in this Act contained shall be construed to limit or affect the terms of office or powers and duties of the present mayor and aldermen of the City of Kinston pending the general election in May, 1961, herein provided for and the election and qualification of mayor and aldermen in accordance with this Act. The members of the City Council elected under the provisions of this Act and their successors in office shall be held and deemed in law and in fact successors to the present mayor and board of aldermen of the City of Kinston, and upon the qualification of the mayor and other members of the City Council elected hereunder, all powers, rights and duties of the present mayor and board of aldermen of said City shall cease; and from and after the passage of this Act the said City Council shall have and exercise all rights, powers and duties conferred upon the governing boards of cities and towns by the laws and Constitution of this State, and shall have and exercise all the rights, powers and duties conferred upon them or any of them by the terms of this Act.

Sec. 5-4. Oaths of Mayor and Aldermen.

Before entering upon the duties of their respective offices, the mayor shall take and subscribe the oaths provided for by Section 160-11 of the General Statutes, and each alderman shall take and subscribe the oath prescribed by Section 160-7 of the General Statutes.

Sec. 5-5. Salaries of Mayor and Aldermen.

The salary of the mayor shall be thirty-six hundred dollars (\$3600.00) per annum payable in equal monthly installments at the end of each month. The salary of each alderman shall be twelve hundred dollars (\$1200.00) per annum payable in equal monthly installments at the end of each month.

Sec. 5-6. Mayor, Member of Council; Duties.

The mayor shall be a member of the City Council with all rights, powers and duties appertaining thereto, except as to voting as limited by Section 5-1 above. He shall keep himself informed as to the City's business and shall from time to time make such recommendations to the City -Council as he may deem to be for the best interest of the City and its inhabitants.

Sec. 5-7. Vacancies; How Filled.

If a vacancy shall occur in the City Council (excepting the mayor), or in the office of the city attorney or city clerk-treasurer, the Council shall elect a person to fill the unexpired term of such officer. In the event of a vacancy in the office of the city attorney or city clerk-treasurer which shall not be promptly filled as above provided, it

shall be the duty of the mayor to appoint an officer pro tem to perform the duties of such vacated office, which said pro tem officer shall be entitled to receive the regular salary for said services for the time he shall perform them, and shall serve in the capacity until said office shall be filled in accordance with this Act.

Sec. 5-8. Aldermen and Clerk May Administer Oaths.

Each alderman and the city clerk shall be and they are hereby authorized to administer oaths in municipal affairs and government of the City.

Sec. 5-9. Council to be Judge of Qualification of Members and Officers; Punishment of Members.

The City Council shall be the judge of the qualification and election of its members, including the mayor, and shall have authority to recount the votes for any of its members and to correct the result which may have been theretofore declared, and in the event notice of a contest of such election shall be given within thirty days after such election shall have been held. It shall also be the judge of the election and qualification of all other City officers subject to the provisions of this Act applying thereto. It may punish members or other persons during its sittings by fine for disorderly conduct.

Sec. 5-10. Journal to be Kept; How Ordinance Passed; Ordinance Confined to One Subject.

A majority of the members of the Council shall constitute a quorum to do business. The Council shall keep a journal of its own proceeding, which shall be public and constitute one of the archives of the City. The Council shall act only by ordinance, resolution or motion, and ordinances and resolutions excepting ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, and ordinances making appropriations shall be confined to the subject of the appropriations. The ayes and nays shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of its proceedings, and every ordinance, resolution or motion shall require on final passage the affirmative vote of the majority of all the members of the City Council.

Sec. 5-11. Vacancy in Office of Mayor; Mayor Pro Tem.

In case of the death, absence, resignation or permanent disability of the mayor, or whenever a vacancy in the office of mayor shall occur, the mayor pro tem shall act as mayor, and shall possess all the rights and powers of the mayor and perform all the duties and receive his salary under the official title, however, as mayor pro tem until the election ordered by the City Council to fill the vacancy in the office of the mayor. Said election, should a vacancy occur in the office of mayor, shall be called by the City Council and held within thirty days thereafter, and due notice of publication shall be given for at least thirty days as may be required by law; provided, that in the event such vacancy should occur within ninety days of the next regular election to be held for members of the City Council, said election of mayor shall be held at the next regular election.

Sec. 5-12. Removal of Mayor.

In case of misconduct, inability or wilful neglect of the performance of the duties of his office, the mayor may be removed from office by the city council by a

majority of the votes of all the aldermen elected, but he shall be given an opportunity to be heard in his defense in person or by counsel, and shall have the right to have process issued to compel the attendance of witnesses who shall be required to give testimony if he so elects; the hearing in case of the impeachment of mayor shall be public and a full and complete statement for the reason of such removal, if he be removed, together with the findings of fact, as made by the Council, shall be filed by the City Council in the public archives of the City, and shall be and become a matter of public record.

ARTICLE 2. ORGANIZATION AND PROCEDURES OF COUNCIL

Section 5-13. Oath of Office; Organizational Meetings.

The organizational meeting of each Council shall be held on Monday following the date of each general election, at 2:30 o'clock p. m. Before entering upon the duties of their respective offices, the mayor and aldermen shall severally take before the city clerk the oaths hereinbefore prescribed for their respective offices. The mayor shall name an alderman as mayor pro tem who shall hold that position until a mayor is re-elected as hereinbefore provided for. The organization of the Council shall take place notwithstanding the absence, death, refusal to serve or nonelection of one or more members; provided, that at least four of the persons entitled to be members are present and take oath. Any member who shall not be present may take oath at any time thereafter.

Sec. 5-14. Regular and Special Meetings.

(a) The Council shall fix suitable times for its regular meetings, which shall be in the city hall and as often as monthly. The mayor, the mayor pro tem, or any two aldermen may at any time call a special meeting by signing a written notice stating the time of the meeting to be delivered to each member or left at his usual dwelling place at least six hours before the meeting. Meetings of the Council may also be held at any time when all members of the Council are present and consent thereto. It shall be necessary to state in the notice of a special meeting the business to be transacted; and any business may be transacted at a special meeting that might be transacted at a regular meeting.

(b) Except where otherwise specifically provided by this Charter, the City Council shall have authority to determine the time and place of Council meetings, to make such provisions as it may deem wise relative to regular, special, adjourned and continued meetings, to adopt rules of procedure, and generally to regulate the time, place, manner and method of the exercise of its powers. All meetings shall be held within Lenoir County except in the case of an emergency. In the event the Council is authorized or required by law to hold a joint meeting with the governing body of another municipality or political subdivision of the State of North Carolina, it may at its election meet with the other governing body at a designated place within the area subject to the jurisdiction of the other governing body.

Sec. 5-15. Meetings; Quorum; Votes; Attendance of Members.

(a) All meetings of the Council shall be public meetings. The City Council shall not by executive session or otherwise formally consider or vote on any question in private session.

(b) A majority of the aldermen elected to the Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members by ordering them to be taken into custody. The affirmative vote of a majority of the members of the Council shall be necessary to adopt any ordinance. All other matters voted upon shall be by a majority vote of the Council members present, but no ordinance shall be adopted on the same day it is introduced unless four members of the Council vote in favor of it.

(c) All final votes of the Council involving the expenditure of money or the enactment of ordinances shall be by roll call and shall be entered in the minutes. The mayor shall announce the result of each vote of the Council.

(d) The Council shall have power to compel the attendance of absent members by ordering them to be taken into custody.

Sec. 5-16. Continuance of Public Hearing.

If a public hearing is set for a given date, and a quorum is not then present, the hearing shall be continued until the next regular Council meeting without further advertising. The Council may continue any public hearing without further advertisement.

ARTICLE 3. COUNCIL: ORDINANCE PROCEDURE

Section 5-17. Applicable General Law Provisions.

Except as herein otherwise provided, the adoption, amendment, repeal, pleading and proving of ordinances shall be governed by applicable provisions of general law.

Sec. 5-18. Publication of Ordinances.

(a) Any compilation or codification of the City ordinances adopted by the City Council, and ordered printed by it in pamphlet or book form, may be published by publication of the ordinance adopting the compilation or codification, and the ordinances included in the compilation or codification shall be effective not less than 20 days after publication of the adopting ordinance.

(b) Any new chapter of the City code whether by way of addition or substitution may be published in its entirety or a notice may be published stating the title of the chapter, the date of its adoption, and that it will be effective 20 days after the publication of said notice. Any new chapter published in its entirety shall become effective upon publication. Any new chapter published by title shall become effective not less than 20 days after publication,

(c) All other ordinances shall be published in their entirety and shall become effective upon publication, unless the ordinance expressly provides for a different effective date.

(d) As used in this Section the term "publication" means publication once 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. 5-19. Code of Ordinance.

(a) The City Council may adopt and provide for the publication and distribution of a codification of the City ordinances, to be known as the "Kinston Code

of Ordinances." The Code of Ordinances shall consist of two separate parts, The first part shall be known as "General Ordinances." The second part shall be known as "Technical Ordinances," and shall include all ordinances regarding the construction of buildings, the installation of plumbing, the installation of electric wiring, and installation of oil appliances, or gas appliances and equipment, and other technical ordinances designated as such by the City Council.

(b) The official copy of the Code of Ordinances, including all ordinances, amending or supplementing the code, shall be kept in the office of the city clerk.

Sec. 5-20. Codification of Certain Zoning. Traffic and Related Ordinances by Appropriate Entries upon Official Map Books.

(a) Every ordinance concerning the matters enumerated in subsections (b) and (c) of this Section shall be codified by appropriate entries upon official map books to be retained permanently in the office of the City building inspector. Such entries shall be made by or under the direction of the City Manager. In conjunction with the introduction of every proposed ordinance concerning any of these matters, a map of the affected area shall be presented to the City Council, but failure to present a map shall not affect the validity of the ordinance.

(b) The ordinances referred to in subsection (a) include all ordinances establishing or amending boundaries of any district under zoning regulations.

(c) The ordinances referred to in subsection (a) also include all ordinances:

- (1) Designating the location of official traffic control devices;
- (2) Designating areas or zones where restrictions, prohibitions or other controls are applied with respect to parking, loading, bus stops, and taxicab stands;
- (3) Establishing speed limits;
- (4) Designating the location of through streets, stop intersections, yield right-of-way intersections, waiting lanes, one-way streets, and truck traffic routes; and
- (5) Establishing restrictions, prohibitions, or other controls upon vehicle turns at designated locations.

Sec. 5-21. Ordinances of Limited Application.

The Council shall have the power to pass ordinances which shall be effective only in certain districts or sections of the City, or ordinances which may except from their operations any district or sections of the City, if in the judgment of the City Council the condition in such sections or districts require them to be included in or excepted from the provisions of any such ordinance.

ARTICLE 4. COUNCIL: POWERS AND DUTIES

Section 5-22. Exercise of City Powers; Powers of City Council.

(a) The City Council shall direct the exercise of all of the powers of the City, except as otherwise provided by this Charter.

(b) In addition to other powers conferred upon it by law, the Council may adopt and provide for the execution of such ordinances, rules and regulations, not inconsistent with this Charter, as may be necessary or appropriate for the preservation

and promotion of the health, comfort, convenience, good order, better government, and general welfare of the City and its inhabitants.

ARTICLE 5. MAYOR, ABSENCE OR DISABILITY

Section 5-23. Mayor and Mayor Pro Tem.

The mayor shall be the official head of the City and shall preside at Council meetings. In the absence from the City or disability of the mayor, the mayor pro tem shall perform his duties. During the absence or disability of both the mayor or mayor pro tem the Council shall select one of its number to perform such duties.

ARTICLE 6. MISCELLANEOUS

Section 5-24. Force of Ordinances not inconsistent with Charter.

All ordinances of the City of Kinston not inconsistent with the provisions of this Charter shall remain in full force and effect until altered, amended or repealed by the City Council provided the power to pass such ordinances under former charters has not been repealed, expressly or impliedly, by the terms of this Act.

Sec. 5-25. Pleading Ordinances in Judicial Proceedings; Admission in Evidence.

In all judicial proceedings it shall be sufficient to plead any ordinance of the said City by caption or by the number of section thereof and the caption, and it shall not be necessary to plead the entire ordinance or section. All printed ordinances or codes of ordinances published in book form by authority of the City Council of the City of Kinston shall be admitted in evidence in all courts and shall have the same force and effect as would the original ordinance.

Sec. 5-26. Ordinances Governing Grants of Franchises.

No ordinance or resolution making grant of any franchise or special privilege shall ever be passed finally on the date of its introduction, but shall only be passed finally at the next regular meeting, following the date of its introduction, or at any regular meeting, thereafter.

Sec. 5-27. Constitutionality of Charter.

In the event that any part, article, section or subdivision of this Act shall be held to be unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of the Act, but the same shall continue in full force and effect notwithstanding such holding.

CHAPTER VI. ADMINISTRATIVE OFFICES: POWERS AND PROCEDURES

ARTICLE 1. CREATION AND POWERS OF DEPARTMENTS, OFFICES, POSITIONS, BOARDS, COMMISSIONS AND OTHER AGENCIES GENERALLY

ARTICLE 1. IN GENERAL

Section 6-1. Officer, Positions, Departments, etc. Continued by Charter or Created by Council.

(a) The following offices and positions are hereby continued under this Charter; mayor, mayor pro tem, five (5) aldermen, city manager, city clerk-city treasurer, tax collector, city attorney, chief of police, fire chief, city engineer (public works director), utilities director, and building inspector. The Council may assign to the said offices and positions functions in addition to those set forth in this chapter, but may

not discontinue or transfer from such offices and positions functions assigned to them by this Charter, except that the positions of city clerk-city treasurer-city tax collector, and of assistant city clerk-assistant tax collector-assistant city treasurer, may be combined, and the functions of any of these positions may be assigned to the holders of any other of such position.

(b) The Council may create, combine, consolidate and abolish; may assign functions to; and may organize as it sees fit the work of.

(1) Other offices and positions in addition to those named in subsection (a); and

(2) Such departments, boards, commissions and agencies as it deems appropriate. Such departments, boards, commissions and agencies as have been heretofore created or appointed by the governing body of the City and are in existence at the effective date of this Act shall continue until expiration, discontinuance, abolition, or other action of the Council.

ARTICLE 2. CITY MANAGER

Section 6-2. Qualifications and Appointment.

The City Council shall, by a majority vote of said Council, appoint the city manager, who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be chosen by the Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter outlined. At the time of his appointment he need not be a resident of the City or State, but during his tenure of office he shall reside within the City. No person elected mayor or to membership on the Council shall, subsequent to such election, be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he was elected.

Sec. 6-3. Appointment for Indefinite Term.

The city manager shall be appointed for an indefinite term but may be removed by a majority vote of the members of the Council. The action of the Council in removing the manager shall be final. In case of the absence or the disability of the manager the Council may designate a qualified administrative officer of the City to perform the duties of the manager during such absence or disability.

Sec. 6-4. Oath and Bond of City Manager.

Before entering upon the discharge of the duties of his office the city manager shall take an oath that he will faithfully perform such duties and shall execute and file with the City Council a bond in favor of the City of Kinston, with an incorporated bonding company or companies licensed to do business in North Carolina as surety or sureties thereon, conditioned upon the faithful discharge by him of such duties. The amount of such bond shall be prescribed by the City Council, but in no event shall it be less than ten thousand dollars (\$10,000.00), and the premium thereon shall be paid by the City.

Sec. 6-5. City Manager Not to be Personally Interested in City Work.

The city manager shall not be personally interested in any contract to which the City is party for doing any work or supplying materials of any character to the City; nor shall he be a stockholder or interested in any manner in any corporation making or having such a contract with the City, nor shall he engage in political elections, nor take an active part in political campaigns nor attempt to influence the result of State, county or City elections except by exercise of his right as a citizen to hold his own political views and to cast his own vote.

Sec. 6-6. Duties of City Manager.

The city manager shall devote his entire time to the duties of his office. He shall attend all meetings of the City Council and recommend to it from time to time such measures and actions as he shall deem necessary or proper, and supply it with all useful or necessary information and details concerning any of the departments or work under his control. He shall have entire charge and control of all of the executive work of the City in its various departments, and shall have and exercise control of the several heads of departments and employees of the City, and shall make all contracts for labor and supplies to be performed for or furnished to the City. He shall see that the laws and ordinances of the City and the resolution and regulations of the City Council are enforced. He shall have power and authority to revoke licenses, pending action thereon by the City Council. He shall have power and authority to appoint all subordinate officers and servants of the City and to remove or suspend any officer employed by him, but he shall report (very such appointment and removal to the City Council; Provided, that nothing, herein contained shall be construed to take from the City Council the power and authority to elect the city clerk-treasurer-tax collector, city attorney or auditor, or to fix their duties so far as authorized by the Charter of the City or the laws of the State, and provided further that nothing, herein contained shall be construed to take from the civil service board, if any, the power and authority to appoint and remove subordinate officers and servants of the City; provided further, that the municipal accountant whose duty it shall be to prepare and submit an annual budget for the consideration of the City Council shall also be designated by the City Council.

Sec. 6-7. Additional Duties of City Manager.

The city manager shall see that all terms and conditions in favor of the City or its citizens imposed by or contained in any public utility franchise are faithfully kept and performed, and, upon discovery or ascertainment of any violation or breach thereof, shall in writing bring such violation or breach to the attention of the City Council. He shall secure from the heads of offices, departments and agencies of the City the budget statements by them required under the Municipal Fiscal Control Act and see that they are properly filed with the municipal accountant, and he shall keep the Council fully advised as to the financial condition and needs of the City. He shall have authority and charge over all public works, the erection of buildings for the City, and construction of all improvements, paving, curbing, sidewalks, streets, bridges and viaducts, and the repair thereof. He shall approve all payrolls and bills against the City for materials furnished, work done or labor performed, except salaries fixed by the City Council; all estimates of the cost of public works, and shall have the right to accept or reject work

done or improvements made; shall have control over the location of telephone and telegraph poles and wires; and he shall perform such other duties as may be imposed upon him by the City Council. His salary shall be fixed by the City Council.

Sec. 6-8. Duties of City Attorney.

It shall be the duty of the city attorney to represent the City in all litigation and controversies and, when requested by the City Council or any member thereof, to give his written legal opinion or advice on such questions as may be referred to him.

To draft all proposed ordinances granting franchises, and such other ordinances as may be referred to him by the City Council or a member thereof.

To inspect and pass upon all papers, contracts and other instruments in which the City may be interested.

To act as legal adviser of the mayor the City Council or any committee thereof and all City officers and employees with respect to any legal question involving an official duty or any other matter pertaining to the affairs of the City.

To perform such other duties of a legal nature pertaining to the City as he may be directed so to do by the City Council.

The term of office of the city attorney shall be for an indefinite term at the pleasure of the City Council. He shall receive for his services such compensation as may be fixed by the City Council.

Sec. 6-9. City Clerk and Treasurer.

The City Council shall, by a majority vote, elect a city clerk to hold office for an indefinite term at the pleasure of the City Council. He shall have such powers and perform such duties as the City Council may from time to time prescribe in addition to such duties as are imposed upon him by this Charter or by general law.

The city clerk shall have the powers and perform the duties of city treasurer, such powers and duties to be prescribed from time to time by the City Council and to be in addition to all powers and duties as may be prescribed by law, and the city clerk shall be known as the "city clerk and treasurer".

The City Council shall also have the authority to appoint a deputy city clerk and treasurer to act during the absence or disability of the city clerk and treasurer, and may assign to said deputy the same powers, authority and duties as are assigned to the city clerk and treasurer.

The city clerk and treasurer shall give bond for the faithful performance of his duty in such sum as may be fixed by the City Council, with corporate surety thereon to be approved by the mayor, the premium on such bond to be paid by the City; and a like bond may be required of the deputy clerk and treasurer.

The city clerk and treasurer shall receive such salary as may be fixed by the City Council.

Sec. 6-10. Duties of City Clerk-Treasurer.

It shall be the duty of the city clerk to attend every meeting of the City Council and keep the minutes and record of all proceedings in a well bound book kept for that purpose.

To keep the books of account of the City, and to make such financial reports and statements as are provided for and to be made by him under this Act.

To keep separate accounts of each appropriation made by the City Council so as to show the date thereof, the purpose for which the same was made, and so as to show for what each payment of public money was made and to whom paid.

To keep separate accounts for each department of the government, and also such other accounts as may be necessary to show a complete financial statement of the City's affairs.

To require all persons who have received any money belonging to the City and who have not reasonably accounted for the same to settle such accounts; and it shall be the duty of every person, firm or corporation having funds of the City to pay the same forthwith into the hands of the city clerk-treasurer.

It shall be the duty of the city clerk to audit and determine the correctness of all accounts against the City presented to him for payment, and he is fully authorized, when by him (teemed necessary or expedient, to require any such account or claim to be certified by the affidavit of the claimant or, in the case of a corporation, by an officer thereof, and to that end the city clerk shall be and he is hereby authorized to administer oaths and to require any person to answer such questions as may be propounded to him touching the correctness of any account or claim against the City.

ARTICLE 3. POLICE OFFICERS

Section 6-11. Powers and Duties of Chief of Police and Policemen.

(a) The chief of police, acting under the city manager, shall have supervision and control of the police force and shall enforce discipline therein.

(b) The chief of police and each member of the police force shall have for the purpose of enforcing city ordinances and regulations, of preserving the peace of the City, of suppressing disturbances and apprehending offenders, and for serving civil process – the powers of peace officers vested in sheriffs and constables, Such powers may be exercised within the corporate limits of the City and one mile beyond, upon City real property wherever located, and within the limits of the watershed of the City water supply.

Sec. 6-12. Power to Establish Police Emergency Lines.

The City Council shall have the power to authorize the chief of police or other police officers in charge at the scene of a parade, fire, accident, disturbance, crime scene, natural or artificial disaster or emergency, or any large gathering of people, to provide barricades, ropes, signs, or other means of restraint, and it shall be unlawful for any person other than a law enforcement officer, fireman, or other person having official business at the scene, to cross a duly established police emergency line without express permission of the police office at the scene.

Sec. 6-13. City and County Jails.

The keeper of the jail of Lenoir County is hereby required to receive into the jail without a mittimus, any person under arrest by a police officer of the City, and to keep such person safely until he is brought out for trial. For such services the jailer shall be entitled to such fees as are allowed him in like cases. The City may also provide and

use a jail for the confinement of prisoners in its discretion, but the providing of a City jail shall not relieve the county jailer of the duty to receive prisoners from police officers of the City.

Sec. 6-14. Further Duties of Police Officers.

The police officers shall give bond in such sum as the City Council may prescribe for the faithful discharge of the duties of their office, and for the faithful accounting of all money that may come into their hands from fines, penalties and otherwise by virtue of their offices. It shall be their duty to report any violation of laws or ordinances in the City, and they shall promptly and faithfully execute, within the City limits, all writs and processes issued from the Municipal-County Court of the City of Kinston and County of Lenoir. They shall have like power with the sheriff of the county to execute the writ of search warrant. They shall be active in quelling riots, disorder and disturbances of the peace within the limits of the said City, and shall take into custody all persons so offending against the public peace, and shall have authority to take suitable and sufficient bail for the appearance before said court of any person charged with any criminal offense, and it shall be their duty to arrest all persons who shall obstruct or interfere with them in the execution of the duties of their offices, or who shall be guilty of disorderly conduct or any disturbance whatever; to prevent breach of the peace and preserve quiet and good order. They shall perform such other duties and possess such other powers, rights and authority in addition to those herein provided as the City Council may require and confer upon them not inconsistent with the Constitution and laws of the State of North Carolina and the provisions of this Act. The salaries of all police officers shall be fixed by the City Council.

ARTICLE 4. TAXATION

Section 6-15. General Authority to Levy and Collect Taxes.

To raise revenue for defraying expenses incident to the proper government of the City, the Council may annually levy and collect (1) an ad valorem tax on real and personal property and on all other property subject to ad valorem tax; (2) a tax on all businesses, trades, professions, vocations, and franchises, carried or on enjoyed within the City; and (3) any other taxes permitted by general law.

Sec. 6-16. Levy, Collection and Payment of Ad Valorem Property Taxes.

(a) Except as otherwise herein provided, ad valorem property taxes shall be imposed and collected in the manner provided by general law.

(b) Ad valorem taxes shall become due and payable on the date provided by general law, and interest shall be charged for late payment in the amounts and during the periods covered by general law. In the discretion of the City Council, discounts may be allowed for prepayment of taxes, and if allowed, shall be granted in the amounts and for the periods provided by general law.

(c) The Council may make rules and regulations for the payment of the tax on any particular parcel or parcels of real estate or personal property listed in the name of any person, firm or corporation without requiring the payment of all of the taxes listed by such person, firm or corporation. The property upon which taxes are so paid shall be released or exempt from the lien of the unpaid portion of taxes.

(d) If for any reason the making out of tax statements is delayed so that persons cannot ascertain the full amount of their taxes in time to take advantage of the discounts herein provided for, the Council may revise the schedule of discounts and penalties, either or both, as in its judgment may be fair and proper, but the maximum discount or penalty thus fixed by the Council shall not exceed the maximum provided for by subsection (b).

(e) The city tax collector shall, on the second Monday in June of each year, report a list of all taxpayers owing taxes for the current year which are liens on real property, and the City Council shall thereupon, at its next regular meeting, order the sale of the tax lien on said real property of said taxpayers to be held at one of the times prescribed in the General Statutes of North Carolina.

Sec. 6-17. Additional Remedies for Collection of Privilege License Taxes.

In addition to any other civil or criminal remedy available to enforce the collection of privilege license taxes, the tax collector may employ the remedies of levy upon personal property, attachment and garnishment, in the manner of and subject to the limitations provided in G. S. 105-385(c) through (g).

ARTICLE 5. PERSONNEL

Section 6-18. Appointment and Removal of Department Heads and Employees; Salaries; Absence or Disability.

(a) The city manager, except as otherwise provided in this Charter, shall appoint and may suspend and remove all city employees and heads of departments. He shall report to the City Council every appointment and removal of a department head at the next Council meeting following the appointment or removal.

(b) All compensation and salaries shall be fixed or approved by the Council.

(c) In case of the absence or disability of any department head or holder of any position named in this Charter, except city attorney, city clerk-treasurer-tax collector, and auditor, an assistant designated by the city manager may perform the functions of the department head or position holder.

Sec. 6-19. Public Liability Insurance Policies Covering Certain Employees.

The City may purchase and pay the premium on a public liability insurance policy or policies to protect and hold harmless from loss any city employee or employees engaged in occupations found by the Council to be hazardous to the public generally.

Sec. 6-20. Loss and Theft Insurance Policies Covering Certain Employees.

The City may purchase and pay the premium on an insurance policy or policies to protect and hold harmless from loss by disappearance, theft, or means other than the wrongdoing of the insured employee or employees, any city employee or employees who are engaged in duties which require them to be responsible for public funds.

Sec. 6-21. Oaths of Certain Officers and Employees.

Before entering upon the discharge of their duties, the holders of the following named offices and positions shall be required to take and subscribe before the

mayor, or some other officer authorized to administer oaths in such cases, the oath prescribed for public officers and an oath that they will faithfully and impartially discharge the duties of their respective offices or positions according to law: the chief of police and each member of the police force, the tax collector and assistant tax collector, and the building inspector and all employees empowered to enforce the building code. All such oaths shall be filed with the city clerk.

ARTICLE 6. CONTRACTING, PURCHASING AND PROPERTY MANAGEMENT PROCEDURES

Section 6-22. Contracting Procedures.

All contracts, except leases provided for in Section 6-27(b) of this Charter, shall be made or authorized by the City Council, and no contracts shall bind the City unless reduced to writing and approved by the Council. All contracts, and all ordinances or resolutions making contracts or authorizing the same, shall be drawn by the city attorney or shall be submitted to him before authorization by the Council.

ARTICLE 7. SALE AND DISPOSITION OF PROPERTY

Section 6-23. Sale of Personal Property.

Any personal property not exceeding twenty-five hundred dollars (\$2500.00) in value at the time of sale may be sold or exchanged by the Council without advertisement. Personal property having a value in excess of twenty-five hundred dollars (\$2500.00) may be sold only at public sale after advertisement as prescribed in Section 6-25.

Sec. 6-24. Sale of Real Property Not Exceeding Fifteen Thousand Dollars (\$15,000.00) in Value.

Any real property owned and held by the City for governmental or other purposes, the fair market value of which (exclusive of special assessments thereon) does not at the time of sale exceed fifteen thousand dollars (\$15,000.00), may be sold by the Council. When any satisfactory offer is made for the same, and a deposit of five per cent, of the amount bid is made with the city clerk, the council 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, there shall be posted in three places in the City, a general description of the property, the amount and the terms of payment offered, together with a notice that within ten days any person may raise the bid not less than five per cent. If within ten days any person raises the bid five per cent, and deposits with the city clerk a certified check covering the deposit for the increased bid, the city clerk shall readvertise the offer, and shall continue to readvertise so long as the bids are increased and proper deposits are made; and when there is no increased bid within the prescribed time, the Council may sell and convey such property for the amount of the highest bid offered; but the Council may at any time refuse to proceed further with the proposed sale. In lieu of the foregoing procedure, the Council may, in its discretion, order a public auction sale of any real property without regard to its value.

Sec. 6-25. Sale of Real Property Exceeding Fifteen Thousand Dollars (\$15,000.00) in Value.

By a two-thirds vote of all the members of the City Council, any real property owned and held by the City for governmental or other purposes having, an apparent fair market value in excess of fifteen thousand dollars (\$15,000.00) may be sold by the City Council, but only at public sale and after advertisement. The resolution authorizing the sale shall describe the property to be sold, the time, place, and terms of sale, and shall state that any offer or bid must be accepted and confirmed by the Council before the sale shall be effective. The resolution may, but need not, require that the highest bidder at the sale deliver to the city treasurer, or other official designated by the City Council, a cash deposit in an amount named in the resolution, to guarantee that, if the sale is confirmed by the Council, the bidder will comply with the terms of his bid. The resolution shall be published in some newspaper published in the City which is qualified to carry legal notices, once a week for four successive weeks, or, if there be no such newspaper, the resolution shall be posted in three public places in the City, and the last publication may, but need not, be on the day of sale. After the bids have been received at the sale, the highest bid for the property shall be reported to the Council, and within thirty days thereafter the Council shall accept or reject the bid. If the bid is rejected, the Council may readvertise the property for sale.

Sec. 6-26. Sale or Exchange of Excess Property.

In any case where the City has purchased property instead of taking it by condemnation for any public purpose, and, in the opinion of the Council, it is desirable to sell any excess of the property, that is, such property as is not needed for the particular improvement or public purpose, the Council may sell it by public sale, by receiving sealed bids, or by exchanging it for other property. In such case any required public sale shall be as provided by Section 6-24 or Section 6-25, according to its fair market value.

Sec. 6-27. Lease of Property.

(a) Any property owned by the City, whether originally acquired for governmental or other purposes, may be rented or leased by the Council for a term not to exceed ten years if, in the opinion of the City Council, the property will not be needed by the City for the period of the lease. A lease may be made privately by the Council or publicly after notice is given in such manner and for such length of time as prescribed by the Council. In any case, however, where the lessee enters into a binding obligation to erect, upon property owned by the City, improvements to cost not less than fifty thousand dollars (\$50,000.00), the Council may rent or lease such property for a term not to exceed forty (40) years and such lease may be made by the Council either privately or publicly and upon such terms as in the judgment of the Council will promote the best interest of the City.

(b) The city manager shall have the authority, under rules and regulations adopted by the City Council, to lease, privately or publicly, any vacant land or any building to be used for dwelling purposes, owned by the City, from month to month, at a rental to be determined by the city manager to be the fair rental value of the property.

Sec. 6-28. Real Property Conveyed to the City for Parks, Recreation and Playgrounds; Dedication for Street, Sidewalk, Water or Sewer Purposes.

The City Council may dedicate and use for street, sidewalk, water or sewer purposes any part of any real property heretofore or hereafter conveyed or dedicated to the City for parks, recreation or playgrounds as in the opinion of the City Council public convenience or necessity may require; but nothing herein shall have the effect of altering the terms or conditions of any agreement with the City, or conveyance to the City, relative to the use of property.

Sec. 6-29. Releases and Quitclaims.

(a) The city manager is hereby authorized to execute releases of persons, firms, and corporations because of damages to personal property belonging to the City when the full amount of damages to such property is ascertained and statement thereof has been furnished to the manager by the city attorney and the amount of such release does not exceed five hundred dollars (\$500.00). In the event that a draft or check is presented to the City which constitutes a release, instead of a regular release form, the manager may direct that such draft or check be handled as other payments to the City and, when approved by the manager, it shall constitute a release to the extent stated on the draft or check.

(b) The City may quitclaim any rights it may have in property not needed for public purposes upon report by the city attorney and city manager, and adoption of a resolution by the City Council, both finding that the property is not needed for public purposes and that the City's interest has no readily ascertainable monetary value.

Sec. 6-30. Conflict of Interest.

Any officer, department head, employee, or board or commission member who has a financial interest, direct or indirect, in any proposed contract with the City or in a proposed sale of any land, material, supplies, or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such a contract or sale. Any officer, department head, or employee who willfully conceals such a financial interest or willfully violates the requirements of this section shall be guilty of a misdemeanor.

CHAPTER VII. REGULATORY AND PLANNING FUNCTIONS

ARTICLE 1. ADMINISTRATION OF JUSTICE

Section 7-1. Rewards for Conviction of Certain Offenses.

The City Council may offer and pay rewards for the conviction of any person or persons alleged to have committed criminal offenses which, in the judgment of the Council, involved serious danger to the public peace or public safety. The Council shall fix the terms, conditions and amounts of such awards. Rewards shall be paid only by order of the Council from nontax revenues in the general fund of the City. The Council shall, in its discretion, determine who shall be entitled to the collection of any reward.

ARTICLE 2. OCCUPATIONAL AND BUSINESS LICENSING AND REGULATION

Section 7-2. Power to Tax, Regulate, etc., Certain Businesses.

The Council shall have the power to license, tax, regulate, restrict, prohibit, suspend, and revoke any license on the following businesses: For running billiard tables, bowling alleys, or alleys of like kind, bowling saloons, bagatelle tables, pool tables, or tables for any other game or play with or without a name for the use of which

a charge is directly or indirectly made; pawnbrokers; fruit or vegetable stands; restaurants; drink stands; lunch counters; dance halls; pressing clubs; theatres; vaudeville or moving picture houses or shows; and any other businesses the Council may determine should be placed in this class. Before issuing the license as above, the Council may require bonds from all applicants, conditioned as the Council may determine, with such sureties as the city manager and city attorney may approve.

ARTICLE 3. PLANNING, ZONING, BUILDING REGULATIONS AND RELATED MEASURES

Section 7-3. Authority Within Corporate Limits.

The City Council may exercise within the corporate limits any planning, subdivision, zoning and building regulation powers (including plumbing, heating or electrical regulation powers) now or hereafter conferred by law upon cities and city governing bodies generally, or specifically conferred by law upon it or upon the City of Kinston.

Sec. 7-4. Extraterritorial Authority.

(a) For the purpose of promoting the orderly growth, expansion and development of the City of Kinston and the surrounding territory hereinafter defined, and for the purpose of promoting the health, safety, morals, and general welfare of the citizens of such area, the City Council is hereby authorized to exercise any planning, subdivision, zoning and building regulation powers (including plumbing, heating, or electrical regulation powers) now or hereafter conferred upon the City of Kinston and vested in the Council by this Charter, the General Statutes, or any other statute applicable to the City of Kinston, not only within the corporate limits of the City but also within the territory beyond the corporate limits, as now or hereafter fixed, for a distance of one mile in all directions. Such powers may be exercised to the same extent and according to the same procedures as are applicable to the exercise of planning, zoning, subdivision, or building regulation powers (including plumbing, heating, or electrical regulation powers) within the corporate limits of the City; but any ordinance intended to have application beyond the corporate limits of the City shall so provide. Such powers shall include the power to adopt such ordinances and regulations as may be considered necessary or expedient by the Council to regulate, control and restrict:

- (1) The height, number of stories, and size of buildings and other structures;
- (2) The percentage of a lot that may be occupied;
- (3) The size of yards, courts and other open spaces;
- (4) The density of population;
- (5) The location and use of buildings, structures, and land for trade, industry, residences, or other purposes;
- (6) The construction of buildings, including plumbing, heating and electrical installations; and
- (7) The names of streets, and the City may provide street name signs in the area.

(b) At least two but not more than four members of the Kinston Planning Board, authorized by G. S. 160-22, shall be citizens and residents of the territory beyond the corporate limits of Kinston and within one mile thereof. Members appointed from the territory beyond the corporate limits of the City of Kinston shall be appointed in the same manner and shall have the same powers and duties as the other members of the Kinston Planning Board, and the laws, ordinances, rules and regulations applicable to the members of the Kinston Planning Board shall be applicable to said members.

(c) The City Council is authorized, in order to enforce properly the provisions of any zoning ordinance or building regulation, to require by ordinance that prior to the beginning of any construction, reconstruction or alteration of any building or structure, or for plumbing, heating or electrical installations within said area, a permit or permits be obtained therefor from the building inspector of the City of Kinston. All permits, plans, inspections and fees which are specified in the Kinston Code of Ordinances will apply to such area within one mile beyond the corporate limits.

(d) Membership on the Kinston Board of Adjustment, authorized by G. S. 160-178, shall not be limited to citizens and residents of the City of Kinston and members may be appointed to said board who reside within the corporate limits of the City or within the territory beyond the corporate limits and within one mile thereof, except that not more than two members of the Kinston Board of Adjustment shall be residents of the territory beyond the corporate limits and within one mile thereof.

(e) The powers herein granted to the City Council are intended to be supplementary to any powers now or hereafter conferred upon it. The exercise of powers herein granted shall be within the discretion of the Council. This Section shall have no effect upon any existing city ordinances. The adoption of any ordinance under authority of this Section shall have no effect upon any litigation pending at the time of adoption of such ordinance.

Sec. 7-5. Authority to Require Installation of Certain Improvements Prior to Approval of Plats.

(a) In connection with subdivision or platting controls, the City Council may require the improvement and grading of streets and the construction and installation of street pavements, curbs, gutters, sidewalks, and water, sewer, surface water drainage, and other utility mains, as a condition precedent to approval of the plat. The requirement may provide for tentative approval of the plat prior to such improvement and installation; but any tentative approval shall not be entered on the plat. The requirements may provide that in lieu of completion of the work and installations prior to final approval of a plat, the Council may accept a bond, in an amount and with surety and condition satisfactory to it, providing for and securing to the City the actual construction and installation of the improvements and utilities within a period specified by the Council and expressed in the bond. The City is empowered to enforce the bond by all appropriate legal and equitable remedies. Requirements adopted under this subsection may be applied throughout the area over which the City is authorized by law to exercise platting, or subdivision controls.

(b) The requirements may provide, in lieu of the completion prior to the final approval of a plat of such work and installation on land within the corporate limits of the City, for an assessment under this Charter or under Article 9 of Chapter 160 of the General Statutes or other statutory authorization whereby the City may do the work and make the installations at the cost of the owners of the property within the subdivision.

ARTICLE 4. BUILDING REGULATIONS

Sec. 7-6. Building Inspector.

The building inspector shall enforce the city building code, shall perform the functions prescribed by this Charter and by general law, and shall perform such additional functions as may be assigned to him by the City Council.

Sec. 7-7. Board of Building Appeals.

(a) The City Council may provide for the creation and organization of a board of building appeals to which appeals may be taken from the decision of the building inspector upon any provision of the building code of the city.

(b) The board shall consist of five members to serve for three-year overlapping terms. It shall have power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties; and it shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the building inspector may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the building inspector to the board shall be taken within such reasonable time as shall be prescribed by the board by general rule and shall be taken by filing with the building inspector and with the clerk or secretary of the board, or with such other person as may be designated by the board, a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the building inspector shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the building inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed by the board. When any appeal is from a decision of the building, inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement of the building inspector until the hearing by the board, unless the building inspector certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted, for due cause shown and upon not less than one day's written notice to the building inspector, by the board or by the Superior Court of Lenoir County.

(d) The board shall fix a reasonable time for the hearing of all appeals and shall render its decision within a reasonable time. Any party may appear in person or by

agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the building inspector; but the concurring vote of four members of the board shall be necessary to reverse or modify any decision of the building inspector. In passing upon appeals, the board shall have power not only to determine whether the decision of the building inspector is made upon a proper construction of the pertinent provisions of the building code but it shall have power also to allow materials and methods of construction other than those required by the building code to be used when in its opinion other materials and methods of construction are as good as those required by the code; and for this purpose the requirements of the building code shall be considered as a standard to which construction shall conform. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the building code, to adapt the application of the code to the necessities of the case to the end that the spirit of the code shall be observed, public safety and welfare secured and substantial justice done.

(e) Every decision of the board shall be subject to review by the Superior Court of Lenoir County by proceedings in the nature of certiorari instituted within fifteen days of the decision of the board, but not otherwise.

Sec. 7-8. Fees for Building Inspection and Related Matters.

The City Council may fix its own fees, notwithstanding any State law for fixing such fees generally, for the inspection of: (1) the construction, alteration, repair, removal, and demolition of buildings; (2) all plumbing, electrical, heating and air conditioning work done in the city; and (3) the erection, installation, repair, maintenance and operation of smokestacks and smoke-producing apparatus of any kind whatsoever.

ARTICLE 5. UTILITY REGULATIONS

Sec. 7-9. Public Utility Franchises.

(a) The Council may grant franchises for any public utility in the manner provided by law, and, in its discretion, may hold a referendum at the expense of the applicant on the question of granting a franchise.

(b) Franchises granted hereunder:

(1) Shall extend for such periods as the Council may determine, not to exceed sixty years, and may be renewable;

(2) Shall be revocable at the will of the Council for violation of their terms or conditions;

(3) Shall – if they pertain to streets, sidewalks, public grounds or places in the city – be separately taxable, such taxes to be in addition to all other taxes, except when such imposition by the City is prohibited by any Statute now or hereafter in effect;

(4) May not be transferred without the approval of the Council;

(5) May contain such provisions – consistent with the General Statutes relating to the jurisdiction of the State Utilities Commission – as the Council deems

proper concerning service, facilities, maintenance, operation, rates, accounting, reports and other matters; and

(6) May reserve to the City the right to purchase the utility properties covered by the franchise upon such terms (including price) as may be provided for by the franchise, but in no event shall the value of the franchise be considered in determining the purchase price.

ARTICLE 6. CITY REGULATION OF VEHICLES AND TRAFFIC IN GENERAL

Sec. 7-10. Authority of City Council to Adopt Regulations.

(a) Subject to the provisions of subsection (b) of this Section, the City Council may adopt ordinances regulating, the speeds of vehicles upon any city streets and may establish truck routes (or other required routes for limited classes of vehicles or traffic) applicable to any city streets. As used in this Section the term "city streets" includes all public highways, roads and streets within the city limits, including numbered State highways, and highways, roads and streets maintained, repaired, constructed, re-constructed or widened in whole or in part with State funds.

(b) An ordinance concerning vehicle speeds, truck routes or other required routes that applies to numbered State highways shall become effective only as provided in this subsection. The Council shall transmit to the State Highway Commission by registered mail a copy of the ordinance upon its adoption. The ordinance shall become effective if not disapproved by the commission within twenty days following the next regular meeting of the commission after the commission has received a copy of the ordinance.

(c) The authority herein granted to the City Council shall be in addition to any authority conferred by general law upon the City Council or the City to regulate vehicles, traffic or the use of City streets.

Sec. 7-11. Power to Regulate Ambulances and Wreckers.

The Council may establish regulations governing the operations of ambulances, wreckers, and other motor vehicles used in connection with emergencies, disasters, or accidents, and may provide for the operation of an ambulance service or a wrecker service, or to enter into a contract or contracts for the providing of such service by a private person or persons.

Sec. 7-12. Power to Regulate Obstruction of Alleys.

If, in the opinion of the City Council, a fire hazard is created by the obstruction of private alleys, either by reason of the parking of motor vehicles or otherwise, the Council may adopt regulations governing the obstruction of private alleys, but such regulations shall not be construed so as to restrict or limit the legal right of the owners of interests in a private alley to close the alley or to exercise other property rights therein.

Sec. 7-13. Location of Traffic Control Devices.

The City Council may authorize an official to designate the location of official traffic control devices, upon a determination by him:

(1) If such a device is to be installed at a particular location, that its installation is necessary in order to control traffic congestion in the interest of public safety; or

(2) If such a device is to be moved or removed from a particular location, that the device is no longer required at such location for control of traffic congestion in the interest of public safety.

An "official traffic control device," as used in this Section, is a sign, signal, marking, or device, including a parking meter, which is intended to regulate vehicular or pedestrian traffic.

ARTICLE 7. TRAFFIC BUREAU

Sec. 7-14. Authority of City Council to Create a Traffic Bureau.

(a) The City Council may provide a traffic bureau to handle the following traffic violations:

- Parking over the allowed time
- Parking between one a. m. and six a. m.
- Parking more than twelve inches from the curb
- Parking within twenty-five feet of an intersection
- Parking too close to a fire hydrant
- Parking in a non-parking space
- Illegal use of loading zones, bus stops and taxi stands
- Parking at entrance of alley or driveway
- Parking at left side of curb
- Double Parking
- Not displaying proper lights
- Making U turn in street where prohibited
- Illegal left or right turn
- Disregard of stop sign
- Not displaying city license
- Obstructing traffic
- Other violations of traffic ordinances enumerated in such ordinance

(b) The Council may eliminate any traffic violations from the foregoing schedule.

(c) Any person receiving a citation or ticket for any traffic violation may pay through the traffic bureau the following amounts as payment of the civil penalty and be discharged.

(1) Overtime parking one dollar (\$1.00)

(2) Traffic violations, other than overtime parking, not to exceed five dollars (\$5.00) as fixed by the Council.

(d) Any person given a citation or ticket by a police officer of the City of Kinston for a violation designated as provided in subsection (a) may tender an amount not in excess of the sum provided for in subsection (c) as payment of the civil penalty.

(e) The city manager shall designate a sufficient number of persons. to operate the traffic bureau.

(f) All civil penalties collected in the traffic bureau shall be paid into the general fund of the City of Kinston.

CHAPTER VIII. CITY SERVICES AND FACILITIES

ARTICLE 1. CITY CEMETERIES

Section 8-1. Sale of Cemetery Lots.

The city clerk may sell cemetery lots in the city cemeteries, subject to rules and regulations adopted by the City Council. All deeds or instruments conveying title to such lots shall be signed by the mayor.

ARTICLE 2. FIRE PROTECTION SERVICES

Sec. 8-2. Power to Destroy Property to Stop Fires.

The mayor, city manager or any two members of the City Council may order the blowing up, tearing down or other destruction of any building when it is deemed necessary to stop the progress of a fire. No person shall be held liable, civilly or criminally, for acting in obedience to orders, nor shall the city, the mayor, or the city manager, or the council members be held liable, civilly or criminally, for the giving of such orders or for damages to property ordered destroyed.

ARTICLE 3. GARBAGE AND REFUSE DISPOSAL

Sec. 8-3. Liens for Garbage and Refuse Disposal Charges.

The Council may establish charges to be made for garbage and refuse disposal. In case any charge for the removal and disposal of garbage and refuse is not paid within ten days after it becomes due, the charge shall become a lien against the property served or in connection with which the service or facility is used and may be collected thereafter in the manner hereinafter provided for collection of utility charges.

ARTICLE 4. RECREATION FACILITIES

Sec. 8-4. Power to Regulate Use of Facilities.

(a) The City Council may:

- (1) Regulate the use of recreation facilities belonging to the City;
- (2) Regulate recreational uses of any city-owned lake and other city-owned reservoirs or bodies of water;
- (3) Promote athletic events and other recreation and entertainments in or involving any such facilities, reservoirs, or bodies of water, or contract for the promotion of athletic events, entertainment or recreation events, by leasing such facilities as provided in this Charter, or otherwise.

(b) With respect to the use of city-owned reservoirs or bodies of water, the Council may:

- (1) Adopt regulations concerning boating on city-owned reservoirs and the taking of fish therefrom (including regulations of the size, kind and number of fish that may be taken, and of fishing seasons)
- (2) Fix charges for fishing permits, boating permits, rental of fishing tackle and sale of bait;
- (3) Employ wardens to enforce any such regulations, and stock such reservoirs with fish; and

(4) Exercise all other rights and privileges incident to the ownership of such properties.

ARTICLE 5. ROADS AND STREETS

Sec. 8-5. Establishment of Proposed Street Lines.

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 street should be widened, extended, or opened. If any street under the provision 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 a 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 no 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. 8-6. Notice to City Required Before Improvement.

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 said lines to be repaired or otherwise improved, until the City shall have first been given an opportunity to purchase or otherwise acquire said 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 said land prior to the construction of said building or the making of such repairs or improvements, and if it fails within sixty days from the date of receipt of said notice to acquire or to institute condemnation proceedings to acquire, said 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 said notice.

Sec. 8-7. Failure to Give Notice Bars Recovery.

Any person, firm, or corporation builds upon any land included within proposed street lines without giving the City and opportunity to acquire said land free from said 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 proceeding subsequently brought to acquire said land for the purpose set out in said Section.

Sec. 8-8. Acquisition of Land.

If upon receiving any notice in compliance with Section 8-6, the City Council determines to acquire said land immediately, it may acquire the same by grant, purchase, or condemnation. In no case shall an effort to purchase said 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 Section 160-205 of the General Statutes.

Sec. 8-9. Cost of Land Acquired for Street Widening to be Assessed as Part of Improvement.

After any land has been purchased or condemned for the purpose of widening, extending, or opening any street, and the land purchased or condemned lies within the limits of an improvement directed in said proceeding, then the amount paid by the City for the land purchased or condemned, together with the cost of the condemnation proceeding and interest on said 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 said improvement and shall be assessed as provided by law against the property to be assessed for the improvements.

Sec. 8-10. Exercise of Condemnation Power after Failure to Condemn Following Notice.

The failure of the City to acquire any land within thirty 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 said time to institute proceedings to condemn the 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 said land free of said improvements.

Sec. 8-11. Power to Close Streets.

(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 a 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 the street shall be notified by registered letter or personal service by a police officer of the City of the time and place of the 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 Lenoir 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 upon proper finding of fact by a jury. A certified copy of the order of the Council (or the judgment of the Superior Court in the event of an appeal) shall be filed for record in the office of the Register of Deeds of Lenoir County. 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 owner 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 deed's 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 Kinston Planning Board for study and recommendations, but public hearing shall be necessary before the Kinston Planning Board.

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

ARTICLE 6. ELECTRIC LIGHT AND POWER, WATER SUPPLY, SEWAGE AND WASTE DISPOSAL, AND OTHER UTILITIES

Section 8-12. Operation of Electric Light and Power Systems, Water Systems, Sewerage and Waste Disposal Systems, and Other Utilities.

(a) The City Council may:

(1) Provide for the construction or acquisition and operation of utilities and utility systems;

(2) Acquire any real or personal property necessary or incidental thereto, including equipment, machinery, and all manner of rights or interests in or relating to land and water, and appurtenances thereto; and

(3) Establish rates of charge for utility services and for the use of utility facilities.

(b) The city manager shall have the entire supervision and control of the management of all City utilities and utility systems. With the approval of the City Council he may adopt rules and regulations:

(1) Concerning the management of utility and utility systems, with regard to such matters as maintenance, operation, and improvement thereof, or requiring the pretreatment of waste; and

(2) Concerning collection of charges for utility services and for the use of utility facilities. If pursuant to any rule or regulation utility service to any property is discontinued, it shall be unlawful for any person, firm or corporation without the city manager's approval to renew a utility service or to use it without having first paid any outstanding charges and obtained the approval of the city manager. Violations of this

paragraph shall be misdemeanors punishable by a fine of not exceeding, fifty dollars (\$50.00), or imprisonment for not exceeding thirty days.

(c) As used in this Charter, unless the context otherwise requires, the term "utility", includes water supply, water distribution, sewerage, waste disposal, electric light and power, gas, and public transportation utilities.

Sec. 8-13. Water Connection by Abutting Owners.

The City Council may require that within thirty days after a water main or sewer main is completed and made ready for use, the owner of every abutting lot whereon water is supplied for any human use shall cause the lot to be connected to the water main or sewer main.

ARTICLE 7. LOCAL IMPROVEMENTS AND ASSESSMENTS FOR LOCAL IMPROVEMENTS

Section 8-14. Authority to Make Local Improvements.

The City Council shall have authority to make the local improvements described in this Charter, and to assess the cost against benefited property. The procedure set forth in this Article shall not be exclusive, but shall be in addition to any other procedure provided by law.

Sec. 8-15. Separate Proceedings Not Required.

One or more local improvements may be made in a single proceeding, and assessments for one or more local improvements may be combined.

Sec. 8-16. Definitions.

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

(a) A "street" is the entire width between property lines of every way or place, of whatever nature, when any part thereof is dedicated or open to the use of the public as a matter of right for the purpose of vehicular or pedestrian traffic.

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

(c) 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.

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

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

(f) 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 extending from a lateral at the property line or curb line to the house or plumbing fixture to be served.

(g) A "roadway" is the part of a street which is used, or to be used, for vehicular traffic.

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

Sec. 8-17. Improvements Described.

The 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 of 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 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 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 or reconstruction of all such portions of driveways as in the judgment of the Council ought to be laid in the street area.

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

Sec. 8-18. Water and Sewer Mains Between Streets.

Whenever the Council finds it in the public interest, and it will be more economical and the interest of the property owners will best be served by constructing either water or sanitary sewer mains, or both, between streets rather than in a street, the petition may provide therefor, or in the event the water and sanitary sewer mains may be constructed in a street without petition, they may be constructed between streets without petition. The cost of the construction of such water or sewer mains and laterals shall be assessed according to the street frontage in the same manner and to the same extent that it would be assessed if the improvements were constructed in a street; provided that the City shall provide the rights-of-way for construction and maintenance of such mains at its own expense without assessing the cost thereof.

Sec. 8-19. 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 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) In any case where there is park land or unimproved land abutting one side, or a part of one side, of a street; or
- (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 a special assessment against it cannot be made, or, if made, would probably exceed the value of the land assessed; or
- (3) where the owners of all the property to be assessed agree thereto.

Sec. 8-20. The Petition; Certificate of Sufficiency.

(a) Except as otherwise provided a subsection (b), 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 property abutting on the street or streets or parts 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 subsection (d), the petition shall be signed by at least a majority in Dumber 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, street intersections.

(d) (1) A petition for the making of local improvements on one side of a 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 lineal feet of frontage of the lands abutting such side of the street, excluding street intersections.

(2) Any petition for the making of any improvements covering the entire width of a street and the assessment of the cost 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 the owners of undivided interests in any land shall be deemed and treated as one person and such land 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 an estate by entirety, or of the estate of inheritance, and shall not include mortgages, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lien-holders.

(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. 8-21, When Petition Unnecessary.

(a) No petition shall be necessary for the making of any local improvements for which the City bears the entire cost without assessment.

(b) If, in the judgment of the City Council, the abutting property to be assessed will be benefited in an amount at least equal to the assessment, no petition for local improvement shall be necessary in the cases set forth in subsection (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 portion 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 system 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. 8-22. Notice of Hearing.

(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 a 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 8-21 of this Chapter.

Section 8-23. Public Hearing.

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 the preceding 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 of 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 the 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. 8-24. 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 by 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 said Company pave that part of the street occupied by its tracks, the rails of the tracks, and 18 inches in width outside such tracks, with such material and in such manner as the governing body may prescribe, and that unless such paving be completed on or before a day specified in the resolution, the governing body will cause the same to be done. Where such railroad company shall occupy such street or streets under a franchise or contract which otherwise provides, such franchise or contract shall not be affected by this Section, except insofar as may be consistent with the provisions of such franchise or contract.

(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 resolutions, 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. 8-25. Details of Construction; Contracts for Construction.

The 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 the City. 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. 8-26. Determination as to Cost of Improvements.

Upon completion of the improvements, the 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 incident 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. The determination of the Council as to the total cost of any improvement shall be conclusive.

Sec. 8-27. 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), the preliminary assessment shall be as follows:

(1) Roadway Paving. The total cost of any roadway paving improvement, excluding the cost incurred at street intersections, 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.

(2) Water Mains and Sewers. The cost of not exceeding an eight-inch water or sanitary sewer main and of not exceeding a thirty-inch storm sewer main shall be assessed against the abutting property. Such cost shall be assessed against the lots and parcels of land according to their respective frontages thereon by an equal rate per foot of such frontage. If a water or 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 the 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 thereon 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 proportion of the cost of any improvement than that set forth in subsection (2), there shall be assessed against abutting property only the proportion of the cost as was specified in the petition or in said resolution.

(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. 8-28. Corner Lot Exemptions.

The Council shall have authority to determine the amount of 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 mid-point of the curve or foreshortened corner.

Sec. 8-29. Preliminary Assessment Roll,

The Council shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot or parcel of land assessed, the amount assessed against 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 the 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 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 said 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 hearing 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 were served or mailed.

Sec. 8-30. Hearing; Revision; Confirmation; Lien.

At the time appointed for that purpose or at some other time to which it may adjourn, the 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 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 assessments so confirmed shall be in proportion to the special benefits, except in the case of franchise obligations of railroads. Whenever the governing body shall confirm assessments for local improvements, 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 assessments 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 tax collector.

Sec. 8-31. 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 Council that he takes an appeal to the Superior Court of Lenoir County, in which case he shall within 20 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. 8-32. 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 give notice to 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. 8-33. Reassessment.

The 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 to make a reassessment. In such case there shall be included, as a 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 proceeding shall, as far as practicable, be in all respects as in case of original assessments, and the reassessment shall have the same force as if it had originally been properly made.

Sec. 8-34. Publication of Notice of Confirmation of Assessment Roll.

After the expiration of 20 days from the confirmation of the 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 at three public places in the city, a notice of confirmation of the assessment roll, and that assessments may be paid at any time before the expiration of 30 days from the date of publication or posting of the 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. 8-35. 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 or more than ten equal annual installments as may have been determined in the resolution ordering the 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 be due and payable on the same day of the month in each successive year until the assessment is paid in full; provided, however, that if the 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. 8-36. 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, interest, 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 Lenoir County. Collection of assessments with interest and penalties may also be made by the city by 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 assessed for an improvement ordered by the same resolution, after default in the payment of any installment. The payment of said installment, together with interest and penalties due thereon, with accrued court costs, before the lot or parcel of land, against which the same is a lien, is sold or said lien is foreclosed shall bar the right of the city to sell land or to foreclose the lien by reason of default.

Sec. 8-37. Assessment of Cost of Water Main 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 said extension or extensions as, in the judgment of the 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. 8-38. 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 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. 8-39. Change of Ownership.

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 improvements may be completed and assessment made there-For as if there had been no change in ownership.

Sec. 8-40. Lands Subject to Assessment.

No land 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 lands belonging to the United States which are exempt under the provisions of Federal Statutes, and the 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. 8-41. 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 person interested in any lot or parcel of land affected thereby shall be regarded as a substantial mistake or omission.

Sec. 8-42. 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.

Sec. 8-43. 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 assessments 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 said assessments in abeyance.

(b) All statutes of limitations, and particularly the Statute of Limitations provided for in Chapter 331, Section 1, of Public Laws 1929 (G. S. 160-93) are hereby suspended during the time that any assessment is held in abeyance without the payment of interest, as provided in subsection (a). 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. 8-44. Abutting Property Outside City Limits.

If any lots or parcels of land abutting any local improvements are located outside the city limits, the 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.

CHAPTER IX. MISCELLANEOUS

ARTICLE 1. CLAIMS AGAINST THE CITY

Section 9-1. Presentation of Claims to City Council.

No action shall be instituted or maintained against the City of Kinston upon any claim or demand whatever of any kind of character until the claimant shall have first presented in writing his or her claim or demand to the City Council and the Council shall have declined to pay or settle the same as presented, or for 60 days after presentation shall have neglected to enter or cause to be entered upon its minutes its determination in regard thereto. Nothing contained in this Article shall be construed to prevent any statute of limitations from commencing to run at the time when a claim accrued or demand arose, or in any manner to interfere with its running.

Sec. 9-2. Time for Presentation of Claims.

(a) Except as otherwise provided in this Section, no action for damages of any character whatever, to either person or property, shall be instituted against the city unless, within six months after the happening or infliction of the injury complained of, the complainant, his executor, administrator, guardian, or next friend shall have given notice in writing to the Council of the injury, stating in the notice the date and place of

the injury, the manner of infliction, the character of the injury, and the amount of damage claimed.

(b) No action shall be instituted against the city on account of damages to or compensation for real property used or taken by the city for any public purpose of any kind unless, within two years after such alleged use, the owner, his executor, administrator, guardian, or next friend shall have given notice in writing to the Council of the claim, the notice to set forth the date that the alleged use commenced, a description of the property alleged to have been used, and the amount of damage or compensation claimed.

(c) Notwithstanding the provisions of subsection (a) and (b), if a complaint suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given by him or on his behalf within six months after the termination of the physical or mental incapacity, provided that minority shall not of itself constitute physical or mental incapacity. If the complainant is a minor, his action shall not be barred if notice of claim is given on his behalf within three years after the happening or the infliction of the injury complained of; or, if the minor suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given on his behalf within six months after termination of the physical or mental incapacity, or within three years after the happening or infliction of the injury complained of, whichever is the longer period. The city at any time may request the appointment of a next friend to represent any person having a potential claim against the city and known to be suffering from physical or mental incapacity.

Sec. 9-3. Settlement of Claims by City Manager.

The city manager may settle claims against the city for (1) personal injury or for damages to property when the amount involved does not exceed the sum of three hundred dollars (\$300.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred, and (2) the taking of small portions of private property which are needed for the rounding of corners at street intersections, when the amount involved in any such settlement does not exceed the sum of five hundred dollars (\$500.00) and does not exceed the actual loss sustained. Settlement of a claim by the city manager pursuant to this Section shall constitute a complete release of the city from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident, occasion, or taking complained of. All such releases shall be subject to the approval of the city attorney.

Sec. 2. All contracts entered into by the city, 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 or 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. And the terms of office of the present officials of the City of Kinston shall continue and be unaffected hereby until their successors shall have been duly elected and qualified under the provisions hereof.

Sec. 3. If any part of this Act shall be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not invalidate the remainder hereof.

Sec. 4. Nothing in this Act contained shall be deemed or held in any way to modify or repeal the following mentioned laws: Chapter 346 of the Public-Local Laws of 1929, as amended; Chapter 875 and Chapter 876 of the Session Laws of 1951; Chapter 1170 of the Session Laws of 1955; and Chapter 860 of the Session Laws of 1957.

Sec. 5. All the provisions of Section 143-129 of the General Statutes, as amended, which apply or are intended to apply to municipalities in general shall apply to the City of Kinston.

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

Sec. 7. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 23rd day of March, 1961.