

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 101
HOUSE BILL 333

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF MARION AND TO REPEAL PRIOR LOCAL ACTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Marion is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF MARION.

"ARTICLE I.

"INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Sec. 1.1. Incorporation. The City of Marion, North Carolina, in the County of McDowell, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name and style of the 'City of Marion', hereinafter at times referred to as the 'City'.

"Sec. 1.2. Powers. The City of Marion shall have and may exercise all of the powers, duties, rights, privileges and immunities, which are now, or hereafter may be, conferred, either expressly or by implication, upon the City of Marion, specifically, or upon municipal corporations, generally, by this Charter, by the State Constitution, or by general or local law.

"Section 1.3. Corporate limits. The corporate limits of the City of Marion shall be those existing at the time of ratification of this Charter, as the same are set forth on the official map of the City, and as the same may be altered from time to time in accordance with law. An official map of the City, showing the current City boundaries, shall be maintained permanently in the office of the City Clerk, and shall be available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map of the City shall be made.

"Sec. 1.4. through 1.10. (Reserved.)

"ARTICLE II.

"MAYOR AND COUNCIL.

"Sec. 2.1. Governing body. The Mayor and City Council, elected and constituted as herein set forth, shall be the governing body of the City. On behalf of the City, and in conformity with applicable laws, the Mayor and Council may provide for the exercise of all municipal powers, and shall be charged with the general government of the City.

"Sec. 2.2. City Council; composition; terms of office. The City Council shall be composed of five members, each of whom shall be elected for terms of four years in the

manner provided by Article III of this Charter, provided they shall serve until their successors are elected and qualified.

"Sec. 2.3. Mayor; term of office; duties. The Mayor shall be elected in the manner provided by Article III of this Charter to serve for a term of 4 years, or until his or her successor is elected and qualified. The Mayor shall be the official head of the City Government and shall preside at all meetings of the City Council. The Mayor shall have the right to vote only when there are an equal number of votes in the affirmative and the negative on any motion before the Council. The Mayor shall exercise such powers and perform such duties as presently are or hereafter may be conferred by the General Statutes of North Carolina, by this Charter, and by the ordinances of the City.

"Sec. 2.4. Mayor pro tempore. In accordance with applicable State laws, the Council shall appoint one of its members to act as Mayor pro tempore to perform the duties of the Mayor in the Mayor's absence or disability. The Mayor pro tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Council.

"Sec. 2.5. Meetings of the Council. In accordance with the General Statutes, the Council shall establish a suitable time and place for its regular meetings. Special meetings may be held according to the applicable provisions of the General Statutes.

"Sec. 2.6. Ordinances and resolutions. The adoption, amendment, repeal, pleading, or proving of City ordinances and resolutions shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter. The ayes and noes shall be taken upon all ordinances and resolutions and entered upon the minutes of the Council. The enacting clause of all City ordinances shall be: 'Be it ordained by the City Council of the City of Marion'.

"Sec. 2.7. Voting requirements; quorum. Official action of the Council shall in every instance be by majority vote, provided that a quorum, consisting of a majority of the actual membership of the Council is present. Vacant seats are to be subtracted from the normal Council membership to determine the actual membership.

"Sec. 2.8. Qualifications for office; vacancies; compensation. The compensation of Council members, the filling of vacancies on the Council, and the qualifications of Council members shall be in accordance with applicable provisions of the General Statutes.

"Sec. 2.8. through 2.15. (Reserved.)

"ARTICLE III.
"ELECTIONS.

"Sec. 3.1. Regular municipal elections; conduct and method of election. Regular municipal elections shall be held in the City every two years in odd-numbered years and shall be conducted in accordance with the uniform municipal election laws of North Carolina. The Mayor and members of the Council shall be elected according to the nonpartisan plurality method of election.

"Sec. 3.2. Election of the Mayor. At the regular municipal election in 1977, and every four years thereafter, there shall be elected a Mayor to serve a term of four years. The Mayor shall be elected by the voters of the City voting at large.

"Sec. 3.3. Election of the council members. At the regular municipal elections in 1977 and every four years thereafter, there shall be elected three Council members to fill the seats of those officers whose terms are then expiring. At the regular municipal elections in 1979 and every four years thereafter, there shall be elected two Council members to fill the seats of those officers whose terms are then expiring.

"Sec. 3.4 through 3.10. (Reserved.)

"ARTICLE IV.

"ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. Form of government. The City shall operate under the Council-Manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. City Manager. The Council shall appoint a City Manager who shall serve at the pleasure of the Council, who shall be the head of the administrative branch of City government, and who shall be responsible to the Council for the proper administration of the affairs of the City. In exercising the duties of chief administrator, the Manager shall:

(a) Except as provided in subsection (b) hereof, appoint and suspend or remove all City employees whose appointment or removal is not otherwise provided for by law, in accordance with such general personnel rules, regulations, policies, or ordinances as the Council may adopt;

(b) Recommend to the Council for their approval appointments to the positions of the City Clerk, Tax Collector, Finance Officer, Public Works Director, Fire Chief and Chief of Police. Appointments to the positions of Assistant Fire Chief and/or Assistant Chief of Police shall be made by the City Council upon recommendation from the appropriate department head and the City Manager;

(c) Direct and supervise the administration of all departments, offices, and agencies of the City, subject to the general direction and control of the Council except as otherwise provided by law;

(d) Attend all meetings of the Council and recommend any measures deemed expedient;

(e) See that all laws of the State, the City Charter and the ordinances, resolutions and regulations adopted by the Council are faithfully executed within the City.

(f) Prepare and submit the annual budget and capital program to the Council;

(g) Annually submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of the fiscal year;

(h) Make any other reports that the Council may require concerning the operation of the City departments, offices, and agencies subject to the Manager's direction and control; and

(i) Perform any other duties that may be required and authorized by the Council.

"Sec. 4.3. City Attorney. The Council shall appoint a City Attorney who shall be licensed to engage in the practice of law in the State of North Carolina. It shall be the duty of the City Attorney to prosecute and defend suits against the City; to advise the Mayor, Council and other City officials with respect to the affairs of the City; to draft

all legal documents relating to the affairs of the City; to inspect and pass upon all agreements, contracts, franchises and other instruments with which the City may be concerned; to attend meetings of the council and to perform other duties required by law or as the Council may direct.

"Sec. 4.4. City Clerk. The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain in a safe place all records and documents pertaining to the affairs of the City, and to perform such other duties as may be required by law or as the Council may direct.

"Sec. 4.5. City Finance Officer. The Council shall provide for the appointment of a City Finance Officer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act.

"Sec. 4.6. City Tax Collector. The Council shall appoint a City Tax Collector to collect all taxes, licenses, fees and other revenues accruing to the City, subject to the General Statutes, the provisions of this Charter and the ordinances of the City. The City Tax Collector shall diligently comply with and enforce all the laws of North Carolina relating to the collection of taxes and other revenues by municipalities.

"Sec. 4.7. Consolidation of functions. The Council may consolidate any two or more positions of City Manager, City Clerk, City Tax Collector and City Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

"Sec. 4.8. Other administrative officers and employees. Consistent with applicable State laws, the Council may establish other positions, provide for the appointment of other administrative officers and employees, and generally organize the city government in order to promote the orderly and efficient administration of the affairs of the City.

"Sec. 4.9 through 4.15. (Reserved.)

"ARTICLE V.

"SPECIAL PROVISIONS.

"Sec. 5.1. Assessments for street and sidewalk improvements; petition unnecessary. A. In addition to any authority which is now or may hereafter be granted by general law to the City for making street improvements, the Council is hereby authorized to make street improvements and to assess the cost thereof against abutting property owners in accordance with the provisions of this Section.

B. The Council may order street improvements and assess the cost thereof against the abutting property owners, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the North Carolina General Statutes without the necessity of a petition, upon the finding by the Board as a fact:

- (1) That the street improvement project does not exceed 1,200 linear feet, and
- (2) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or
- (3) That it is in the public interest to connect two streets, or portions of a street already improved, or

(4) That it is in the public interest to widen a street, or part thereof, which is already improved, provided, that assessments for widening any street or portion of street without a petition shall be limited to the costs of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the City's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Section.

C. For the purposes of this Section, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters and street drainage facilities.

D. In addition to any authority which is now or may hereafter be granted by general law to the City for making sidewalk improvements, the Council is hereby authorized, without the necessity of obtaining a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the City, and to assess the total cost thereof against abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the North Carolina General Statutes; provided, however, that regardless of the assessment basis or bases employed, the Council may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of such street.

E. In ordering street and sidewalk improvements, without a petition and assessing the cost thereof under authority of this Section, the Council shall comply with the procedure provided by Article 10, Chapter 160A of the General Statutes except those provisions relating to the petition of property owners and the sufficiency thereof.

F. The effect of the act of levying assessments under the authority of this Section shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

Sec. 2. The purpose of this act is to revise the Charter of the City of Marion and to consolidate herein certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

Sec. 3. This act shall not be deemed to repeal, modify, or in any manner affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein:

(a) Any acts concerning the property, affairs, or government of public schools in the City of Marion.

(b) Any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind.

Sec. 4. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act are hereby repealed:

Ch. 49 Priv. L. 1844

Ch. 194 Priv. L. 1847
Ch. 120 Priv. L. 1857
Ch. 16 Priv. L. 1862
Ch. 18 Priv. L. 1869
Ch. 109 Priv. L. 1869
Ch. 59, Priv. L. 1869
Ch. 77 Pub. L. 1871
Ch. 85 Pub. L. 1881
Ch. 183 Priv. L. 1899
Ch. 114 Priv. L. 1891
Ch. 310 Pub. L. 1895
Ch. 286 Priv. L. 1895
Ch. 73 Priv. L. 1901
Ch. 149 Priv. L. 1901
Ch. 428 Priv. L. 1901
Ch. 247 Priv. L. 1903
Ch. 369 Priv. L. 1907
Ch. 73 Priv. L. 1909
Ch. 291 Priv. L. 1909
Ch. 105 Priv. L. 1911
Ch. 121 Priv. L. 1915
Ch. 317 Priv. L. 1915
Ch. 19 Priv. L. 1917
Ch. 54 Priv. L. 1917
Ch. 103 Priv. L. 1917
Ch. 8 Priv. L. 1919
Ch. 42 Priv. L. 1919
Ch. 31 Priv. Ex. 1920
Ch. 161 Priv. L. 1921
Ch. 9 Priv. L. Ex. 1921
Ch. 162 Priv. L. 1923
Ch. 44 Priv. L. 1924
Ch. 128 Priv. L. 1925
Ch. 103 Priv. L. 1929
Ch. 106 Priv. L. 1931
Ch. 163 Priv. L. 1931
Ch. 792 S.L. 1947
Ch. 793 S.L. 1947
Ch. 1159 S.L. 1951
Ch. 309 S.L. 1953
Ch. 388 S.L. 1953
Ch. 417 S.L. 1955
Ch. 881 S.L. 1959
Ch. 665 S.L. 1967

Sec. 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.

(b) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

Sec. 6. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(a) The repeal herein of any act repealing such laws, or

(b) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

Sec. 7. All existing ordinances and resolutions of the City of Marion and all existing rules or regulations of departments or agencies of the City of Marion not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified or amended.

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

Sec. 8. If any of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, repealed or superseded, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is repealed or superseded.

Sec. 10. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 11. This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 21st day of March, 1977.