

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 263
HOUSE BILL 461

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF
NORTH WILKESBORO AND TO REPEAL PRIOR LOCAL ACTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of North Wilkesboro is hereby revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF NORTH WILKESBORO.

"ARTICLE I.

"INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"Section 1.1. Incorporation. The Town of North Wilkesboro, North Carolina, in the County of Wilkes, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name and style of the 'Town of North Wilkesboro', hereinafter at times referred to as the 'town'.

"Sec. 1.2. Powers. The Town of North Wilkesboro 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 Town of North Wilkesboro specifically or upon municipal corporations generally by this Charter, by the State Constitution, or by general or local law.

"Sec. 1.3. Corporate limits. The corporate limits of the Town of North Wilkesboro shall be those existing at the time of ratification of this Charter, as the same are set forth on the official map of the town, and as the same may be altered from time to time in accordance with law. An official map of the town, showing the current town boundaries, shall be maintained permanently in the office of the town 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 town shall be made.

"ARTICLE II.

"MAYOR AND BOARD OF COMMISSIONERS.

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

"Sec. 2.2. Selection of the mayor; term of office; duties. The mayor shall be elected by the qualified voters of the town for a term of four years, in the manner provided by Article III of this Charter. The mayor shall be the official head of the town government,

and shall preside at all meetings of the board of commissioners. The mayor shall have the right to vote on matters before the board only where there is an equal number of votes in the affirmative and in the negative.

"Sec. 2.3. Board of commissioners; terms of office. The board of commissioners shall be composed of five members, each of whom shall be elected for a term of four years, in the manner provided by Article III of this Charter.

"Sec. 2.4. Mayor pro tempore. In accordance with applicable State laws, the board of commissioners 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 board.

"ARTICLE III.

"ELECTIONS.

"Sec. 3.1. Regular municipal elections; conduct; staggered terms.

(a) Regular municipal elections shall be held in the town every two years in odd-numbered years, and shall be conducted in accordance with the uniform municipal election laws of North Carolina.

(b) At the regular municipal election to be held in 1977, and every four years thereafter, the mayor of the town shall be elected for a four-year term.

(c) At the regular municipal election to be held in 1977, five members of the board of commissioners shall be elected. The two candidates who receive the highest number of votes shall be elected for four-year terms, while the three candidates who receive the next highest number of votes shall be elected for two-year terms. If two or more of the candidates who are elected receive an equal number of votes, so that the candidate or candidates who will serve four-year terms cannot be determined, the county board of elections shall determine by lot the length of the terms of such candidates.

(d) Beginning at the regular municipal election to be held in 1979, and every four years thereafter, three members of the board of commissioners shall be elected to serve for four-year terms. Beginning at the regular municipal election to be held in 1981, and every four years thereafter, two members of the board of commissioners shall be elected to serve for four-year terms.

"Sec. 3.2. Method of election; officers elected at large. The mayor and members of the board of commissioners shall be elected according to the partisan primary and election method set out in G.S. 163-291. The mayor and members of the board shall be elected by all of the qualified voters of the town.

"ARTICLE IV.

"ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. Form of government. The town 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. Town manager. The board of commissioners shall appoint a town manager who shall be the administrative head of town government, and who shall be responsible to the board for the proper administration of the affairs of the town. The

town manager shall hold office at the pleasure of the board of commissioners, and shall receive such compensation as the board shall determine. In exercising his duties as chief administrator, the manager shall have the following powers and duties:

(a) He shall appoint and suspend or remove all town officers and employees not elected by the people and whose appointment or removal is not otherwise provided for by law, except the town attorney and the employees of the police department, in accordance with such general personnel rules, regulations, policies, or ordinances as the board may adopt.

(b) He shall direct and supervise the administration of all departments, offices, and agencies of the town, except the police department, subject to the general direction and control of the board, except as otherwise provided by law. The police department shall remain under the control and supervision of the mayor and board of commissioners.

(c) He shall attend all meetings of the board, unless excused therefrom, and shall recommend any measures that he deems expedient.

(d) He shall prepare and submit the annual budget and capital program to the board.

(e) He shall keep the board fully advised as to the financial condition of the town and shall annually submit to the board, and make available to the public, a complete report on the finances and administrative activities of the town as of the end of the fiscal year.

(f) He shall make any other reports that the board may require concerning the operations of the town departments, offices and agencies subject to his direction and control.

(g) He shall perform any other duties that may be required or authorized by the board.

"Sec. 4.3. Chief of police. The board of commissioners shall appoint a chief of police to serve at its pleasure. The chief of police shall direct and supervise the administration of the police department, and shall see that all laws of the State and of the town are faithfully executed. The chief of police shall make an annual report to the board concerning the activities of the police department, and shall perform such other duties as the board of commissioners may direct.

"Sec. 4.4. Town attorney. The board of commissioners shall appoint a town 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 town attorney to prosecute and defend suits against the town; to advise the mayor, board of commissioners and other town officials with respect to the affairs of the town; to draft all legal documents relating to the affairs of the town; to inspect and pass upon all agreements, contracts, franchises and other instruments with which the town may be concerned; to attend meetings of the board of commissioners, and to perform other duties required by law or as the board may direct.

"Sec. 4.5. Other administrative officers and employees. Consistent with applicable State laws, the board of commissioners may establish other positions, provide for the appointment of other administrative officers and employees, and generally organize the

town government in order to promote the orderly and efficient administration of the affairs of the town.

"ARTICLE V.

"RETIREMENT AND PENSION FUNDS.

"Sec. 5.1. Retirement system. (a) The board of commissioners is authorized and permitted, in its discretion, to contract with any company, firm, corporation or association for a system of retirement, disability or death benefits, or any combination thereof, for the employees and officials of the town, including the mayor and board of commissioners, and to expend the funds necessary therefor.

(b) The board is also authorized, in its discretion, to require payroll deductions of officials and employees who elect to participate in the system in order to provide funds which may be used to assist in defraying the cost of the system.

"Sec. 5.2. Firemen's supplementary pension fund. (a) There shall continue to be a supplementary pension fund for the fire department of the town, such fund to be known as the 'North Wilkesboro Firemen's Supplementary Fund', hereinafter referred to as 'Supplementary Pension Fund'. The fund is to be administered by a board of trustees composed ex officio of the town treasurer, the first assistant chief of the fire department of the town, and a third member of the board to be elected annually from the membership of the town fire department by a majority vote of the chief and members of the fire department, who shall perform his duties ex officio.

(b) All funds in the firemen's relief fund of the town in excess of five thousand dollars (\$5,000) shall continue to be transferred to the 'Supplementary Pension Fund' so as to retain in the firemen's relief fund an amount of money not greater than five thousand dollars (\$5,000); provided, however, the firemen's relief fund shall have restored such sums from recurring annual receipts as are necessary to maintain a fund of not less than five thousand dollars (\$5,000); provided further, of the funds and subsequent recurring increments thereto transferred from the firemen's relief fund of the town to the 'Supplementary Pension Fund', any or all of the same shall be retrievable by and to the firemen's relief fund of the town in order to defray and meet such legitimate claims which accrue under the provisions and coverage of the firemen's relief fund.

(c) Any person who is a member of the town fire department, as shown by town records, or any person who shall become such a member, shall be eligible for benefits from the 'Supplementary Pension Fund' unless or until such person has been retired as a member of the town fire department under the provisions of the retirement system for counties, cities, and towns as set out in Article 3, Chapter 128 of the General Statutes of North Carolina and as participated in by the town, or as a voluntary member of the town fire department. This section does not modify or alter in any way the Workmen's Compensation Laws of the State of North Carolina.

(d) Any member who has served 25 years as a fireman in the town fire department and has attained the age of 55 shall be entitled to receive a pension from the 'Supplementary Pension Fund'. The pension shall be in the amount of twenty dollars (\$20.00) per month or more as below set forth, providing that those members retiring after the age of 55 and before attaining age 60 may elect to receive the increased amount.

<u>Retirement Age</u>	<u>Amount</u>
25 years service and at least 55	\$20.00
26 years service and at least 56	\$22.00
27 years service and at least 57	\$24.00
28 years service and at least 58	\$26.00
29 years service and at least 59	\$28.00
30 years service and at least 60	\$30.00

(e) The town treasurer, as a member of the board of trustees of the 'Supplementary Pension Fund', shall be treasurer and custodian of the fund and shall pay the beneficiaries thereof on the first day of each and every month any moneys in his possession that such beneficiaries may be entitled to under the provisions of this section.

(f) The town treasurer, as custodian of the 'Supplementary Pension Fund', shall be required to give a bond with an indemnity company authorized to do business in the State of North Carolina as surety in a sum equal to one and one-quarter times the maximum amount estimated by the board of trustees as likely to be in his possession as such custodian at any time within the fiscal year for which the bond is given. The condition of the bond shall be that the custodian shall faithfully receive, keep, disburse, and account for, as herein provided, all funds and property coming into his hands as such custodian, and the premiums on the bond shall be paid out of the 'Supplementary Pension Fund'.

(g) The custodian of the 'Supplementary Pension Fund' is authorized and directed to invest all moneys coming into his possession belonging to the 'Supplementary Pension Fund', except so much as the board of trustees from time to time determines is reasonably necessary for the prompt payment of claims and expenses, in such securities as the board of trustees shall select; provided, however, that such securities shall be limited to and upon the same conditions as those enumerated by the General Statutes of North Carolina, as amended, as to the investment of trust funds, and/or the funds of guardians.

(h) The board of trustees as herein provided for may, in its discretion, take and receive any gift, grant, bequest, or devise or any real or personal property or other things of value for, and as, the property of the 'Supplementary Pension Fund' and hold and disburse and invest the same for the use of the fund in accordance with the purpose of this section and the conditions attached to any such gift, grant, bequest or devise.

(i) The provisions of Chapter 118 of the General Statutes of North Carolina creating a firemen's relief fund shall not apply to the town insofar, and only insofar, as such provisions are inconsistent with and contradictory to the provisions of this section.

"ARTICLE VI.

"BOARDS AND COMMISSIONS.

"Sec. 6.1. Board of Alcoholic Beverage Control. (a) There shall continue to be a town board of alcoholic control, appointed and constituted as herein set forth, which shall have general power and authority over the town liquor control store in the manner provided herein.

(b) The town board of commissioners shall appoint the town board of alcoholic control, which shall be composed of a chairman and two other members who shall be

well known for their character, ability and business acumen. The board shall be known and designated as the 'Town of North Wilkesboro Board of Alcoholic Control'. The chairman of such board shall be designated by the board of commissioners and shall serve for his first term a period of three years, and one member shall serve for his first term a period of two years, and the other member shall serve for his first term a period of one year; and all terms shall begin with the date of their appointment, and after the same terms shall have expired, their successors in office shall serve for a period of three years. Their successors, or any vacancy occurring in the board, shall be named or filled by the board of commissioners.

(c) The town board of alcoholic control shall have all of the powers and duties imposed by Section 18A-17 of the General Statutes on county boards of alcoholic control, except as otherwise provided herein, and shall be subject to the powers and authority of the State Board of Alcoholic Control the same as county boards of alcoholic control as provided in Section 18A-15 of the General Statutes. The town board of alcoholic control and the operation of any town liquor store authorized under the provisions of this section shall be subject to and in pursuance with the provisions of Chapter 18A of the General Statutes, except to the extent which the same may be in conflict with the provisions of this section. Wherever the word 'county' board of alcoholic control appears in such Chapter, it shall include the town board of alcoholic control.

(d) The net profits derived from stores operated under this section, as determined by quarterly audits, shall be allocated by the Board of Alcoholic Control and used as herein provided:

- (1) Five percent (5%) of the net profits shall be expended by the Board of Alcoholic Control for law enforcement and education as to the effects of the use of alcoholic beverages.
- (2) Ten percent (10%) of the net profits shall be paid to the Board of Trustees of Wilkes General Hospital.
- (3) Twenty percent (20%) of the net profits shall be paid to the General Fund of Wilkes County to be appropriated for any proper governmental purpose.
- (4) The remaining net profits shall be paid to the General Fund of the Town of North Wilkesboro to be used for any proper governmental purposes; provided that, the board of commissioners shall apply five percent (5%) of the funds allocated to recreational purposes for the benefit of the citizens of the town.

(e) Subsequent elections concerning the town liquor control store may be held, and such elections shall be conducted in accordance with the procedures contained in Chapter 412, Session Laws of 1965.

"ARTICLE VII.

"SPECIAL PROVISIONS.

(Reserved)."

Sec. 2. The purpose of this act is to revise the Charter of the Town of North Wilkesboro and to consolidate herein certain acts concerning the property, affairs, and

government of the town. 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 Town of North Wilkesboro.

(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:

- Private Laws 1891, Chapter 198
- Private Laws 1893, Chapter 50
- Private Laws 1899, Chapter 314
- Private Laws 1903, Chapter 133
- Private Laws 1913, Chapter 144
- Private Laws 1915, Chapter 286
- Public-Local Laws 1917, Chapter 487
- Private Laws 1917, Chapter 66
- Private Laws 1917, Chapter 84
- Private Laws, Ex. Session 1920, Chapter 34
- Private Laws 1923, Chapter 267
- Private Laws 1935, Chapter 219
- Public-Local Laws 1939, Chapter 272
- Public-Local Laws 1939, Chapter 332
- Session Laws 1947, Chapter 1
- Session Laws 1949, Chapter 1107
- Session Laws 1949, Chapter 1142
- Session Laws 1951, Chapter 839
- Session Laws 1951, Chapter 840
- Session Laws 1951, Chapter 841
- Session Laws 1953, Chapter 398
- Session Laws 1953, Chapter 559
- Session Laws 1955, Chapter 765
- Session Laws 1955, Chapter 1299
- Session Laws 1955, Chapter 1300
- Session Laws 1963, Chapter 37
- Session Laws 1963, Chapter 357
- Session Laws 1969, Chapter 120
- Session Laws 1969, Chapter 617
- Session Laws 1971, Chapter 38
- Session Laws 1971, Chapter 67
- Session Laws 1971, Chapter 333

Session Laws 1973, Chapter 383

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 law, or

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

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

(b) 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 Town of North Wilkesboro or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of 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 25th day of April, 1977.