

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 333
HOUSE BILL 757

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF GARNER

"ARTICLE I.

"INCORPORATION, CORPORATE POWERS AND BOUNDARIES

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

"Sec. 1.2. Powers. The Town of Garner 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 Garner 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 Garner shall be those existing at the time of ratification of this charter, as the same are now or hereafter may be constituted pursuant to law. An official map or description 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 or description of the town shall be made.

"ARTICLE II.

"MAYOR AND BOARD OF ALDERMEN.

"Sec. 2.1. Governing body. The mayor and board of aldermen, 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. Mayor; terms of office; duties. The mayor shall be elected by and from the qualified voters of the town for a term of two (2) years, in the manner provided by Article III of this charter; provided, the mayor shall serve until his successors is elected

and qualified. The mayor shall be the official head of the town government, shall preside at all meetings of the board of aldermen, and shall have the powers and duties of mayor as prescribed by this charter and the General Statutes. 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 aldermen; terms of office. The board of aldermen shall be composed of five members, each of whom shall be elected for terms of two (2) years, in the manner provided by Article III of this charter; provided, board members shall serve until their successors are elected and qualified.

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

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

"Sec. 2.6. Ordinances and resolutions. The adoption, amendment, repeal, pleading, or proving of town ordinances and resolutions shall be in accordance with applicable provisions of the General Statutes of North Carolina not inconsistent with this charter. Except as otherwise provided by law, all ordinances shall become effective upon adoption; provided, an ordinance may, by its own terms, specify some other time upon which it shall take effect. The enacting clause of all town ordinances shall be: 'Be it ordained by the board of aldermen of the Town of Garner'.

"Sec. 2.7. Voting requirements; quorum; emergency measures. Official action of the board shall, except as otherwise provided by law, be by majority vote, provided that a quorum, consisting of a majority of the actual membership of the board is present. Vacant seats are to be subtracted from the normal board membership to determine the actual membership.

An affirmative vote of at least four-fifths of the actual membership of the board shall be necessary to pass or adopt any emergency measure. An emergency measure, for the purposes of this section, shall be defined as an ordinance or resolution to provide for the immediate preservation of the public peace, property, health or safety, and one in which an emergency situation is set forth and defined in a preamble thereto. It is the intention of the town that no situation shall be declared an emergency by the board except under a strict application of the provisions of this section.

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

"ARTICLE III.

"ELECTIONS

"Sec. 3.1. Regular municipal elections; conduct. 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. The mayor and

members of the board shall be elected according to the nonpartisan plurality election method.

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

"Sec. 3.3. Election of board members. At the regular municipal election in 1977 and every two years thereafter, there shall be elected, by the qualified voters of the town, five board members to serve terms of two years each.

"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 aldermen 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 aldermen, and shall receive such compensation as the board shall determine. In exercising his duties as chief administrator, the manager shall:

A. Appoint and suspend or remove all town officers and employees not elected by the people, except the town attorney and those whose appointment or removal is otherwise provided for by law, in accordance with such general personnel rules, regulations, policies, or ordinances as the board may adopt.

B. Report to the board of aldermen each appointment or removal of an officer or employer at the next board meeting following such appointment or removal.

C. Direct and supervise the administration of all departments, offices, and agencies of the town, subject to the general direction and control of the board, except as otherwise provided by law.

D. Attend all meetings of the board, unless excused therefrom, and recommend any measures that he deems expedient.

E. Prepare and submit the annual budget and capital program to the board.

F. Keep the board fully advised as to the financial condition of the town and annually submit to the board and make available to the public, a complete report on the finances and administrative activities of the town at the end of the fiscal year.

G. Make any other reports that the board may require concerning the operation of town departments, offices, and agencies subject to his direction and control.

H. Perform any other duties that may be required or authorized by the board, or as required by law.

"Sec. 4.3. Town attorney. The board of aldermen shall appoint a town attorney who shall be licensed to engage in the practice of law in the State of North Carolina. Upon request by the board of aldermen, it shall be the duty of the town attorney to defend suits against the town; to advise the mayor, board of aldermen and other town officials with respect to the affairs of the town; to draft legal documents relating to the affairs of the town; to inspect and pass upon agreements, contracts, franchises and other

instruments with which the town may be concerned; to attend meetings of the board of aldermen, and to perform other duties as the board may direct.

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

"Sec. 4.5. Town finance officer. The town manager shall appoint a town finance officer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act.

"Sec. 4.6. Town tax collector. The town manager shall appoint a town tax collector to collect all taxes, licenses, fees and other revenues accruing to the town, subject to the General Statutes, the provisions of this charter and the ordinances of the town. The town 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 board of aldermen may provide for the consolidation of any two or more positions of town manager, town clerk, town tax collector, and town 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 board of aldermen 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.

"PUBLIC IMPROVEMENTS.

"Sec. 5.1. Assessments for Street and Sidewalk Improvements, Petition Unnecessary. A. In addition to any authority which is now or hereafter may be granted by general law to the Town for making street improvements, the board of aldermen 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 board of aldermen 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 2,000 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 improvements, 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 streets in accordance with the street classification and improvement standards established by the town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

C. For the purpose of this Article, 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 town for making sidewalk improvements, the board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, 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 board of aldermen 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 Article, the board 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 Article 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. 5.2. Establishment of proposed street lines. A. Whenever, in the opinion of the board of aldermen, it is in the best interest of the town to do so, the board may make provision for the ultimate widening or extension or both of existing streets and for opening of new streets, and for the gradual acquisition of the lands necessary for such improvements, in accordance with the procedure established by this section.

B. Platting of proposed street lines. From and after the time of adoption of a major street plan by the board of aldermen and the board of transportation pursuant to provisions of G.S. 136.66.2, the board shall have power to request, make, or cause to be made, from time to time, surveys for the exact locating of the lines of new, extended, widened, or narrowed streets and highways in the whole or any portion of the town and the area within its outside zoning and subdivision control jurisdiction. Personnel making such surveys are empowered to enter upon lands, make examinations or surveys, and place and maintain necessary monuments thereon, at reasonable times and with due care for the property. A plat or plats of the area or areas thus surveyed shall be prepared on which are indicated the locations of the lines recommended as the planned or mapped lines of future streets, street extensions, street widenings, or street narrowings. The preparation of such plat or plats shall not in and of itself constitute or be deemed to

constitute the opening or establishment of any streets or the taking or acceptance of any land for street purposes.

C. Adoption of official map; hearing; notice. Following the preparation of such plats, the board may officially adopt a map or maps of planned new streets and highways, extensions, widenings, narrowings, or vacations of streets within the town and the territory within its extraterritorial zoning and subdivision control jurisdiction. Before taking any such action, the board shall hold a public hearing thereon, notice of the time and place of which shall have been given once a week for two successive weeks in a newspaper having general circulation in the town, and by posting such notice at four public places in the town and at four public places within the affected area outside the corporate boundaries. Such notice shall be published or posted for the first time not less than 15 days prior to the date fixed for said hearing. Following adoption of such a map or maps the board shall certify a copy to the Register of Deeds of Wake County, which copy shall be duly filed. The placing of any street or street line upon any official map or maps shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or the taking of acceptance of any land for street purposes.

D. Right of town to acquire property before improvement. From and after the time of adoption and certification to the register of deeds of any such map or maps, it shall be unlawful to build upon any land within the lines of proposed streets shown thereon or to repair or otherwise improve any existing buildings within such lines until the board shall have been given an opportunity to purchase or otherwise acquire the property for street purposes as provided by this section. To that end, any person proposing to build upon such land or to make repairs or improvements to any existing building on such land shall, in writing, notify the board of the nature and estimated cost of such building, repairs or improvements. The board shall then determine whether it will take the necessary steps to acquire the land prior to construction of said building or the making of said repairs or improvements. If the board fails, within 60 days from the receipt of such notice, to acquire, adopt a formal resolution directing an appropriate officer to acquire, or institute condemnation proceedings to acquire the property, then the owner or other person giving notice may proceed to erect the building or to make the repairs or improvements described in such notice. The building inspector is authorized to withhold and refrain from issuing, for a period not exceeding 60 days from receipt by the board of the notice herein prescribed, any building permit for the erection of any building within the lines, or for the making of any repairs or improvements to existing buildings within such lines.

E. Failure to give written notice; bar to recovery for value of improvements. If any person, firm or corporation builds upon any land included within the proposed street lines, or repairs or otherwise improves that part of any existing building within such lines, without giving the board an opportunity to acquire the property free from improvements, as provided in this section, the board shall not be required to pay for the value of such building, repairs, or improvements in any proceeding subsequently brought to acquire the land for the purpose shown on the officially adopted map or maps.

F. Failure of town to act; no limit to subsequent condemnation. The failure of the board of aldermen to take action under subsection D of this section within 60 days after notice shall not have the effect of limiting the right of the board at any subsequent time to condemn the land in question. In such case, however, the owner shall be entitled to full compensation as now provided by law for the building, repairs, or improvements made after the failure of the board to take action within the prescribed period.

"Sec. 5.3. Power of eminent domain. The procedures provided in Article 9 of Chapter 136 of the General Statutes, as specifically authorized by G.S. 136.66.3(c), shall be applicable to the town in the case of acquisition of lands, easements, privileges, rights-of-way and other interests in real property for streets, sewer lines, water lines, electric power lines, and other utility lines in the exercise of the power of eminent domain. The town, when seeking to acquire such property or rights or easements therein or thereto, shall have the right and authority, at its option and election, to use the provisions and procedures as authorized and provided in G.S. 136-66(c) and Article 9 of Chapter 136 of the General Statutes for any of such purposes without being limited to streets constituting a part of the State Highway System; provided, however, that the provisions of this section shall not apply with regard to properties owned by public service corporations as defined in G.S. 160A-243(c), unless (1) the exercise of such power of eminent domain is either consented to by the owner of the property to be acquired by the town or (2) it is first adjudicated after notice and a hearing that such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and the operation by such public service corporation.

"Sec. 5.4. Acceptance of dedications. In addition to any other authority granted the town to acquire land for streets and other purposes, the town shall have power to accept by resolution the dedication of any land or interest in land for street, utility or other town purposes, both inside and outside the corporate limits, whether such dedication is made or offered by deed, by recorded plat, or otherwise. Notwithstanding the provisions of G.S. 136-96 or any other provision of law, the acceptance of a street or street easement by resolution adopted pursuant to this section shall constitute a completed dedication and acceptance, and such dedication shall not thereafter be withdrawn except with written permission of the board.

"Sec. 5.5. Acreage charges for water and sewer connections. In addition to any water and sewer service and connection charges authorized by law, the board may establish and collect acreage charges for making connections to the town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water mains and sewer outfalls and the replacement or enlargement of existing mains and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, the board may establish higher acreage charges for property to be developed for commercial, institutional, or industrial use than those established for property to be developed for other uses, and may base acreage charges for residential development on the number of dwelling units per acre of land.

"Sec. 5.6. Contracts for water or sewer extensions. Notwithstanding any provision of this charter or any other law, the board may enter into contracts with any person, firm,

or corporation whereby such person, firm, or corporation agrees to bear the total initial costs of water main or sewer outfall extensions, and whereby the town agrees to reimburse such person firm, or corporation for that portion of the costs in excess of the acreage charges attributable to property owned by such person, firm, or corporation to or through which such extensions are made; provided, such reimbursement shall be made only from revenues derived from acreage charges levied against property developed subsequent to the installation of such extensions; provided, further, that nothing in this section shall be construed to authorize or require the town to reimburse, or to contract to reimburse, any person, firm, or corporation for any part of the costs of installing water or sewer lines within a subdivision to serve such subdivision.

"Sec. 5.7. Cleaning and repair of sidewalks. It shall be the duty of every property owner in the town to maintain in good and safe repair and to keep clean and free of debris, trash, ice, snow, and other obstacles upon the sidewalks abutting his property.

The board of aldermen may by ordinance establish a procedure whereby town employees may repair or may clean any sidewalk or remove therefrom any debris, trash, ice or snow upon failure of the abutting property owner, after adequate notice and opportunity to be heard, to do so. In such event, the cost of such repair, cleaning, or removal shall become a lien upon the abutting property equivalent to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the town or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"ARTICLE VI.

"SPECIAL PROVISIONS.

"Sec. 6.1. Police officers' jurisdiction. All policemen and other law enforcement officers of the town charged with the duty of making arrests or otherwise enforcing the criminal laws are hereby authorized and empowered to make arrests, enforce the criminal laws and to serve any and all process at any point or place in Wake County within a distance of three miles from the corporate limits of the town, but not within the corporate limits of any other municipality.

"Sec. 6.2. Settlement of claims. The board of aldermen may authorize the town manager to settle claims against the town for personal injury or damage to property when the amount involved does not exceed the sum of one hundred dollars (\$100.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. All such settlements shall be approved by the town attorney."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Garner 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 Garner;

(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 1905, Chapter 358

Private Laws 1907, Chapter 197

Private Laws 1933, Chapter 153

Public-Local Laws 1937, Chapter 620

Session Laws 1953, Chapter 210

Session Laws 1953, Chapter 247

Session Laws 1955, Chapter 459

Session Laws 1957, Chapter 633

Session Laws 1959, Chapter 307

Session Laws 1961, Chapter 664

Session Laws 1963, Chapter 197

Session Laws 1963, Chapter 902

Session Laws 1967, Chapter 576

Session Laws 1967, Chapter 597

Session Laws 1969, Chapter 393

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 Garner and all existing rules or regulations of departments or agencies of the Town of Garner, 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 Garner 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 ratification.

In the General Assembly read three times and ratified, this the 9th day of May, 1977.