

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 78
HOUSE BILL 46

AN ACT TO REVISE, CONSOLIDATE AND RESTATE THE CHARTER OF THE
CITY OF CONOVER AND TO REPEAL ALL PRIOR CHARTER ACTS.

The General Assembly of North Carolina enacts:

Section 1.

"THE RESTATED CHARTER OF THE CITY OF CONOVER

"CHAPTER 1. ORGANIZATION AND CORPORATE POWERS

"Section 1.01. Incorporation and corporate powers. The City of Conover shall continue to be a body politic and corporate by the name of 'City of Conover'. Under this name, the city shall continue to be vested with all the property rights which now belong to the corporation; shall have perpetual succession; may sue or be sued; may contract and be contracted with; may acquire such property, real and personal, in any manner acquired by it, and from time to time may hold, invest, sell or dispose of the same; may have a common seal and alter and renew the same at will and shall have and may exercise in conformity with this Charter all the powers, duties, rights, functions, privileges and immunities and municipal powers of every name and nature whatsoever.

"Section 1.02. Exercise of power. All duties, 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. In addition to the powers enumerated herein or those appropriate to the exercise of such powers, the City of Conover shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina, and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"CHAPTER II. MUNICIPAL CORPORATE BOUNDARIES

"Section 2.01. Existing city limits. (a) The corporate boundaries of the city shall be those existing at the time of ratification of this restated Charter with such alterations as may be made from time to time in the manner provided by law. The boundaries of the City of Conover are set out on a map entitled 'Map of Conover City Limits'. The map is maintained in the office of the city clerk, as required by G.S. 160A-22. Reproduced copies of the official map or description of the corporate boundaries of the city, certified by the city clerk shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description.

(b) When required from time to time, the city council may provide for the redrawing of the official map or the rewriting of the official description. A redrawn map and rewritten description shall supersede for all purposes the earlier map and description which are respectively replaced.

"Section 2.02. Extension of corporate boundaries. All extensions of the corporate boundaries shall be governed by the general laws of North Carolina.

"Section 2.03. Electoral district boundaries. The City of Conover comprises one electoral district and the one electoral district is set out and is the same as the official 'Map of Conover City Limits' as required by G.S. 160A-23.

"CHAPTER III. MAYOR AND CITY COUNCILMEN

"SUBCHAPTER A

"Section 3.01. Plan generally. The method of government provided for in this Charter for the City of Conover shall be known as 'council-manager' as required by G.S. 160A, Article 7, Part 2.

"Section 3.02. Governing body. The government and general management of the city shall be vested in the city council and shall exercise its powers in the manner as provided herein and in Chapter 160A, Article 5 of the General Statutes of North Carolina set forth, except the city manager shall have the authority hereinafter specified: The mayor shall preside at all meetings of the council and shall have the same power and responsibility as other members of the city council to vote on all matters coming before the council. In the event of a tie vote, including the mayor's vote, he shall have no additional vote.

"Section 3.03. Composition, election, qualifications, compensation of the city council. The city council shall consist of six members; a mayor and five councilmen, who shall be elected at large by and from the qualified voters of the city in the manner as provided by Chapter IV of this Charter. Qualification for office and compensation of the city council shall be as required by the general laws of North Carolina.

"SUBCHAPTER B. ORGANIZATION AND PROCEDURES

"Section 3.21. Organizational meeting. The organizational meeting of the council shall be held on the date and at the time of the first regular meeting in December. The newly elected mayor and city council, whose terms of office shall begin after the old business of the council is conducted, shall severally qualify by taking the oath of office prescribed in Article VI, Section 7 of the North Carolina Constitution before the city clerk or other person authorized by law to do so.

"Section 3.22. Procedures of the city council. Except where otherwise provided herein, the general law provisions of the North Carolina General Statutes as applied to the city council regular and special meetings, voting requirements, vacancies of elected officials, oaths of office and ordinance procedures shall be provided as required by the general law of North Carolina.

"Section 3.23. Meetings of the city council. The city council shall fix the time for its regular meeting, which shall be as often as once monthly. A special meeting may be called as provided by G.S. 160A-71. All meetings of the council shall be held at the City Hall, unless the council decides otherwise. The council shall hold meetings at any location inside or outside the city as permitted by general law.

The council may adopt rules of procedure for the conduct of regular, special, adjourned and continued meetings; otherwise Roberts Rules of Order shall apply.

The council may continue any public hearing without further advertisement. If a quorum is not present at the time fixed for such hearing, it shall automatically be continued to the next regular council meeting.

"Section 3.41. Salaries of mayor and council. Compensation of elected officials shall be fixed as provided by the general laws of North Carolina.

"SUBCHAPTER C. CITY MANAGER

"Section 3.42. The city manager appointed. The city council shall appoint a city manager, who shall be administrative head and chief executive officer of the city government and shall be responsible for the administration of all departments. He shall be appointed and have those duties as outlined in G.S. 160A, Article 7, Part 2. He shall be appointed with regard to merit only and need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council, and he shall receive such compensation as the city council shall fix.

"Section 3.43. Appointment and removal of officers. Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him, but the city manager shall report the appointment and removal of officers and department heads to the council at the next meeting thereof following any such appointment or removal. The city manager shall appoint all officers with the exception of the city attorney and the tax collector.

"SUBCHAPTER D. COUNCIL POWERS AND DUTIES

"Section 3.61. Exercise of powers. (a) The city council shall direct the exercise of all of the powers of the city, except as otherwise provided by the 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 of the comfort, convenience, security, good order, better government or general welfare of the city or its inhabitants; may enforce the same by imposing penalties for violations; and may compel the performance of the duties imposed upon others by suitable penalties.

"SUBCHAPTER E. MAYOR AND MAYOR PRO TEM

"Section 3.81. Powers and duties of mayor. (a) The powers and duties of the mayor shall be such as are conferred upon him by this Charter and by general law, together with such others as may be conferred by the council pursuant to law.

(b) The mayor shall preside at all meetings of the council.

"Section 3.82. Mayor pro tem. The mayor pro tem shall exercise those powers in the absence or disability of the mayor as provided in G.S. 160A-70, Article 5.

"SUBCHAPTER F. PERSONNEL

"Section 3.101. Compensation. The council shall approve the schedule of pay, expense allowances and other compensation of all city employees and may adopt position classification and pay plans. The council may purchase life insurance and health insurance for the benefit of all or any class of city employees as a part of their compensation, and may provide other fringe benefits for city employees.

"Section 3.102. Retirement benefits. The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan offered by any reputable insurance company subject to regulation by the Commissioner of Insurance, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

"Section 3.103. Personnel rules. The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent and honest career employees. The city manager shall set up an administrative review board to review employee grievances.

"Section 3.104. Participation in Social Security Act. The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act.

"Section 3.105. Defense of employees and officers. Upon request made by or in behalf of any employee or officer, or former employee or officer, the council, in its discretion, may provide for the defense of any civil or criminal action or proceeding brought against such employee or officer either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city. The defense may be provided by the city by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense.

"SUBCHAPTER G. CITY CLERK

"Section 3.121. Appointment and duties. The city clerk shall be appointed by and shall serve at the pleasure of the city manager. The city clerk shall give notice of meetings of the council, keep a journal of the proceedings of the council, be custodian of all city records entrusted to the city clerk, and shall perform any other duties that may be required by law, by the council or by the city manager. In addition, the city manager may appoint or provide for one or more deputy city clerks who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council or by general law.

"SUBCHAPTER H. CITY ATTORNEY

"Section 3.141. Appointment and duties. The council shall appoint a city attorney to serve at its pleasure, and shall prescribe his duties and fix his rate of compensation. Compensation for the city attorney shall be included in the annual budget.

"SUBCHAPTER I. TAX COLLECTOR

"Section 3.161. Appointment and duties. The council shall appoint a tax collector as provided by the General Statutes of North Carolina and upon the recommendation of the city manager. The tax collector's duties shall be as required by N.C.G.S. Chapter 105.

"SUBCHAPTER J. MISCELLANEOUS

"Section 3.181. Official bonds. The officers and employees of the city, both elective and appointive shall execute such official bonds in such amounts and upon such terms and conditions as the council may from time to time require. The city may purchase and pay the premium for such bonds if it elects to do so. The city shall provide and pay the premiums of those bonds as required by general law.

"Section 3.182. Oaths of certain officers and employees. Before entering upon the discharge of their duties, the holders of the following offices and positions shall be required to take and subscribe before the city clerk or some other officer authorized to administer oaths in such cases the oath prescribed for public officers that they will faithfully and impartially discharge the duties of their respective offices or positions according to law: city clerk, chief of police and each member of the police force, tax collector and assistant tax collector, and each building inspector empowered to enforce the building code, fire chief and each member of the fire department. All such oaths shall be filed with the city clerk.

"SUBCHAPTER K. FINANCES AND FISCAL MATTERS

"Section 3.1001. General authority to levy and collect taxes. To raise revenue for defraying expenses incident to the proper government of the city, the council may, except as otherwise provided by law, levy and collect (1) a tax on real and personal property and on all other property subject to taxation as provided by General Statutes Chapter 105; (2) a tax on all trades, occupations, professions, businesses and franchises carried on within the city; and (3) any other taxes authorized by general law, by local act of the General Assembly or by a vote of the citizens of the municipality. The power to impose the tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law as provided in the North Carolina General Statutes. The power to impose the tax shall also include the power to provide for its administration in the manner not inconsistent with the statute authorizing the tax.

"SUBCHAPTER L. PROCUREMENT AND PROPERTY MANAGEMENT

"ARTICLE 1. CONTRACTING, PURCHASING AND PROPERTY

"Section 3.1021. Contract Procedures. All contracts, except as otherwise provided for in this Charter, or by law, shall be authorized and approved by the council and reduced to writing in order to be binding upon the city. All contracts and all ordinances or resolutions authorizing the same shall be drawn by or approved by the city attorney before any contract is executed by the city. No construction or repair work or purchase of apparatus, supplies, materials or equipment, except in cases of emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be made or awarded therefor, unless compliance is made with the provisions of Article VIII, Chapter 143 of the General Statutes of North Carolina, or as the same may hereafter be amended, except that:

(a) The provisions of said Article VIII requiring the public advertisement for bids, the taking of formal bids, and the awarding of contracts pursuant thereto shall not apply to the city in connection with the purchase of apparatus, supplies, materials or equipment requiring an estimated expenditure of public funds in an amount of seven thousand five hundred dollars (\$7,500.00) or less. In all respects not provided for by this Charter, formal requirements concerning the making and execution of contracts by the city shall be governed by general law.

"ARTICLE 2. SALE AND DISPOSITION OF PROPERTY

"Section 3.1022. Sale, lease, exchange and joint use of property by the city shall be as provided by general law.

"Section 3.1023. Grant of easements. The city shall have authority without complying with the provisions of this Article to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as the grant of an easement.

"Section 3.1024. Warranty deeds. The city is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when in the opinion of the city council, it is in the best interest of the city to convey by warranty deed. Members of the city council are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to city-owned property unless they act in fraud, malice, or bad faith.

"Section 3.1025. Conflict of interest. The procedures of the general laws of North Carolina shall apply as the same may hereafter be amended except that a violation of the general laws of North Carolina with the knowledge express or implied of the person or corporation contracting with or making a sale to the city shall render the contract void.

"CHAPTER IV. ELECTIONS

"Section 4.01. Conduct of city elections. All elections for mayor and council shall be held on a nonpartisan basis and the results determined by plurality as provided in G.S. 163-279(a)(1). The term of office of the mayor shall be two years. The terms of office of councilmen shall be four years. At the regular election in November, 1977, and quadrennially thereafter, two councilmen shall be elected. At the regular election in November, 1979, and quadrennially thereafter, three councilmen shall be elected. The elections for the City of Conover shall be held and conducted pursuant to the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes of North Carolina.

"CHAPTER V. REGULATORY AND PLANNING FUNCTIONS

"SUBCHAPTER A. ADMINISTRATION OF JUSTICE

"Section 5.01. Rewards for conviction of certain offenses. The 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, involve serious danger to the public peace or public safety. The council shall fix the terms, conditions and amounts of such rewards. Rewards shall be paid only by order of the council from revenues of the city; and the council shall, in its discretion, determine who shall be entitled to the collection of any reward. In addition, the city council may allocate funds by approval of the annual budget for the payment of informant fees concerning such criminal offenses.

**"SUBCHAPTER B. OCCUPATIONAL AND BUSINESS LICENSING AND
REGULATION**

"Section 5.21. Power to regulate occupations and business. The council is authorized to regulate or to license any occupations, businesses, trades or forms of amusement or entertainment in the interest of public health, welfare, order or safety and to prohibit such as may be inimical to the public health, welfare, order or safety.

**"SUBCHAPTER C. PLANNING, ZONING, BUILDING REGULATIONS AND
RELATED MEASURES**

"ARTICLE 1. IN GENERAL

"Section 5.41. Authority. For the purpose of promoting the orderly growth, expansion and development of the city and the surrounding area hereinafter defined, and for the purpose of promoting the health, safety, morals and welfare of the citizens of such area, the council is hereby authorized to exercise any planning, zoning, subdivision and building regulation powers now or hereafter conferred upon the city and vested in the council by its Charter, the General Statutes, or any other law applicable to the city, 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 as provided by general law. Any ordinance intended to be applicable 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 and expedient by the council to regulate, require and control the development of land and construction of buildings in the area.

The powers herein granted to the city 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.

"Section 5.42. Subdivision control. The city council is hereby authorized to enact an ordinance regulating the planning and recording of any subdivision of land lying within the city or within one mile in any direction of the corporate limits. No subdivision plat shall be filed or recorded until it shall have been submitted to and approved by the city acting by or through such board or agency thereof as is designated by ordinance adopted by the council and such approval entered in writing on the plat by the official or officials designated by such ordinance.

"Section 5.43. Authority to require installation of improvements prior to plat approval. In connection with subdivision or platting controls, the council may require the improvement and grading of streets and the construction and installation of street pavement, curbs, gutters, sidewalks, and water, sewer, surface water drainage, and other

utility mains, according to approved engineering plans and street profiles, as a condition precedent to the approval of the plat. The requirement may provide for tentative approval of the plat prior to such improvement and installation; but any such 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 ordinance may be applied throughout the area over which the city is authorized by law to exercise platting or subdivision controls.

"Section 5.44. Fire limits. The council may establish fire limits in the city with such boundaries as it may determine. The council may also prohibit construction of wooden buildings and may prescribe by general rules or specific permits the kinds of buildings which may be erected therein. It may also provide for the inspection of all structures now or hereafter erected and condemn any of them which are unsafe or dangerous to life or limb by reason of their defective construction or dilapidation. In addition the council may require the owner or owners to remove or to repair within thirty (30) days any structure which has been so condemned. If the owner or owners shall neglect or refuse to remove or to repair the same for a period of thirty (30) days after notice, the council shall then have the power to remove such structure at the expense of the owner or owners. Any cost which the city may sustain shall be a lien on the premises.

"Section 5.45. Power to destroy property to stop fires. The mayor, the city manager, a member of the council, or the chief of the fire department 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 thus given, nor shall the city, the mayor, the manager, the council or the fire chief be held liable, civilly or criminally, for the giving of such orders or for damages to property ordered destroyed.

"Section 5.46. Regulation of buildings in flood plains. The city may regulate and prohibit the construction upon property subject to periodic surface flooding of any buildings or structures designed, intended or capable of being used for human habitation.

"SUBCHAPTER D. UTILITY REGULATIONS

"Section 5.61. Public utility franchises. The council may grant franchises for any public utility in the manner provided by law, and, in its discretion and in accordance with the general law, may hold a referendum at the expense of the applicant on the question of granting a franchise.

"SUBCHAPTER E. VEHICLES AND TRAFFIC

"Section 5.81. Council to adopt regulations. (a) Subject to the provisions of subsection (b) of this section, the 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 street. 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, reconstructed 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 North Carolina Department of Transportation by registered mail a copy of the ordinance upon its adoption, and the ordinance shall become effective, if not disapproved by the commission, within thirty (30) 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 council shall be in addition to any authority conferred by general law upon the city to regulate vehicles, traffic or the use of city streets.

(d) The council shall have authority to provide for the towing and impounding of vehicles unlawfully parked on city streets and on other public places.

"Section 5.82. Power to regulate obstruction of alleys. If, in the opinion of the council, a fire hazard is created by the obstruction of private alleys, the council may adopt regulations governing the obstruction of private alleys, either by reason of the parking of motor vehicles or otherwise, but such regulations shall not be construed as so 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.

"Section 5.83. Off-street parking facilities. The city shall have authority to own, lease, acquire, establish, regulate, operate and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. The city shall also have authority to provide for the towing and impounding of vehicles unlawfully parked thereupon and to provide for the punishment of any person convicted of a parking violation by fine or imprisonment or both.

"Section 5.84. Regulation of taxis. The city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city. The city may by ordinance establish standards for the operation and use of all taxis.

"CHAPTER VI. CITY SERVICES AND FACILITIES

"SUBCHAPTER A. ESTABLISHMENT AND MAINTENANCE OF SERVICES AND FACILITIES

"ARTICLE 1. CEMETERIES

"Section 6.01. Authority to establish and operate cemeteries. The city has authority to establish and operate cemeteries as provided in North Carolina General Statutes 160A, Article 17. The city may by ordinance establish standards for the maintenance and operation of cemeteries.

"ARTICLE 2. UTILITIES

"Section 6.21. Operation of water and sewer 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;
- (3) Establish rates of charge for utility services and for the use of utility facilities;
- (4) Adopt rules and regulations concerning the management of utilities and utility systems, with regard to such matters as maintenance, operation and improvement thereof or require the pretreatment of waste; and
- (5) Adopt rules and regulations concerning charges for utility services.

(b) As used in this Charter, unless the context otherwise requires, the term 'utility' includes water supply, water distribution, sewerage, waste disposal, electric power, natural or manufactured gas and public transportation.

"Section 6.22. Connection by abutting owners. The council may require that within thirty (30) days after a water main or sewer line is completed and made ready for use, the owner of every abutting lot whereon such utility is supplied for any human use shall cause the lot to be connected thereto.

"Section 6.23. Liens for utility charges. In case any charge for utility service or for the use of utility facilities is not paid within ten (10) days after it becomes due, the same shall become a lien upon the real property served or in connection with which the service or facility is used. The charge may at any time thereafter be collected, either by suit in the name of the city or by the city tax collector, through the sale of the property upon which the lien attaches at the Catawba County courthouse door, after advertising the sale once a week for four successive weeks in some newspaper published in the area which is qualified to carry legal ads. The sale shall be made under the same rules and regulations, and subject to the same costs and penalties and to the same rights of redemption as are provided by law for the foreclosure of the lien on real estate for taxes.

"Section 6.24. Deposits. In addition to other remedies now provided for the collection of any charge for utility service or the use of utility facilities and as a part of the cost of such utility service, a deposit by an owner or tenant of the premises to be served shall be required. The deposits may vary according to the type of service. The utility service charge, if not paid within the time designated, may be deducted from the deposit and utility service may be cut off and not be turned on again until the balance of the deposit is increased to the original amount thereof. In order that the utility of the city may be protected and that the costs of services shall be paid by the person receiving such services, an owner or tenant may give notice that the premises have been or will be vacated and in the event that all charges due are paid he shall be entitled to the return of his deposit. In the event the owner or tenant shall vacate the premises without notifying the city and having the utility cut off, he shall forfeit to the city any balance of such deposit remaining after the utility service charge due has been deducted. Such forfeited money may be used by the city for the payment of principal or interest on the bonded

indebtedness of the city incurred for the utility involved or the money may be used for the maintenance or extension of the utility service involved.

"Section 6.25. Penalty for using utility service after discontinuance. If pursuant to any rule or regulation utility service to any property is discontinued, the council may provide that it shall be unlawful for any person, firm or corporation without the approval of the city manager to renew a utility service or to use it without having first paid any outstanding charges and may further provide that any violation of this Article shall constitute a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than thirty (30) days or both.

"Section 6.26. Dedication of water and sewer lines. Before any person, firm or corporation may connect any privately owned water or sewer line with any water or sewer line of the city, the person, firm or corporation in consideration of making the connection and the benefits to be derived therefrom shall, by proper written instrument, convey the water or sewer line to the city. No connection may be made with the city's water or sewer lines without the express approval of the city, nor may any connection be effected except in accordance with its applicable regulations. If any person, firm or corporation connects any privately owned water or sewer line without first dedicating and conveying it to the city, the act of connecting shall be considered a conveyance of the line to the city and the city may accept it or may order that it be disconnected. The city may contract with any person, firm or corporation to lay water or sewer lines within or without the city and connect them to the city's system, notwithstanding any provisions of this section.

"SUBCHAPTER B. LOCAL IMPROVEMENTS AND EMINENT DOMAIN

"ARTICLE 1. LOCAL IMPROVEMENTS

"Section 6.41. Authority. The city has all the power and authority granted to counties and municipalities by the general laws of the State with respect to local improvements, such as, but not limited to, grading, regrading, widening, paving and repaving of public streets and alleys; constructing, reconstructing, and altering of sidewalks, curbs, gutters and storm drains in the public streets and alleys; and laying or relaying sanitary sewer and water lines. The authority granted by this Article is in addition to that granted by any other law and with respect to any particular local improvement, the city may exercise any one or more of the alternative powers available to it.

"Section 6.42. Alternative procedures and power. In making special assessments the city may employ the following procedures:

(a) Upon receipt of a petition from one or more owners of abutting property where fifty percent (50%) or more of the total street frontage is in one ownership, the council may order the making of any local improvement. The council may assess the cost thereof against the abutting property in the same manner and following the same procedures set out in the general laws of the State for making special assessments against property benefited by local improvements.

(b) The council may order the making of any local improvement and assess the cost thereof, except the city's portion, if any, against only a limited number of abutting properties if the owners of those properties submit a petition asking that the

improvement be made and that the total amount to be assessed for the improvement be assessed only against their properties.

(c) If, in the council's judgment, which shall be conclusive, the abutting property to be assessed will be benefited in an amount at least equal to the assessment, no petition for local improvements shall be necessary and the council may order the making of any such local improvement and assess the cost thereof against abutting property owners in the following cases:

- (1) When any street or part of a street is unsafe; or 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 the improvement of a street or part of a street is necessary to connect a paved street, or portion thereof, with a paved highway; or the improvement of a street or part of a street is necessary to provide a paved approach to a railroad, street grade separation or a bridge; or the widening of any street or part of a street is necessary to accommodate present and anticipated volumes of traffic.
- (2) When any street or part of a street, or any property, is without storm sewer or other surface drainage improvements, and storm sewer or other surface drainage should be provided in the public interest.
- (3) When any street or part of a street is without sidewalks and sidewalks should be provided in the public interest.

(d) If the council determines that the public interest requires repair of a sidewalk or portion of a driveway within the public right of way, the council may order the making of the repair and assess the total cost against the property abutting the sidewalk or driveway repaired. Before an assessment may be made for the repair, at least thirty (30) days' written notice shall be given to the abutting property owner personally or by registered or certified mail to his last known address or his address as shown on the tax records. The notice shall state that he is required to make the repair at his own expense in conformity with the sidewalk standards adopted by the city, and that if he shall fail to make the repair within thirty (30) days after notice is served the city thereupon may make the repair and assess the cost. If the council finds that any sidewalk or driveway is in need of immediate repair, the council may adopt a resolution setting out its finding and directing that the repair be made immediately and that the cost be assessed against the abutting property without prior notice to the property owner affected.

(e) The council may provide for special assessment exemptions for corner lots. Exemptions for corner lots may apply to only one side of each lot and the amount of the exemption may not exceed seventy-five percent (75%) of the frontage of that side. 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 midpoint of the curve or foreshortened corner.

(f) Any property owner has the option of paying assessments for local improvements in cash or in installments. In the resolution ordering the improvements, the council shall determine the number of equal annual installments, which shall be not

less than two nor more than ten. The council may direct that (1) installments shall become due and payable on the same date when property taxes are due and payable, or (2) the first installment with interest shall become due and payable sixty (60) days after the date of the confirmation of the assessment roll, and one subsequent 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.

"Section 6.43. Planting strip and driveway maintenance. It is the responsibility of the abutting property owner to maintain any property or driveway between the property line and the curb of a paved street.

"Section 6.44. Exchange of property. In connection with street widening, the city may purchase property immediately adjacent to property located on a street corner and convey the inside property to the owner of the corner property in exchange for property needed for street widening.

"ARTICLE 2. EMINENT DOMAIN

"Section 6.61. Institution of action and deposit. In case condemnation shall become necessary the city shall institute a civil action by filing in the General Court of Justice a complaint declaring that such land, easement or interest therein is thereby taken for the use of the city. Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who, the city is informed and believes, may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained; and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the city is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

The filing of said complaint shall be accompanied by a deposit of the sum of money estimated by said city to be just compensation for said taking and upon the filing of said complaint and deposit of said sum, summons shall be issued and together with a copy of said complaint and notice of deposit is served upon the person named therein in the manner now provided for the service of process in civil actions. The city may amend the complaint, may increase the amount of its deposit with the court at any time while the proceeding is pending and the owner shall have the same rights of withdrawal of this additional amount as set forth in Section 6.63 of this Article.

"Section 6.62. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action. Upon the filing of a complaint and deposit in

court, to the use of the person entitled thereto, of the amount of the estimated compensation stated in the notice of deposit, title to said land or such other interest therein specified in the complaint, together with the right to immediate possession thereof, shall vest in the city and the judge shall enter such orders in the cause as may be required to place the city in possession. Said land shall be deemed to be condemned and taken for the use of the city and the right to just compensation therefor shall vest in the person owning said property or any compensable interest therein at the time of the filing of the complaint and deposit of the money in court; and compensation shall be determined and awarded in said action and established by judgment therein.

At the time of the filing of the complaint and deposit of estimated compensation, the city shall record a memorandum of action with the Register of Deeds and said memorandum shall be recorded among the land records of Catawba County. Upon the amending of any complaint affecting the property taken, the city shall record a supplemental memorandum of action. The memorandum of action shall contain:

- (1) The names of those persons who the city is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land taken for public use; and
- (4) The date of institution of said action and such other reference thereto as may be necessary for the identification of said action.

"Section 6.63. Disbursement of deposit. A person named in the complaint may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall, unless there is a dispute as to title, order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. The judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

No notice to the city of the hearing upon the application for disbursement of deposit shall be necessary, but a copy of the order disbursing the deposit shall be served upon the city manager.

"Section 6.64. Answer, reply and plat. Any person whose property has been taken by the city by the filing of a complaint and deposit of estimated compensation may within the time hereinafter set forth file an answer to the complaint praying for a determination of just compensation. Said answer shall, in addition, contain the following;

- (1) Such admissions or denials of the allegations of the complaint as are appropriate.
- (2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken.
- (3) Such affirmative defenses or matters as are pertinent to the action.

A copy of the answer shall be served on the city manager, or such other process agent as may be designated by the council, provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer

shall be deemed denied. The city may, however, file a reply within thirty (30) days from receipt of a copy of the answer.

The city, within ninety (90) days from the receipt of the answer shall file in the cause a plat of the land taken and such additional area as may be necessary to properly determine the damages, and a copy thereof shall be mailed to the parties or their attorney.

"Section 6.65. Time for filing answer. Any person named in and served with a complaint shall have four (4) months from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. For good cause shown and upon notice to city the judge may within the initial four months' period extend the time for filing answer for a period not to exceed an additional two (2) months.

"Section 6.66. Determination of issues other than damages. After the filing of the plat, the judge, upon motion and ten (10) days' notice by either the city or the owner, shall, either in or out of term, hear and determine any and all issues raised by the pleadings other than the issue of damages, including, but not limited to, if controverted, questions of necessary and proper parties, title to the land, interest taken, correctness of the map, and area taken.

"Section 6.67. Appointment of commissioners. Upon request of the owner in the answer, or upon motion filed by either the city or the owner within sixty (60) days after the filing of answer, the Clerk of Superior Court shall appoint, after the determination of other issues as provided by Section 6.66 of this Article, three competent, disinterested freeholders residing in the county to go upon the property and under oath appraise the damage to the land sustained by reason of the taking and report same to the court within a time certain. If no request or motion is made for the appointment of commissioners within the time permitted, the cause shall be transferred to the civil issue docket for trial at term as to the issue of just compensation.

Such commissioners, if appointed, shall have the power to make such inspection of the property, hold such hearings, swear such witnesses, and take such evidence as they may, in their discretion, deem necessary, and shall file with the court a report of their determination of the damages sustained.

A copy of the report shall at the time of filing be mailed to each of the parties. Within thirty (30) days after filing the report, either the city or the owner may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the civil issue docket of the appropriate division of the General Court of Justice for trial de novo by a jury at term as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the General Court of Justice, nor shall evidence of the deposit by the city into the court be competent upon the trial of the issue of damages. If no exception to the report of commissioners is filed within the time

prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with Section 6.71 of this Article, awards to the property owners compensation. In the event that the judge in his discretion determines that such award does not prove just compensation he shall set aside award and order the case placed on the civil issue docket for determination of the issue of damages by a jury.

"Section 6.68. Parties; order; continuances. The judge may appoint some competent attorney to appear for and to protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceedings by an attorney or agent. The judge shall appoint guardians ad litem for such persons as are minors, incompetents, or other parties who may be under a disability and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding and enter such other orders either in law or equity as may be necessary to carry out the provisions of this Article.

Upon the coming on of the cause for hearing pursuant to Section 6.66 or upon the coming on of the cause for trial, the judge, in order that the material ends of justice may be served, upon his own motion, or upon motion of any of the parties thereto and upon proper showing that the effect of condemnation upon the subject property cannot presently be determined, may, in his discretion, continue the cause until the project under which the appropriation occurred is completed or until such earlier time as, in the opinion of the judge, the effect of condemnation upon said property may be determined.

"Section 6.69. Remedy where no complaint filed; recording memorandum of action. Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the city and no complaint has been filed by the city may, within twenty-four (24) months from the date of said taking, file a complaint in the General Court of Justice setting forth the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates, or interests in the said real estate and if such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint, summons shall be issued together with a copy of said complaint and be served on the city manager. The allegations of said complaint shall be deemed denied; however, the city within sixty (60) days of service of summons and complaint may file answer thereto, and if said taking is admitted by the city, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of Section 6.63 of this Article. If a taking is admitted, the city shall, within ninety (90) days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of

determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the Register of Deeds and it shall be recorded among the land records of Catawba County. The memorandum of action shall contain:

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, and such other reference thereto as may be necessary for the identification of said action.

"Section 6.70. Measure of damages. The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

- (1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for public purposes.
- (2) When the entire tract is taken, the measure of damages of said taking shall be the fair market value of the property at the time of taking.

"Section 6.71. Interest as a part of just compensation. To said amount awarded as damages by the commissioners or a judge or jury, the judge shall, as a part of just compensation, add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been said into court as provided in this Article.

"Section 6.72. Additional rules. In all cases of procedure under this Article where the mode or manner of conducting the action is not expressly provided for in this Article or by the Rules of Civil Procedure in effect in North Carolina or where said Rules of Civil Procedure are inapplicable, the judge before whom such proceeding may be pending shall have the power to make all necessary orders and rules of procedure necessary to carry into effect the object and intent of this Article and the practice in such cases shall conform as nearly as possible to the practice in other civil actions in said courts.

"Section 6.73. Definitions. (1) 'Property' means any right, title, or interest in land, including leases and options to buy or sell. 'Property' also includes rights of access, rights-of-way, easements, water rights, air rights, and any other privilege or appurtenance in or to the possession, use and enjoyment of land.

(2) 'Owner' includes the plural when appropriate and means any person holding a vested estate of inheritance in the property, a tenant for life or for years, tenants by the

entirety, the holder of the equity or redemption under a mortgage, and the grantor and third party beneficiary under a deed of trust. Unless otherwise provided, 'owner' does not include persons holding liens, judgments, options, or any other encumbrances of record on the title to the property, or persons holding unvested future interests in the property.

(3) 'Person' includes the plural when appropriate and means a natural person, association, partnership, corporation, the State of North Carolina, the United States of America, a body politic and corporate, and any other legal entity capable of owning or having any interest in property under the laws of North Carolina.

(4) 'Eminent domain' means the power to divest title from the owner of property and vest it in the possessor of the power against the will of the owner upon the payment of just compensation for the right, title, and interest divested.

(5) 'Condemnation' means the procedure prescribed by law for exercising the power of eminent domain.

(6) 'Judge' shall mean the judge of the appropriate division of the General Court of Justice before whom the cause is pending.

"Section 6.74. Final judgments. Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the property affected, together with a description of the property and estate or interest acquired by the city and a copy of said judgment shall be certified to the Register of Deeds and be recorded among the land records of Catawba County.

"Section 6.75. Payment of compensation. If there are adverse and conflicting claimants to the deposit made into the court by the city or the additional amount determined as just compensation, on which final judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the city, may retain said cause for determination of who is entitled to said moneys, may by further order in the cause direct to whom the same shall be paid and may in his discretion order a reference to ascertain the facts on which such determination and order are to be made.

"Section 6.76. Agreements for entry. The provisions of this Article shall not prevent the city and the owner from entering into a written agreement whereby the owner agrees and consents that the city may enter upon his property without filing a complaint and depositing estimated compensation as herein provided, and the city shall have the same rights under such agreement with the owner in carrying on work on such project as it would have by having filed a complaint and having deposited estimated compensation as provided in this Article.

"Section 6.77. Costs and appeal. The city shall pay all court costs taxed by the court. Either party shall have a right of appeal for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions, and it shall not be necessary that an appeal bond be posted.

"Section 6.78. Entry for surveys. The city without having filed a complaint as provided in this Article is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings or examinations as may be necessary in carrying out and performing its duties under this Article, and such entry shall not be deemed a trespass, or taking within the meaning of this Article; provided, however, that the city

shall make reimbursement for any damage resulting to such land as a result of such activities and the owner, if necessary, shall be entitled to proceed under the provisions of Section 6.67 of this Article to recover for such damage.

"Section 6.79. Refund of deposit. In the event the amount of the final judgment is less than the amount deposited by the city pursuant to the provisions of this Article the city shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto; provided, however, in the event there are not sufficient funds on deposit to cover said excess the city shall be entitled to a judgment for said sum against the person or persons having received said deposit.

"Section 6.80. Power of eminent domain conferred. In addition to powers conferred by any other general law, local act or this Charter, the city shall possess the power of eminent domain and may acquire by purchase or condemnation any property necessary or useful for the following purposes:

- (1) Opening, widening, extending, or improving streets, alleys and sidewalks.
- (2) Establishing, extending, enlarging, or improving the following public enterprises:
 - (a) Electric power generation and transmission distribution systems;
 - (b) Water supply and distribution systems;
 - (c) Sewage collection and disposal systems;
 - (d) Gas distribution systems;
 - (e) Bus lines and mass transit systems;
 - (f) Solid waste collection and disposal systems and facilities;
 - (g) Cable television systems;
 - (h) Off-street parking facilities;
 - (i) Airports;
 - (j) Museums;
 - (k) Armories;
 - (l) Parks, playgrounds and other recreational facilities;
 - (m) Storm sewer and drainage systems and works; and
 - (n) City halls, fire stations, office buildings and other buildings for use by city.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

"Section 6.81. Acquisition of whole parcel or building. When the proposed taking requires condemnation of only a portion of a parcel of land leaving a remainder of such shape, size or condition that it is of little value, the city may acquire the entire parcel by purchase or condemnation. The resolution adopted by the city council for condemnation shall include:

- (1) A determination by the council that a partial taking of the land would substantially destroy the economic value or utility of the remainder, or
- (2) A determination by the council that an economy in the expenditure of public funds will be promoted by taking the entire parcel, or

(3) A determination by the council that the interest of the public will be best served by acquiring the entire parcel.

Residues acquired under this section may be sold or disposed of in the manner provided for the disposition of city property, or may be exchanged for other property needed by the city.

When the proposed taking requires condemnation of a portion of a building or other structure, the city may acquire the entire building or structure by purchase or condemnation, together with the right to enter upon the surrounding land for the purpose of removing the building or structure. If the entire building is to be included in the property to be condemned, a resolution of condemnation adopted by the council shall include either:

(1) That an economy in the expenditure of public funds will be promoted by acquiring the entire building or structure; or

(2) That it is not feasible to cut off a portion of the building or structure without destroying the whole; or

(3) That the convenience, safety, or improvement of the street or highway will be promoted by acquiring the entire building or structure.

Nothing in this section shall be deemed to compel the city to condemn the underlying fee of the portion of any building or structure that lies outside the right-of-way of any existing or proposed improvement.

"Section 6.82. Fee simple title acquired. Unless otherwise expressly provided in the condemnation resolution, condemnation shall vest in the city an estate in fee simple absolute to the property acquired.

"Section 6.83. Removal of structures on condemned land; lien. The city may allow the owner of property acquired by condemnation to remove any building, permanent improvement, or fixture wholly or partially located on or affixed to the property, and may specify a time after adoption of the final condemnation resolution within which it may be removed. If the report of commissioners deducted the value of any such property to be removed from the award of compensation and allowed the cost of removal as an element of damages and the owner fails to remove it within the time allowed, the city may remove it and the cost of the removal and storage of the property shall be chargeable against the owner and a lien upon any remainder of the property not acquired by the city, to be recovered or foreclosed in the manner provided by law for recovery of debt or foreclosure of mortgages.

"Section 6.84. Sale or other disposition of land condemned. When any land condemned in fee by the city is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property.

"Section 6.85. If the city desires to condemn land under this charter belonging to a public service corporation as defined in G.S. 160A-243(c), then the provisions of this charter shall not apply with regard to that condemnation unless the exercise of such eminent domain is either consented to by the owner of the property to be acquired by the city or, otherwise, 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.

"ARTICLE 3. GARBAGE AND REFUSE DISPOSAL

"Section 6.101. 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 (10) 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 provided for collection of ad valorem taxes.

"CHAPTER VII. MISCELLANEOUS

"SUBCHAPTER A. CLAIMS AGAINST THE CITY

"Section 7.01. Presentation of claims. No action shall be instituted or maintained against the city upon any claim or demand whatsoever of any kind or character unless the claimant shall have first presented in writing his or her claim or demand to the city manager and said council or city manager shall have declined to pay or settle the same as presented. The written notice of the claim shall be made as required by G.S. 1-539.15. Nothing contained in this Subchapter 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.

"SUBCHAPTER B. CLAIMS BY THE CITY

"Section 7.21. Settlement of claims by the city manager. 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 a statement thereof has been furnished to the city manager by the city attorney and the amount of such release does not exceed one thousand dollars (\$1,000.00). In the event that a draft or check is presented to the city which constitutes a release, instead of a regular release form, the city manager is hereby authorized to direct that such draft or check be handled as other payments to the city and, when approved by said city manager, shall constitute a release to the extent stated on the draft or check.

"SUBCHAPTER C. WAIVER OF GOVERNMENTAL IMMUNITY

"Section 7.41. Authority to purchase liability insurance. The city may contract to insure itself and any of its officers, agents and employees against liability for wrongful death or negligent or intentional damage to person or property, and against absolute liability for damage to person or property, caused by an act or omission of the city or any of its officers, agents or employees when acting within the scope of their authority or the course of their employment. The council shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section.

Purchase of insurance pursuant to this section waives the city's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function of local government during the term of the insurance. By entering into an insurance contract with the city, an insurer waives any defense based upon the governmental immunity of the city.

"Section 7.42. Damage suits against the government involving governmental functions. Any person, or in case of his death his personal representative, sustaining damages as a result of an act or omission of the city or any of its officers, agents or employees, occurring in the exercise of a governmental function of local government, may sue the city for recovery of damages. To the extent of the coverage of insurance purchased pursuant to Section 7.41, governmental immunity shall not be a defense to the action. Otherwise, the city shall have all defenses available to private litigants and to counties and municipalities in any action for wrongful death or intentional or negligent damage to person or property or absolute liability for damage to person or property, without restriction, limitation or other effect, whether the defense arises from common law or by virtue of any statute.

Despite the purchase of insurance as authorized by Section 7.41 of this Charter, the liability of the city for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

"SUBCHAPTER D. PRESUMPTION OF TITLE IN THE CITY

"Section 7.51. Presumption of title in the city. That in the absence of any contracts with the city in relation to the lands used or occupied by it for the purpose of streets, sidewalks, alleys, or other public works of the city, signed by the owner thereof or his agent, it shall be presumed that such land has been granted to the city by the owner or owners thereof, and the city shall have good right and title thereto, and shall have, hold, and enjoy the same. Unless the owner or owners of such land, or those claiming under them shall make claim or demand for compensation within two years next after such land was taken, he, or they, shall be forever barred from recovering the land, or having any compensation therefor; provided, nothing herein contained shall affect the rights of infants until two years after the removal of their disabilities.

"SUBCHAPTER E. SUPPLEMENTARY

"Section 7.61. Powers granted supplementary. The powers granted by this Charter are supplementary to any powers heretofore or hereafter granted by any other general law, local act or amendment to this Charter for the same or similar purposes."

Sec. 2. The purpose of this act is to revise the Charter of the City of Conover 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:

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

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

Sec. 4. 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 (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 5. 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. 6. (a) All existing ordinances and resolution of the City of Conover and all existing rules or regulations of departments or agencies of the City of Conover 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 City of Conover or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 7. If any provision 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. 8. Chapter 101 of the Private Laws of 1883 as amended and special legislation, laws, and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 9. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 14th day of March, 1977.