

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 847
SENATE BILL 432

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF VALDESE.

"ARTICLE I.

"Incorporation, Corporate Powers and Boundaries.

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

"Sec. 1.2. Powers. The Town of Valdese 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 Valdese, 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 Valdese shall be those existing at the time of ratification of this charter, as the same are set forth on the official map of the town, and as the same may be altered from time to time in accordance with law. An official map or description 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 Town Council.

"Sec. 2.1. Governing body. The mayor and town council, 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 council may provide for the exercise of all municipal powers, and shall be charged with the general government of the town.

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

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

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

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

"ARTICLE III.

"Elections.

"Sec. 3.1. Regular municipal elections; conduct and method of election. 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 council shall be elected according to the nonpartisan plurality method of election.

"Sec. 3.2. Election wards; ward boundaries. The town shall continue to be divided into five single-member election wards, numbered one through five, respectively.

The election ward boundaries shall be those existing at the time of the ratification of this charter, as the same are set forth by an official written description. The official written description of the election ward boundaries shall be maintained permanently in the office of the town clerk, and shall be available for public inspection.

The town council is authorized, in accordance with State law, to revise from time to time the election ward boundaries of the town. Upon alteration of the ward boundaries pursuant to law, the board shall cause to be made the appropriate changes in the official written description of the election ward boundaries.

"Sec. 3.3. Election of council members. At the regular municipal elections in 1977 and quadriennially thereafter, there shall be elected three council members to represent, respectively, election wards one, two, and three, as hereinabove provided. At the regular municipal elections in 1979, and quadriennially thereafter, there shall be elected two council members to represent, respectively, election wards four and five as hereinabove provided. Each candidate for the office of council member shall have been a resident of the ward from which he is a candidate for a period of not less than 30 days next preceding the date of the election. Candidates for council member shall be voted upon by the voters of the town voting at large.

"Sec. 3.4. Election of the mayor. At the regular municipal election in 1977, and biennially thereafter, there shall be elected a mayor to serve a term of two years. The mayor shall be elected by the voters of the town voting at large.

"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. Administrative officers and employees. Consistent with applicable State laws, the town council and town manager may establish positions, provide for the appointment of 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.

"Sec. 4.3. Consolidation of administrative functions. The town council and town manager may consolidate any two or more administrative positions in the town government or may assign the functions of any position to the holder or holders of any other position, subject to the Local Government Budget and Fiscal Control Act, and other applicable State laws.

"ARTICLE V.

"Alcoholic Beverage Control.

"Sec. 5.1. Election authorized. Subject to the limitations of Section 5.6 hereof, an election may at any time be called in the town upon written request of the town council or upon a petition to the appropriate board of elections conducting elections for the town on the question of submitting to the qualified voters of the town the question of establishing and operating in the town an alcoholic beverage control store, or stores, as herein provided.

The election shall be called in the town by the appropriate board of elections upon the written request of the town council or upon a petition to the board of elections signed by a number of voters of the town equal to at least twenty percent (20%) of the number of registered voters of the town according to the registration figures certified by the State Board of Elections on the date the petition is presented to the appropriate board of elections. In calling the special election, the board of elections shall give at least 30 days' public notice of the election before the closing of the registration books for such election, and the registration books shall close at the same time as for a regular town election. A new registration of voters for special alcoholic beverage control elections is not required, and all qualified electors who are properly registered prior to the registration for the special election, as well as those electors who register for the special alcoholic beverage control election, shall be entitled to vote in the election.

"Sec. 5.2. Petition procedure. Unless otherwise specified in this Article, the procedural requirements relating to the petition shall be as provided in G.S. 18A-52(b), (c), (d), and (e), except the question shall be 'For' or 'Against' municipal alcoholic beverage control stores.

"Sec. 5.3. Election procedure; determination of results. The appropriate board of elections shall immediately call an election pursuant to the provisions of G.S. 18A-52, subsections (a) through (i), which are hereby adopted, except that subsection (j) shall allow the presentation of one or more of the following:

'For' or 'Against' Off-Premises Sales Only of Unchilled Unfortified Wine.

'For' or 'Against' Off-Premises Sales Only of Unchilled Malt Beverages.

This section shall in no way be construed as to limit the provisions of G.S. 18A-52, but is solely to allow the additional questions as to unchilled malt beverages or wine to be presented to the voters in addition to those contained in subsection (j), pursuant to the 1973 amendment of the North Carolina Legislature, or to be in addition to any questions which might later be allowed by the Legislature.

Those favoring the setting up and operation of alcoholic beverage control stores in the Town of Valdese shall place a mark in the voting square to the left of the words 'For Municipal Alcoholic Beverage Control Stores' printed on the ballot, and those opposed to setting up and operating alcoholic beverage control stores in the Town of Valdese shall place a mark in the voting square to the left of the words 'Against Municipal Alcoholic Beverage Control Stores', printed on the same ballot. If a majority of the votes cast in such election shall be for municipal alcoholic beverage control stores, then an alcoholic beverage control store, or alcoholic beverage control stores, may be set up and operated in the Town of Valdese as herein provided. If a majority of the votes cast at the election are against municipal alcoholic beverage control stores, then no alcoholic beverage control store shall be set up or operated in the Town of Valdese under the provisions of this Article.

"Sec. 5.4. Board of Alcoholic Control; organization; use of funds. If the operation of a municipal alcoholic beverage control store is authorized under the provisions of this Article, the mayor and council shall immediately create a town board of alcoholic control to be composed of a chairman and two other members who shall be well known for their character, ability and business acumen. Said board shall be known and designated as 'The Town of Valdese Board of Alcoholic Control'. The chairman of said board shall be designated by the mayor and town council and shall serve for his first term a period of three years; one member shall serve for his first term a period of two years; the other member shall serve for a term of one year. All terms shall begin with the date of their appointment and after such terms shall have expired, the successors in office shall serve for a period of three years. The successors and any vacancies occurring in the Town Board of Alcoholic Control shall be named or filled by the mayor and the council of the town.

The Town of Valdese Board of Alcoholic Control shall have all the powers and duties imposed by the General Statutes on county boards of alcoholic control and shall be subject to the powers and authority of the State Board of Alcoholic Control the same as county boards of alcoholic control, as provided in the General Statutes. The Town Board of Alcoholic Control and the operation of any town liquor store authorized under the provisions of this section shall be subject to and in pursuance with the provisions of Chapter 18A of the General Statutes, except to the extent which the same may be in conflict with the provisions of this Article. Wherever the term 'county' board of alcoholic control appears in Chapter 18A, it shall include the Town of Valdese Board of Alcoholic Control. The net profits remaining after first deducting necessary working capital, salaries and expenses, including those sums expended for law enforcement and for education on the excessive use of alcoholic beverages and for the rehabilitation of

alcoholics as required by G.S. 18A-17, shall be distributed not less than annually as follows:

(a) ten percent (10%) of the net profits paid into the General Fund of Burke County to be used only for capital outlay for the county public schools;

(b) ninety percent (90%) of the net profits paid into the General Fund of the Town of Valdese to be appropriated by the governing body of the town for any proper governmental purpose.

"Sec. 5.5. Subsequent elections. The appropriate board of elections shall, upon request by the town council or receipt of a petition signed by twenty percent (20%) of all registered voters of the town, call a subsequent election, to be conducted in accordance with Sections 5.1 through 5.4 hereof, for the purpose of voting 'For' or 'Against' liquor control stores. If, after the establishment of an alcoholic beverage control store or stores in the town under the provisions of this Article, a subsequent election shall be held and, if, at such election a majority of the votes shall be cast 'Against Municipal Alcoholic Beverage Control Stores', the Board of Alcoholic Control shall, within three months from the canvassing of such votes and the declaration of the result thereof, close such store or stores and shall thereafter cease to operate the same. Within three months therefrom the board shall dispose of all alcoholic beverages on hand, all fixtures, and all other property in the hands and under the control of the Board of Alcoholic Control and convert the same into cash and turn the same over to the town finance officer. Thereafter, all Public, Public-Local, Private and Session Laws applicable to the sale of intoxicating beverages within the town in force and effect prior to the authorization to operate a municipal alcoholic beverage control store shall be in full force and effect as if such election had not been held, until and unless another election is held under the provisions of this Article in which a majority of the votes shall be cast 'For Municipal Alcoholic Beverage Control Stores'.

"Sec. 5.6. Limitations on holding elections. No election shall be called and held in the town under the provisions of this Article within three years from the holding of the last election thereunder. It shall be the duty of the board of elections conducting elections for the Town of Valdese to order the special liquor election herein authorized within 60 days after request by the town council or after the filing of a sufficient petition requesting the same, but no election under this act shall be held on the day of any biennial county or town general election or primary election, or within 45 days of any such election.

"ARTICLE VI.

"Special Provisions.

"Sec. 6.1. Assessments for street and sidewalk improvements; petition unnecessary.

A. In addition to any authority which is now or may hereafter be granted by general law to the town for making street improvements, the town council is hereby authorized to make street improvements and to assess the cost thereof against abutting property owners in accordance with the provisions of this section.

B. The town council may order street improvements and assess the cost thereof against the abutting property owners, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of

Chapter 160A of the North Carolina General Statutes without the necessity of a petition, upon the finding by the board as a fact:

- (1) that the street improvement project does not exceed 1,200 linear feet, and
- (2) that such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or
- (3) that it is in the public interest to connect two streets, or portions of a street already improved, or
- (4) that it is in the public interest to widen a street, or part thereof, which is already improved, provided, that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such street 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 purposes of this section the term 'street improvement' shall refer to the initial improvement of an unimproved, unpaved street, including initial acquisition of rights-of-way, grading, surfacing, and the construction of curb and gutter and street drainage facilities. For the purposes of this section, the term 'sidewalk improvement' shall refer to the initial acquisition of rights-of-way, laying out, grading and surfacing of new sidewalks. The provisions of this section are not intended to refer to those activities that are normally included under the city's street maintenance program, such as street resurfacing and repairs, curb and gutter and sidewalk maintenance and repairs.

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 town council 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 commissioners 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 of commissioners shall comply with the procedure provided by Article 10 of 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 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. 6.2. 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 interest 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. 136-66.3(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. 2. The purpose of this act is to revise the Charter of the Town of Valdese 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 Valdese.

(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:

Chapter 104, Private Laws of 1935

Chapter 300, Public Laws of 1941

Chapter 606, Session Laws of 1961

Chapter 3, Session Laws of 1963

Chapter 642, Session Laws of 1963

Chapter 217, Session Laws of 1965

Chapter 421, Session Laws of 1967

Chapter 422, Session Laws of 1967

Chapter 116, Session Laws of 1975

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

Sec. 8. 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 Valdese or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

Sec. 9. If any 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. 10. 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. 11. All laws and clauses of laws in conflict with the provisions of this act are hereby repealed.

Sec. 12. This act shall become effective upon its ratification.

In the General Assembly read three times and ratified, this the 30th day of June, 1977.