

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 209
HOUSE BILL 486

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF FOREST CITY.

"INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

"ARTICLE I.

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

"Sec. 1.2. Powers.—The Town of Forest City 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 Forest City 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 Forest City shall be those existing at the time of ratification of this Charter, as the same are now or hereafter may be constituted pursuant to law. An official map or description of the Town, showing the current Town boundaries, shall be maintained permanently in the office of the Town Clerk, and shall be available for public inspection. Immediately upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map or description of the Town shall be made.

"ARTICLE II.

"MAYOR AND BOARD OF COMMISSIONERS.

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

"Sec. 2.2. Mayor; terms of office; duties.—The Mayor shall be elected by and from the qualified voters of the Town for a term of two years, in the manner provided by Article III of this Charter; provided, the Mayor shall serve until his successor is elected and qualified. The Mayor shall be the official head of the Town government, shall

preside at all meetings of the Board of Commissioners, and shall have the powers and duties of Mayor as prescribed by this Charter and the General Statutes. The Mayor shall have the right to vote on matters before the Board only where there are an equal number of votes in the affirmative and in the negative.

"Sec. 2.3. Board of Commissioners; terms of office.—The Board of Commissioners shall be composed of five members, each of whom shall be elected for terms of two years, in the manner provided by Article III of this Charter; provided, Board members shall serve until their successors are elected and qualified.

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

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

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

"ARTICLE III.

"ELECTIONS.

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

"Sec. 3.2. Election of the Mayor.—At the regular municipal election in 1981, and every two years thereafter, there shall be elected a Mayor to serve a term of two years. The Mayor shall be elected by the qualified voters of the Town voting at large.

"Sec. 3.3. Election of Board members.—At the regular municipal election in 1981 and every two years thereafter, there shall be elected by the qualified voters of the Town five Board members to serve terms of two years each.

"ARTICLE IV.

"ORGANIZATION AND ADMINISTRATION.

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

"Sec. 4.2. Town Manager.—The Board of Commissioners shall appoint a Town Manager who shall be the administrative head of Town government, and who shall be responsible to the Board for the proper administration of the affairs of the Town. The

Town Manager shall hold office at the pleasure of the Board of Commissioners, and shall receive such compensation as the Board shall determine.

"Sec. 4.3. Town Attorney.—The Board of Commissioners shall appoint a Town Attorney who shall be licensed to engage in the practice of law in the State of North Carolina. Upon request by the Board of Commissioners, it shall be the duty of the Town Attorney to defend suits against the Town; to advise the Mayor, Board of Commissioners and other Town officials with respect to the affairs of the Town; to draft legal documents relating to the affairs of the Town; to inspect and pass upon agreements, contracts, franchises and other instruments with which the Town may be concerned; to attend meetings of the Board of Commissioners, and to perform other duties as the Board may direct.

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

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

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

"Sec. 4.7. Consolidation of functions.—The Board of Commissioners may provide for the consolidation of any two or more positions of Town Manager, Town Clerk, Town Tax Collector and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

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

**"ARTICLE V.
"PUBLIC IMPROVEMENTS.**

"Sec. 5.1. Assessments for street and sidewalk improvements; petition unnecessary.—(a) In addition to any authority which is now or hereafter may be granted by general law to the Town for making street improvements, the Board of Commissioners is hereby authorized to make street improvements and to assess the total cost thereof against abutting property owners in accordance with the provisions of this section.

(b) The Board of Commissioners may order street improvements and assess the cost thereof against the abutting property owners, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article

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

- (1) that the street improvement project does not exceed 2,000 linear feet, and
- (2) that such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvements, or
- (3) that it is in the public interest to connect two streets, or portions of a street already improved, or
- (4) that it is in the public interest to widen a street, or part thereof, which is already improved, provided, that assessments for widening any street or portion of street without a petition shall be limited to the cost of widening and otherwise improving such streets in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curbs, gutters and street drainage facilities.

(d) In addition to any authority which is now or may hereafter be granted by general law to the Town for making sidewalk improvements, the Board is hereby authorized without the necessity of a petition, to make or to order to be made sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the North Carolina General Statutes; provided however, that regardless of the assessment basis or bases employed, the Board of 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 shall comply with the procedure provided by Article 10, Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Sec. 5.2. 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 interests in real property for streets, sewer lines, water lines, electric power lines, and other utility lines in the exercise of the power of eminent domain. The Town, when seeking to acquire such property or rights or easements therein or to use the provisions and procedures as authorized and provided in G.S. 136-66(c) and Article 9 of Chapter 136 of the General Statutes for any of such purposes without being limited to streets constituting a part of the State Highway System; provided, however, that the provisions of this section shall not apply with

regard to properties owned by public service corporations as defined in G.S. 160A-243(c), unless (1) the exercise of such power of eminent domain is either consented to by the owner of the property to be acquired by the Town or (2) it is first adjudicated after notice and a hearing that such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and the operation by such public service corporation.

**"ARTICLE VI.
"SPECIAL PROVISIONS.**

"Sec. 6.1. Purchasing.—Notwithstanding the provisions of G.S. 143-129, the Town of Forest City shall not be required to use the formal bid procedure for the purchase or lease-purchase of apparatus, materials, supplies or equipment requiring an estimated expenditure of twelve thousand dollars (\$12,000) or less.

"Sec. 6.2. Referendum authority.—The Board of Commissioners shall have the right and authority to call an election to be held at any time upon the written application of twenty-five percent (25%) of the qualified voters of said Town for the purpose of voting upon any question which the said petition may request them to submit to a vote of the citizens of said Town, for any purpose whatsoever or for the purpose of ascertaining the wishes of the inhabitants of said Town upon any other question of public interest. The said Board shall advertise said election so ordered for a period of 30 days in some newspaper published in Rutherford County and no special act shall be necessary to authorize the said Commissioners to order any such election. The said Board shall also have the authority to call as many elections under the provisions of this section as they may be petitioned to call in the manner hereinbefore set out, and may call more than one election to be held for the purpose of voting upon the same question if a petition be filed, as herein provided, requesting said Commissioners to call such election, notwithstanding the fact that other elections may have been held for the purpose of ascertaining the wishes of the citizens of the Town upon the same question theretofore.

"Sec. 6.3. Supplemental retirement funds for firemen.—(a) Disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of the Town of Forest City shall as soon as practical after January 15th and July 15th, but in no event later than March 1st or September 1st, divide the income earned in the preceding calendar six months, upon investment of funds belonging to the Local Firemen's Relief Fund into equal shares and disburse the same as supplemental retirement benefits in accordance with subsection (b) of this section.

(b) Supplemental Retirement Benefits.

- (1) Each fireman of the Town who has 20 years' service or more and who has attained the age of 55 years and retires after June 25, 1980, shall be entitled to and shall receive an annual supplemental retirement benefit equal to one share for each full year of service as a fireman of the Town; provided, in no event shall any retired fireman be entitled to or receive in any year an annual benefit in excess of six hundred dollars (\$600.00).
- (2) Any former or present fireman of the Town who has five years' service and who is not otherwise entitled under the supplemental retirement

benefits under subsection (1) of this section shall nevertheless be entitled to such benefits in any calendar year in which the Board of Trustees makes the following written findings of fact:

- a. that he initially retired from his position as fireman because of his inability, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- b. that, within 30 days prior to or following his initial retirement as a fireman, at least two physicians licensed to practice medicine in North Carolina certified that he was at such time unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- c. that, at the time of his initial retirement as a fireman, there was not available to him in the fire department or in any other department of the Town a position of employment, the normal duties of which he was capable of performing; and
- d. that, since the preceding January 1, at least two physicians licensed to practice medicine in North Carolina have certified that he remains unable, by reason of sickness or injury, to perform the normal duties of an active fireman; provided, that the Board of Trustees, after initially making the findings of fact specified in (1), (2), and (3) of this subsection, need not specify such findings in any subsequent calendar year unless there is valid reason to believe that he is able to return to normal duty.

(c) **Intention.** It is the intention of subsection (a) and (b) of this section to authorize the disbursement as supplemental retirement benefits only the income derived in any calendar year from the investments of funds belonging to the Local Firemen's Relief Fund. Any of these funds not disbursed shall revert to the Local Firemen's Relief Fund.

(d) **Investment of Idle Funds.** The Board of Trustees is hereby authorized and directed to invest all funds of the Local Firemen's Relief Fund in one or more of the investments named in G.S. 159-30.

(e) **Bond of Treasurer.** The Board of Trustees shall bond the treasurer of the Local Firemen's Relief Fund with a good and sufficient bond, in an amount at least equal to the amount of funds in his control, payable to the Board of Trustees, and conditioned upon the faithful performance of his duties; such bond shall be in lieu of the bond required by G.S. 118-6. The Board of Trustees shall pay from the Local Firemen's Relief Fund the premiums on the bond of the treasurer."

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

(1) Any acts concerning the property, affairs, or government of public schools in the Town of Forest City.

(2) 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:

Public Laws 1876-77, Chapter 136

Public Laws 1887, Chapter 244

Private Laws 1897, Chapter 116

Public Laws 1897, Chapter 347

Private Laws 1909, Chapter 136

Private Laws 1915, Chapter 235

Private Laws 1921, Chapter 116

Private Laws 1925, Chapter 2

Private Laws 1925, Chapter 49

Private Laws 1925, Chapter 129

Private Laws 1935, Chapter 17

Public-Local Laws 1937, Chapter 87

Public-Local Laws 1937, Chapter 88

Public-Local Laws 1941, Chapter 153

Session Laws 1943, Chapter 494

Session Laws 1945, Chapter 230

Session Laws 1949, Chapter 630

Session Laws 1953, Chapter 289

Session Laws 1955, Chapter 240

Session Laws 1955, Chapter 519

Session Laws 1955, Chapter 701

Session Laws 1957, Chapter 1122

Session Laws 1959, Chapter 54

Session Laws 1959, Chapter 398

Session Laws 1967, Chapter 680

Session Laws 1969, Chapter 236

Session Laws 1971, Chapter 41

Session Laws 1973, Chapter 425

Session Laws 1973 (2nd Session, 1974), Chapter 1181

Session Laws 1979 (2nd Session, 1980), Chapter 1276.

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:

(1) 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.

(2) 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:

(1) The repeal herein of any act repealing such law, or

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

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

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

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

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

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 13th day of April, 1981.