

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 356
HOUSE BILL 572

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

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Apex is revised and consolidated to read.

"THE CHARTER OF THE TOWN OF APEX.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

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

"Sec. 1.2. Powers. The Town of Apex 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 Apex 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 Apex 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 four 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 the applicable State laws, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held according to applicable provisions of the General Statutes.

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

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

"Sec. 2.8. Qualifications for Office, Vacancies, Compensation. The compensation of Board members, the filling of vacancies on the Board, and the qualifications of Board members shall be in accordance with applicable provisions of the General Statutes.

"ARTICLE III. ELECTIONS.

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

"Sec. 3.2. Election of the Mayor. At the regular municipal election in 1985, 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 1985 and every two years thereafter, there shall be elected by the qualified voters of the Town Board members to serve terms of four years each as follows: The offices of Board memberships now held by Commissioners Clarice D. Atwater, W. Nolan Cooke and James F. Ingram shall stand for election in 1985 and the offices of Board memberships

now held by Commissioners Charles C. Bennett, Jr., and Jack H. Kerley shall stand for election in 1987. Thereafter, all Commissioners thus duly elected shall each serve for a term of four years or until their successor is duly elected and qualified.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

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

"Sec. 4.2. Town Manager. The Board of Commissioners shall appoint a Town Manager who shall be the administrative head of Town government, and who shall be responsible to the Board for the proper administration of the affairs of the Town. The Town Manager shall hold office at the pleasure of the Board of Commissioners, and shall receive such compensation as the Board shall determine. In exercising his duties as chief administrator, the Manager shall:

- (1) Appoint and suspend or remove all Town officers and employees not elected by the people, except the Town Attorney and those whose appointment or removal is otherwise provided for by law, in accordance with such general personnel rules, regulations, policies or ordinances as the Board may adopt.
- (2) Report to the Board of Commissioners each appointment or removal of an officer or employee at the next Board meeting following such appointment or removal.
- (3) Direct and supervise the administration of all departments, offices and agencies of the Town, subject to the general direction and control of the Board, except as otherwise provided by law.
- (4) Attend all meetings of the Board, unless excused therefrom, and recommend any measures that he deems expedient.
- (5) Prepare and submit the annual budget and capital program to the Board.
- (6) Keep the Board fully advised as to the financial condition of the Town and annually submit to the Board, and make available to the public, a complete report of the finances and administrative activities of the Town at the end of the fiscal year.
- (7) Make any other reports that the Board may require concerning the operation of the Town departments, offices and agencies subject to his direction and control.
- (8) Perform any other duties that may be required or authorized by the Board, or as required by law.

"Sec. 4.3. Town Attorney. The Board of 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 Board of Commissioners 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 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 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 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 or sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by Article 10, Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

(f) The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Sec. 5.2. Establishment of Proposed Street Lines. (a) Whenever, in the opinion of the Board of Commissioners, it is in the best interest of the Town to do so, the Board may make provision for the ultimate widening or extension or both of existing streets and for opening new streets, and for the gradual acquisition of the lands necessary for such improvements, in accordance with the procedure established by this Section.

(b) Platting of Proposed Street Lines. From and after the time of adoption of a major street plan by the Board of Commissioners and the Board of Transportation pursuant to provisions of G.S. 136-66.2, the Board shall have power to request, make, or cause to be made, from time to time, surveys for the exact locating of the lines of new, extended, widened or narrowed streets and highways in the whole or any portion of the Town and the area within its outside zoning and subdivision control jurisdiction. Personnel making such surveys are empowered to enter upon lands, make examinations or surveys, and place and maintain necessary monuments thereon, at reasonable times and with due care for the property. A plat or plats of the area or areas thus surveyed shall be prepared on which are indicated the locations of the lines recommended as the planned or mapped lines of future streets, street extensions, street widenings, or street narrowings. The preparation of such plat or plats shall not in and of itself constitute or

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

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

(d) Right of Town to Acquire Property Before Improvement.

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

(e) Failure to Give Written Notice; Bar to Recovery for Value of Improvements.

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

(f) Failure of the Town to Act; No limit to Subsequent Condemnation. The failure of the Board of Commissioners to take action under Subsection (d) of this Section within 60 days after notice shall not have the effect of limiting the right of the Board at any subsequent time to condemn the land in question. In such case, however, the owner shall be entitled to full compensation as now provided by law for the building, repairs, or improvements made after the failure of the Board to take action within the prescribed period.

"Sec. 5.3. Acceptance of Dedications. In addition to any other authority granted the Town to acquire land for streets and other purposes, the Town shall have power to accept by resolution the dedication of any land or interest in land for street, utility or other Town purposes, both inside and outside the corporate limits, whether such dedication is made or offered by deed, by recorded plat or otherwise. Notwithstanding the provisions of G.S. 136-96 or any other provisions of law, the acceptance of a street or street easement by resolution adopted pursuant to this Section shall constitute a completed dedication and acceptance, and such dedication shall not thereafter be withdrawn except with written permission of the Board.

"Sec. 5.4. Cleaning and Repair of Sidewalks. It shall be the duty of every property owner in the Town to maintain in good and safe repair and to keep clean and free of debris, trash, ice, snow, and other obstacles upon the sidewalks abutting his property.

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

"ARTICLE VI. SPECIAL PROVISIONS.

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

"Sec. 6.2. Settlement of Claims. The Board of Commissioners may authorize the Town Manager to settle claims against the Town for personal injury or damage to property when the amount involved does not exceed the sum of one thousand dollars (\$1,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. All such settlements shall be approved by the Town Attorney.

"Sec. 6.3. Conditional Use Zoning. (a) In addition to the authority contained in Article 19 of Chapter 160A of the General Statutes, the Town may provide within its land use ordinance for the creation and amendment of conditional use zoning districts in

accordance with the provisions of this Section and other applicable law. Within a conditional use district, uses shall be permissible only upon the issuance by the Board of Commissioners of a conditional use permit. This differentiates these conditional use districts from general use districts, in which a variety of uses are permissible, but subject to specific site development standards.

(b) In establishing any conditional use district, the Board of Commissioners may, in lieu of setting forth all of the regulations applicable to such district, incorporate by reference all of the regulations applicable to any other general use zoning district created by the Town's land use ordinance, subject to such exceptions and additions as the Board, in the exercise of its legislative discretion, deems appropriate. The ordinance creating the conditional use district may not set forth exceptions that are less stringent than those of the referenced general use district, but may provide (by way of illustration without limitation) that only one or a few of the uses permitted within the referenced general use district shall be permissible within the conditional use district, or that increased setback distances shall apply within the conditional use district.

(c) A conditional use zoning district may be applied to particular property only upon the submission by the property owner or a person acting on his behalf of a petition seeking an amendment to the official zoning map to have the zoning classification of his property changed to such conditional use zoning district.

"Sec. 6.4. Overlay Districts. (a) In addition to the authority conferred in Article 19 of Chapter 160A of the General Statutes, the Town may provide within its land use ordinance for the creation and amendments of overlay zoning districts in accordance with the provisions of this section and the applicable law. These overlay districts may be applied to certain designated areas within which development should be made subject to certain restrictions over and above those applicable to the underlying general use districts.

(b) Overlay districts may be established in designated areas where critical concern is recognized for protection of natural systems (such as the groundwater, surfacewater, drainageways, flood hazard areas, areas of poor soils, etc.), and for promotion of quality in man-made systems (such as preserving or improving scenic views along major thoroughfares, etc.), or for achieving other public objectives (such as infill development or other forms of revitalization) in specially designated areas.

(c) Within these overlay districts, any development that occurs must be in compliance not only with the regulations applicable to the underlying general use districts but also with the additional requirements of the overlay districts. In instances of conflict, the overlay district regulations shall take precedence."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Apex 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 Apex.
- (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: Chapter 996 of the Session Laws of 1951, except for Section 34 of that act; and Chapter 581 of the Session Laws of 1957. All clauses of laws omitted from this section and in conflict with the provisions of this act are also hereby repealed.

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 Apex and all existing rules or regulations of departments or agencies of the Town of Apex, 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 Apex 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 its ratification; provided, that the Mayor and Board of Commissioners in office at the time this Charter takes effect shall continue in office until their successors are elected and qualify.

In the General Assembly read three times and ratified, this the 7th day of June, 1985.