

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-62
HOUSE BILL 532

AN ACT TO DELETE CERTAIN OBSOLETE PROVISIONS AND MAKE
CERTAIN TECHNICAL AMENDMENTS IN THE CHARTER OF THE CITY OF
HENDERSON AND TO AUTHORIZE ENTRY INTO AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967 as amended on June 22, 1981, by ordinance under G.S. 160A-101, reads as rewritten:

"Section 4. Elective Officers - Enumerated; Conduct of Elections; Terms of Office, Vacancies. The elective officers of the city shall consist of a mayor, who shall be elected ~~on the first Tuesday in May at the time prescribed by the General Statutes~~ and biennially thereafter, by the qualified voters of the whole city, and two aldermen from each ward, whose term of office shall be two years. The City shall be divided into four (4) electoral districts or wards and the seats of the eight (8) City Aldermen shall be divided equally into four (4) 'ward seats' and four (4) 'at large seats', one each of which shall be apportioned to each of the electoral districts or wards (so that each Alderman with a 'ward seat' shall represent approximately the same number of persons); the qualified voters of each electoral district or ward shall vote for and elect candidates to the respective 'ward seats'; candidates for the 'at large seats' shall reside in and represent the districts according to the apportionment plan, but all candidates for 'at large seats' shall be voted for and elected by all of the qualified voters of the entire City. Except as otherwise herein provided, such elections shall be in conformity with the general law of the State governing municipal elections; and the term of office of such mayor and aldermen shall commence ~~at 4:00 o'clock in the afternoon on the first Monday in June following their election.~~ at the time prescribed by the General Statutes. A vacancy shall exist when an elective officer shall fail, without good cause, to qualify within 60 days after his election; shall die, resign, remove from the city, absent himself without just cause continuously for 60 days from the city; is convicted or submits to the charge of a felony, is judicially declared a lunatic, or is removed for cause."

Section 2. Section 5 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

~~"Section 5. Same - Majority Vote Required for Election; Effect of Failure to Get Majority Vote. Except as otherwise provided, in all city elections, the candidate for each office receiving a majority of all votes cast for such office shall be declared elected. In the event no candidate for any particular office shall receive a majority of~~

~~the votes cast for such office, the candidate receiving the second highest number of votes cast for such office shall be entitled to require that a second election for such office be held between the two candidates receiving the highest numbers of the votes cast for such office. If the second high candidate desires a second election for such office, he shall file, in writing with the city clerk not later than 12:00 noon on the first Friday following the regular city election, a notice requesting that a second election be held.~~

~~If the city clerk shall receive a notice requesting a second election for any office, and the candidate filing such notice is entitled to a second election under the provisions of this Section, then the city clerk shall call such election to be held on the third Tuesday in May, and shall cause notice of such second election to be published at least once in a newspaper having general circulation in the city.~~

~~In all second elections held under authority of this section, the registration books used for the regular city election shall be used, and no new or additional registration shall be necessary; and, the election officials who conducted the regular city election shall conduct any second election, unless otherwise provided by action of the city council.~~

~~In the event a candidate for any office is entitled, under the provisions of this section to request a second election, and does not file the required notice in proper time as herein provided, then the candidate who received the highest number of votes cast for such office in the regular city election shall be declared elected.~~ City Elections. - Municipal elections in the City of Henderson shall continue to be conducted pursuant to the 'nonpartisan election and runoff election' method as described in the General Statutes, and the General Statutes shall continue to govern the registration of potential voters, the filing dates for candidates, the dates of the election and runoff election, the procedures to be followed in municipal elections, and the number of votes required before a candidate can call for a runoff or be declared elected."

Section 3. Section 6 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 4. Section 10 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 10. City Council - Power Generally; Organization; Mayor Pro Tempore; Oath of Office. All legislative powers of the city shall be vested in the city council and mayor. At the ~~meeting held on the first Monday in June,~~ organizational meeting of the council following each municipal election, or as soon thereafter as is practicable, the city council shall elect from its members a mayor pro tempore who shall hold his office during the pleasure of the city council.

The organization of the city council shall take place as provided in this Section notwithstanding the absence, death or refusal of one or more members to serve; provided, that at least a majority of the persons entitled to be members of the city council are present and take the prescribed oath of office. Any number entitled to take such oath who were not present at the time fixed therefor may take the oath at any time. The council shall be judge of the election and qualification of its members."

Section 5. Section 11 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 11. Duty to Elect Certain City Officers, etc. The city council shall also elect at the meeting held pursuant to Section 10, or as soon thereafter as is practicable, a city clerk, a city ~~collector of revenue, director of finance, a city treasurer,~~ and a city attorney, ~~whose terms of office shall be provided for by ordinance,~~ who shall be subject to such regulations and receive such compensation as the city council may determine, and shall hold their respective offices during the pleasure of the city council. ~~The city council shall have power to appoint or remove department heads in conformity with Section 9(j).~~"

Section 6. Section 17 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 7. Section 19 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 19. Salaries of Mayor and Councilmen. The salary of the mayor ~~shall be fixed by the city council at the meeting held the first Monday in June, or as soon thereafter as is practical.~~ The and the salary of the city council shall be fixed by the city council to be payable monthly, at the time it adopts the annual budget for the city."

Section 8. Section 22 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 22. ~~City Collector of Revenue, Director of Finance.~~ At the first meeting of the city council held on the first Monday in June, after its qualification, or as soon thereafter as is practicable, the city council shall elect a city ~~collector of revenue~~ Director of Finance who shall serve at the pleasure of the city council and give bond in the amount in the amount of not less than twenty-five thousand dollars (\$25,000), as may be fixed by the city council for the faithful performance of his duties and for a proper accounting of all funds coming into his hands by virtue of his office, or coming into his possession in connection therewith, for which he may be responsible, such bond to be renewed annually by a new bond for such sum as may be determined by the city council, and shall receive such compensation for his services as is fixed by the city council.

The city council may combine the office of ~~collector of revenue~~ Director of Finance with any other office or offices that it sees fit, vesting in the person holding such combined offices the powers and duties of each position."

Section 9. Section 23 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 10. Section 27 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, as amended by Chapter 809 of the 1969 Session Laws, reads as rewritten:

"Section 27. City Council-Powers ~~Enumerated.~~ Enumerated Generally. The city council shall continue under existing laws to have power to make and provide for the execution of such ordinances for the city as they may deem proper not inconsistent with the laws of the land, and the city shall have all the powers granted to municipalities by the general laws of the State as the same may now be or as hereafter enacted. In

addition to the powers now or hereafter granted to municipalities under the general laws of the State, the city is specifically granted the following powers.

(a) To adopt an ordinance requiring the owners of property abutting sidewalks to keep the sidewalks clear at all times of ice, snow, dirt and debris.

~~(b) To require all railroad companies to maintain gates or watchmen at street crossings when deemed necessary unless such railroad has installed proper and fully approved automatic warning devices at such crossings as approved by the city council.~~

~~(c) To regulate and control the location of railroad tracks and to require railway companies of all kinds to construct at their own expense such bridges, underpasses, turnouts, culverts, crossings and other things as the city council may find necessary; to require by ordinance any railroad company to repair grade crossings in such manner as deemed by the city council to be necessary to the safety and convenience of the traveling public, and any ordinance adopted hereunder shall contain provisions establishing adequate notice and hearing procedures in accordance with due process of law.~~

~~(d)~~(b) To require that all property owners provide adequate drainage facilities to the end that their premises be kept free from standing water and permit the natural flow of water thereon to be taken care of, and that in case of failure on the part of such owner or owners, to provide the same, after due notice, to go upon their premises and construct the necessary facilities and charge the cost thereof against such premises so improved, such cost to constitute a lien upon such premises and be collected as in the case of taxes.

~~(e)~~(c) To compromise suits for street and sidewalk assessments when the validity or collectibility of any such assessment is doubtful; provided, however, that no compromise settlement shall be made unless it is recommended by the city attorney, and unless such compromise settlement is approved by three-fourths vote of those present at the council meeting that passes on the proposal.

~~(f)~~(d) The city council shall have the power to adopt an ordinance designating the officers of the city who shall be empowered to sign and countersign checks, drafts, warrants and vouchers for payment on behalf of the city.

~~(g)~~(e) To discontinue water service for non-payment of either water charges or sewer charges or any other sanitation charge.

~~(h)~~(f) To appropriate funds annually in its discretion, from any source of revenue other than funds derived from ad valorem property taxation, for the purpose of obtaining or aiding and encouraging the locating in or near the City of manufacturing, industrial, business, and commercial plants and enterprises, the advertising of the suitability of the City and the surrounding area and the advantages it has to offer, and for such other purposes as will, in the opinion of the city council, increase the population, taxable property values, and the general and material welfare of the City and the surrounding area. Expenditures for the ~~purpose~~ purposes herein authorized are hereby declared to be for a lawful public purpose. Provided, however, that nothing herein shall prevent the appropriation of funds derived from ad valorem property taxation for any purpose so authorized by law.

(g) Upon receipt of a voluntary petition by any entity whose property is not subject to ad valorem property taxation under Part 1 or 4 of Article 4A of Chapter 160A

of the General Statutes or any successor statutory provision, the city council may contract with that entity for that entity to pay for city utilities at different rates from those rates paid by other citizens or entities located within the city limits, provided that the different rates shall not become payable before the effective date of the annexation and shall not extend for more than five years from the effective date of the annexation.

~~(j)~~(h) The enumeration of particular powers by this Charter shall not be deemed or held to be exclusive, but in addition to the powers herein enumerated or ~~implied~~, implied; the city, either through the city council, or through such other officers as may by law be provided, shall have and may exercise all other powers which under the Constitution and laws of the State, may be granted to cities.

~~(j)~~(i) No liability shall accrue to the city for the failure of the city or its officers and employees to perform any duty or exercise any power above enumerated."

Section 11. Section 31 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 31. Power to Convey Real and Personal Property, etc. The city council shall have the power at all times to sell any and all personal property of the city at private sale, without resorting to public sale. The city shall have the power at all times to sell any real property belonging to the city after having advertised the same once a week for four consecutive weeks in a newspaper published in the county; provided that before any bid shall be deemed accepted or any sale made, or title passed by virtue of such sale, such sale shall be confirmed by the city council and the council may in its discretion, refuse confirmation, and when so authorized, a deed for such real estate may be executed by the mayor and attested by the city clerk, with the corporate seal of the city attached; provided, however, this shall not apply to plots in the cemetery except as to the manner of execution of the deed. In the sale of real estate the city is authorized to execute deeds in the usual form and containing full covenants of warranty. Provided, however, nothing in this section prevents the city from selling real or personal property in any manner authorized by the General Statutes."

Section 12. Section 37 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 37. Assessment Procedure. In ordering street improvements without a petition and assessing the cost thereof, unless otherwise provided by this Charter, the city council shall comply with the procedure provided by ~~Article 9, Chapter 160 of the~~ General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof."

Section 13. Section 38 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 38. Effect. The effect of the act of levying assessments under authority of Sections 35 through 37 shall for all purposes be the same as if the assessments were levied under authority of ~~Article 9, Chapter 160 of the~~ General Statutes."

Section 14. Section 40 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 40. Enactment of Regulations. The city is authorized to adopt a building code, plumbing code, electrical code, zoning ordinance, subdivision ordinance,

minimum housing code, laws authorizing abatement of nuisances under G.S. 160A-193 or any successor statute, condemnation of dilapidated structures ordinance, weeded lots ordinance, abandoned and junked motor vehicles ordinances, and mapped streets ordinance in accordance with Sections 45 through 50, and other similar regulatory codes not only for the area within the corporate limits as may be provided for in the General Statutes, but for any area within the city extraterritorial planning area as defined by Section 39."

Section 15. Section 42 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 42. Authority of Zoning Board of Adjustment. The board of adjustment of the city, appointed pursuant to ~~Section 160-178 of the~~ General Statutes shall have the same power and authority within the city extraterritorial planning area as defined by Section 39 outside the corporate limits of the city as may now or hereafter be vested with such board for the area inside the corporate limits, and such board shall be constituted in accordance with the provisions of ~~Section 160-181.2 of the~~ General Statutes."

Section 16. Section 43 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 43. Recording Subdivision Plat, Etc. (a) Platting Authority. ~~The board of aldermen-city council~~ is hereby authorized to enact an ordinance regulating the subdivision of land as defined by this Article within the city or within the extraterritorial planning area and not located in any other municipality. In the event of land lying outside the city within the extraterritorial planning area and lying also within the subdivision control jurisdiction of another municipality, the jurisdiction of the city shall terminate at a boundary line equidistant from the corporate limits of the city and the corporate limits of the other municipality, unless such municipalities shall agree to writing upon a different boundary line based upon geographical features and existing or projected patterns of development within the area. ~~The legislative body-city council~~ may, if it deems wise, decline to exercise its regulatory powers over any part of its extraterritorial jurisdiction which lies in another county, or which is separated from the municipality or from the remainder of the area subject to municipal jurisdiction by a river, inlet, sound, or other major physical barrier to urban growth; such decision shall not affect the validity of any subdivision regulations enacted for the remainder of the area over which the municipality has extraterritorial jurisdiction.

(b) Adoption of Ordinance; Procedure. Before the ~~board-city council~~ shall adopt a subdivision control ordinance or any amendment thereto, it shall hold a public hearing, notice of which shall be given once a week for two successive calendar weeks in a newspaper published within ~~the city~~ Vance County, or if no newspaper is so published, by posting such notice at four public places in the city. The notice shall be published the first time, or posted, not less than 15 nor more than 25 days prior to the date fixed for the hearing.

(c) Approval of Subdivision Plats. If the ~~board-city council~~ adopts an ordinance regulating the subdivision of land, no subdivision plat shall be filed or recorded until it shall have been submitted to and approved by the appropriate board designated for that

ordinance and such approval entered in writing on the plat by the city clerk, provided a copy of such ordinance shall be filed with the Register of Deeds of Vance County. The register of deeds upon receipt of such ordinance shall not thereafter file or record a plat of a subdivision of land located within the territorial jurisdiction of the city as herein defined without the approval of such plat by the board. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the territorial jurisdiction of the city as herein defined. ~~The Clerk of Superior Court of Vance County shall not order or direct the recording of a plat where such recording would be in conflict with this Section.~~

(d) Subdivision Regulations. Prior to exercising the powers granted by this Article, the ~~board-city council~~ shall by ordinance adopted pursuant to this Article adopt regulations governing the subdivision of land within its platting jurisdiction as defined in paragraph (a) of this Section. The ordinance shall require that at least a preliminary plan of every proposed subdivision shall be submitted for a study, recommendation, and tentative approval to the appropriate board ~~or to the planning board or commission designated in the ordinance.~~

The ordinance may provide for the orderly development of the city and its environs; for the coordination of streets within proposed subdivision with existing or planned streets or with other public facilities; for the dedication or reservations of rights of way or easements for street and utility purposes; and for the distribution of population and traffic which shall avoid congestion and overcrowding, and which shall create conditions essential to public health, safety, and general welfare.

The ordinance may include requirements for the final plat to show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the orderly development of subdivisions by regulating the construction of community service facilities, including water lines; sewer lines; street paving, curbing and guttering; and street drainage facilities in accordance with policies and standards established by the ~~board-city council~~ under authority granted in Section 44 of this Charter and, to assure compliance with such requirements, the ordinance may require the posting of bond or other such method as shall offer guarantee of compliance.

Such ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever land is subdivided within its jurisdiction, within the definition of 'subdivision' in ~~G.S. 160-226.6.~~ the applicable provisions of the General Statutes.

(e) Effect of Plat Approval on Status of Dedications. The approval of a plat by the ~~board of aldermen-city council~~ shall not be deemed to constitute or effect the acceptance by the city or the public of the dedication of any street or other ground, public utility line, or other public facility shown upon the plat.

However, ~~any municipal legislative body~~ the city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes, where such lands or facilities are located within its subdivision-regulation jurisdiction.

(f) Penalties for Transferring Lots in Unapproved Subdivisions. If the ~~board~~ city council adopts an ordinance regulating the subdivision of land as authorized by this Section, any person who, being the owner or agent of the owner of any land located within the platting jurisdiction of the city as defined by paragraph (a) of this Section, thereafter subdivides his land in violation of such ordinance or transfers or sells such land by reference to or by exhibition of or by other use of a plat showing a subdivision of such land before such plat has been approved by the appropriate board and recorded in the register of deeds' office, shall be guilty of a misdemeanor, and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The city, through the city attorney or other official designated by the ~~board-city council~~, may enjoin such transfer or sale by action for ~~injunction~~ injunction or seek to rescind the same.

(g) Definitions. For purposes of this Section, a 'subdivision' shall include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations authorized by this Section:

- (1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as shown in its subdivision regulations;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two areas into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the city, as shown in its subdivision regulations."

Section 17. Section 44 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 44. Authority to Require Improvements to Comply With City Specifications. In addition to the authority granted by ~~G.S. 160-226.3~~, the applicable provisions of the General Statutes, the city council is hereby authorized to provide for the more orderly development of subdivisions in the extraterritorial area by including in its subdivision regulation ordinance provisions requiring the following:

(a) that any streets proposed to be opened shall be graded and stabilized and adequate storm drainage facilities installed, all in accordance with city standards and specifications;

(b) that any streets proposed to be paved, and any curbs and gutters proposed to be constructed, shall be paved and constructed in accordance with city standards and specifications; and

(c) that any water or sewer lines proposed to be installed shall be installed and constructed in accordance with city standards and specifications."

Section 18. Section 47 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Section 47. Adoption of Official Map, Etc. Following the preparation of plats as required by Section 46, the city council may officially adopt a map or maps of planned new streets and highways, extensions, widenings, narrowings, or vacations of streets within the city and the extraterritorial area outside of its corporate boundaries. Before taking any such action, the council 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 published in ~~the city~~ Vance County, or if there be no newspaper published in the city, by posting such notice at four public places in the city and at four public places within the affected area outside of the corporate boundaries. Said notice shall be published or posted for the first time not less than 15 days prior to the date fixed for said hearing. Following adoption of such a map or maps, the council shall certify a copy to the Register of Deeds of Vance County, which copy shall be duly filed. The placing of any street or street line upon any official map or maps shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street or the taking ~~of or~~ acceptance of any land for street purposes."

Section 19. Section 52 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, is repealed.

Section 20. Section 53 of the Charter of the City of Henderson, being Chapter 780 of the Session Laws of 1967, reads as rewritten:

"Sec. 53. Procedure for Letting Contracts, etc. All purchases and contracts made by the city council shall be made, let, and executed according to the general laws of the State applicable thereto, as the same may be now or hereafter be enacted; provide, however, that contracts of the city involving more than ~~one thousand dollars (\$1000.00)~~ twenty thousand dollars (\$20,000) shall be in writing and ~~G.S. 160-279 the applicable provisions of the General Statutes requiring contracts to be in writing shall control and govern only contracts of the city in excess of one thousand dollars (\$1,000.00). twenty thousand dollars (\$20,000).~~"

Section 21. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker

Speaker of the House of Representatives