

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 313
Committee Substitute Favorable 7/8/03

Short Title: Rocky Mount Charter Revision.

(Local)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE AND REVISE THE CHARTER OF THE CITY OF
ROCKY MOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of Rocky Mount is revised and consolidated to read as follows:

"CHARTER OF THE CITY OF ROCKY MOUNT.

"CHAPTER I.

"GENERAL PROVISIONS.

"Section 1. **Definitions.** As used in this Charter, the following words are hereby defined to mean as set forth, unless otherwise clearly required by the context:

(a) City. The word "City" shall mean the City of Rocky Mount.

(b) City Council. The words "City Council" shall mean the City Council of the City of Rocky Mount.

"CHAPTER II.

"ORGANIZATION AND POWERS.

"ARTICLE I. CITY BOUNDARIES.

"Section 2. **Existing City Boundaries.** The boundaries of the City shall be those existing at the time of the effective date of this Charter until modified in accordance with law.

"Section 3. **Wards.** The City shall be divided into seven single-member electoral districts (referred to in this Charter as "wards"), each ward representing the same number of persons as nearly as possible. The City Council shall have the authority to revise the ward boundaries for the purposes of:

(1) Accounting for territory annexed to or excluded from the City; and

(2) Correcting population imbalances between the wards shown by a new federal census or caused by exclusions or annexations.

Changes in the ward boundaries shall be made by a five-sevenths vote of all the members of the City Council.

1 "ARTICLE II. CORPORATE POWERS.

2 "Section 10. **General Rights and Powers.** The inhabitants of the City are a body
3 corporate and politic under the name City of Rocky Mount. The City has all of the
4 powers, duties, rights, privileges, and immunities conferred and imposed on cities by the
5 Constitution of North Carolina and the General Statutes of North Carolina. In addition
6 to the powers conferred as stated above, the City shall possess the following powers and
7 authority:

- 8 (1) To regulate or prohibit the sale, use, and storage of gunpowder,
9 dynamite, gasoline, naphtha, and all other dangerous, explosive or
10 combustible substances within the corporate limits of the City, or
11 within one mile thereof; to regulate or prohibit the discharge of
12 firearms or the firing or setting off of fireworks or other explosives
13 within such corporate limits or within one mile thereof.
- 14 (2) To regulate or prohibit all sports, theatrical exhibitions, agricultural or
15 other fairs, circuses, tent revivals, and other public performances and
16 exhibitions within the corporate limits of the City.
- 17 (3) To regulate public ways as follows: No person (natural or corporate)
18 or combination or association of any such persons shall use the public
19 streets, street rights-of-way, or alleys of the City for nonstreet or
20 nonvehicular purposes, except upon the grant of a franchise, license, or
21 easement by the City Council.
- 22 (4) To promote the right of gainful employment, industrial and
23 commercial opportunities, and general welfare of the inhabitants of the
24 City, either directly or through such instrumentalities or agencies as
25 exist or may exist (including the City of Rocky Mount Business
26 Development Authority) for the public purpose of alleviating
27 unemployment with its resulting spread of indigence and economic
28 stagnation, by fostering and promoting business and industry, and
29 developing commerce and trade, and inducing the location of
30 manufacturing, industrial and commercial enterprises in or about the
31 City by advertising, establishing industrial parks, extending electric,
32 natural gas, and water and sewer lines, and by acquiring real and
33 personal property, owning, improving, equipping, and maintaining the
34 same, and selling, leasing, exchanging, and conveying such property in
35 furtherance of any such purposes.
- 36 (5) To regulate or prohibit junkyards and other places where junked
37 automobiles, scrap metal, and other junk are dismantled or stored
38 within the corporate limits of the City or within two miles thereof.
- 39 (6) To regulate or prohibit boxing and wrestling matches or exhibitions.
- 40 (7) To do any and all things as are deemed by the City Council necessary
41 and requisite to establish, promote, advance, and maintain the general
42 welfare, culture, and economy of the City, its environs and inhabitants.
- 43 (8) To regulate and control by ordinance the use of all lands owned by the
44 City and any waters covering such lands either within or without the

1 corporate limits, including, but not limited to, use by the public of any
2 body of water covering lands owned by the City, wherever the same
3 may be located.

4 "Section 11. **Form of Government.** The City shall operate under the
5 council-manager form of government as provided in G.S. 160A-147, et seq.

6 "ARTICLE III. AMENDMENTS.

7 "Section 21. **How Charter Amended.** The Charter shall be amended only by an act
8 of the General Assembly of North Carolina or as otherwise provided by law.

9 "CHAPTER III.

10 "GOVERNING BODY.

11 "ARTICLE I. CITY COUNCIL.

12 "Section 31. **Composition.** The City Council shall consist of seven members. One
13 Council member shall be apportioned to each of the respective wards of the City. The
14 qualified voters of each ward shall elect a Council member for the seat apportioned to
15 that ward.

16 "Section 32. **City Council Members; Terms; Qualifications; Vacancies.**

17 (a) **Terms of Office.** Council members shall serve staggered terms of four years
18 and until their successors are duly elected and qualified. The terms of the Council
19 members in office on the effective date of this Charter shall not be affected by the
20 adoption of this Charter.

21 (b) **Qualifications.** No person shall be eligible to file for, or be elected to, the City
22 Council, or to serve thereon, unless such person is a qualified voter, 21 years of age, a
23 resident of the City and of the ward from which he seeks to be elected, and has not been
24 disqualified as provided in the Constitution of North Carolina.

25 (c) **Change of Residence.** If any elected Council member shall cease to reside in
26 the ward from which elected, such Council member shall thereafter be disqualified from
27 serving as a Council member from such ward, and the City Council shall name a
28 successor; however, the provisions of this subsection shall not apply in the event of
29 changes in the ward boundaries. Any Council member who becomes a resident of a
30 different ward as a result of a relocation of boundaries shall continue to represent the
31 ward from which elected until the expiration of the term for which he was elected.

32 "Section 33. **Organization, Powers, and Procedures of City Council Members.**

33 (a) **Oath.** Any Council member-elect who shall not be present at the
34 organizational meeting of the City Council may take the oath of office at any time
35 thereafter.

36 (b) **Other Powers and Procedures.** Except as otherwise specifically provided by
37 this Charter, the City Council shall have authority to adopt rules of procedure and
38 generally regulate the manner and method of the exercise of its powers. All meetings
39 shall be held within the City of Rocky Mount, except in case of an emergency. If the
40 City Council deems it desirable to hold a joint meeting with the governing body of
41 another municipality or political subdivision of the State of North Carolina, the City
42 Council may at its election, meet with the other governing body at a designated place,
43 within the area subject to the jurisdiction of the other governing body.

44 "Section 34. **Quorum, Votes, Attendance of Council Members.**

1 (a) Quorum; Attendance. A majority of the members elected to the City Council
2 shall constitute a quorum to do business, but a less number may adjourn from time to
3 time and compel the attendance of absent members by ordering them to be taken into
4 custody.

5 (b) Ordinances. All ordinances offered for adoption shall be in writing, and no
6 ordinance shall be passed finally on the date on which it is introduced unless by a vote
7 of five-sevenths of the entire membership of the City Council or the unanimous consent
8 of those present whenever there are less than five-sevenths of the membership present.

9 (c) Votes. All final votes of the City Council involving the making of
10 assessments or levying of taxes, and all votes where requested by a Council member,
11 shall be by roll call. The Mayor shall announce the result of each vote of the Council.

12 "Section 35. **Ordinances, Rules and Regulations.** In addition to the other powers
13 conferred upon it by this Charter, the City Council may adopt and provide for the
14 execution of such ordinances, rules and regulations not inconsistent with law, as may be
15 necessary or appropriate for the preservation and promotion of the comfort, culture,
16 economy, convenience, good order, better government, and general welfare of the City
17 and its inhabitants.

18 "Section 36. **Removal of Council Members.** The City Council shall have the
19 power on the vote of five-sevenths of its members to remove any one of its members for
20 misfeasance, malfeasance, or nonfeasance of office, after a hearing of the matter before
21 the City Council, at which time the subject of such hearing may be present and
22 represented by counsel. Notice of such hearing shall be served on the subject thereof at
23 least two weeks in advance of the hearing in person, if possible, and if not possible, by
24 publication.

25 "ARTICLE II. MAYOR.

26 "Section 61. **Qualifications and Term of Office.**

27 (a) Term of Office. The Mayor shall serve a term of four years and until a
28 successor is duly elected and qualified. The term of the Mayor in office on the effective
29 date of this Charter shall not be affected by the adoption of this Charter.

30 (b) Qualifications. No person shall be eligible to be elected Mayor, or to serve as
31 Mayor, unless such person is a qualified voter, 21 years of age, a resident of the City,
32 and has not been disqualified as provided in the Constitution of North Carolina.

33 "ARTICLE III. CITY MANAGER.

34 "Section 81. **Appointment; Duties; Removal.**

35 (a) Appointment; Removal. The City Council shall appoint the City Manager,
36 who shall be the administrative head of the City government and shall serve at the
37 pleasure of the Council. In the event of removal, the City Manager may demand and
38 shall be entitled to a public hearing thereon before the City Council prior to the date on
39 which his final removal shall take effect and may there be represented by counsel; but
40 the decision of the Council shall be final, and pending such hearing, the Council may
41 suspend the City Manager from duty.

42 (b) Administrative Service. Except for the purpose of inquiry, the City Council
43 and its members shall deal with the administrative service of the City through the City
44 Manager. No member of the City Council shall give orders to or attempt to influence the

1 action of any subordinate of the City Manager either publicly or privately. Where this
2 Charter or any ordinance or statute gives to the City Manager the power to appoint or to
3 employ persons in the administrative service of the City, neither the City Council nor
4 any of its members shall attempt to in any manner influence the City Manager in the
5 appointment or employment of any such person or persons. The City Manager shall
6 have the power to suspend and dismiss any person appointed, and such action in every
7 case shall be final.

8 (c) General Authority and Duties. The City Manager shall, except when clearly
9 inconsistent with the provisions of this Charter, exercise supervision and control over all
10 departments and divisions of the City. The City Manager shall keep the City Council at
11 all times advised as to the conditions and efficiency of the various departments of the
12 City under said City Manager's direction and control and of the needs and conditions of
13 the City. The City Manager shall perform such other duties as may be prescribed by this
14 Charter or be required by ordinance or resolution of the City Council.

15 "ARTICLE IV. CITY ATTORNEY.

16 "Section 90. **Appointment.** The City Council shall appoint an attorney or firm of
17 attorneys to serve as City Attorney. The City Attorney shall be the City's legal advisor
18 and shall hold office at the pleasure of the City Council.

19 "Section 91. **Other Attorneys.** The City Council or City Manager may employ such
20 other attorneys as they deem advisable.

21 "ARTICLE V. CITY CLERK.

22 "Section 100. **Appointment; Powers and Duties.** The City Council shall appoint a
23 City Clerk who shall hold office at the pleasure of the City Council. The City Clerk
24 shall be the custodian of all records, documents, papers, and other articles committed to
25 the office and shall surrender the same to any successor. The City Clerk shall be the
26 custodian of the common seal of the City and shall attest the execution of and affix the
27 common seal to all legal documents executed by the Mayor in behalf of the City and
28 shall perform any other duties as may be prescribed by law or assigned by the Council.

29 "ARTICLE VI. CITY TREASURER.

30 "Section 110. **Appointment; Powers and Duties.** The City Council shall appoint
31 from its membership a City Treasurer who shall hold office at the pleasure of the
32 Council. All notes, bonds, or other evidences of indebtedness of the City shall bear the
33 City Treasurer's signature, which, when authorized by the City Treasurer in writing,
34 may also be by facsimile signatures.

35 "CHAPTER IV.

36 "POLICE DEPARTMENT.

37 "Section 140. **Appointment, Powers and Duties of Chief of Police and Police**
38 **Officers.**

39 (a) Chief. The City Manager shall appoint the Chief of Police. The Chief of
40 Police shall have immediate direction and control of the Police Department, subject to
41 the supervision of the City Manager, and to such rules, regulations, and orders as the
42 City Manager may prescribe.

43 (b) General Powers. The Chief of Police and each member of the police force
44 shall have, for the purpose of enforcing City ordinances and regulations, or preserving

1 the peace of the City, and of suppressing disturbances, and apprehending offenders, the
2 powers of peace officers vested in sheriffs and constables.

3 (c) Public Peace. The Chief of Police and other police officers of the City shall
4 have the power, and it shall be their duty, to suppress all breaches of the public peace,
5 and all disturbances of the quiet and good order of the City, and they may, with or
6 without warrant, arrest, anywhere within the corporate limits of the City, or within one
7 mile thereof, any person charged with the violation of any ordinance of the City, or with
8 any other offense whatsoever against the public peace, and the quiet and good order of
9 the community.

10 (d) Other Duties. In addition to the foregoing, the Chief of Police and other
11 police officers shall perform such other duties as may from time to time be prescribed
12 by the City Manager not inconsistent with the Constitution and laws of the State of
13 North Carolina and the provisions of this Charter.

14 "Section 141. **Police Emergency Lines.** The Chief of Police or other police officer
15 in charge at the scene of a parade, accident, disturbance, crime scene, natural or
16 artificial disaster, or emergency, or any large gathering of people shall have authority to
17 provide barricades, ropes, signs, or other means of restraint, and it shall be unlawful for
18 any person other than a law enforcement officer, firefighter, or other person having
19 official business at the scene to cross such a line without express permission of the
20 police officer at the scene.

21 "CHAPTER V.

22 "FIRE DEPARTMENT.

23 "Section 150. **Appointment, Powers and Duties of Fire Chief.**

24 (a) Appointment; General Authority. The City Manager shall appoint a Fire
25 Chief. The Fire Chief shall have immediate direction and control of the Fire
26 Department, subject to the supervision of the City Manager and to such rules,
27 regulations, and orders as the City Manager may prescribe.

28 (b) Destroying Property at Fires. The Fire Chief, and in the Fire Chief's absence,
29 any assistant, may order the blowing up, tearing down, or other destruction of any
30 building when it is deemed necessary to stop the progress of a fire. No person shall be
31 held liable, civilly or criminally, for acting in obedience to their orders, nor shall the
32 Fire Chief or any assistant, the City, the Mayor, the City Manager, or the City Council
33 be held liable, civilly or criminally, for the giving of such orders or for damages to
34 property ordered destroyed.

35 (c) Fire, etc., Emergency Lines. The Chief of Police or other police officer, or the
36 Fire Chief or any assistant, in charge at the scene of a fire, accident, disturbance, natural
37 or artificial disaster or emergency, or any large gathering of people, shall have authority
38 to provide barricades, ropes, signs, or other means of restraint, and it shall be unlawful
39 for any person other than a law enforcement officer, firefighter, or other person having
40 official business at the scene to cross such a line without express permission of the
41 person in charge at the scene.

42 (d) Other Duties. The Fire Chief and other firefighters shall perform such other
43 duties in addition to those provided in this Charter as may be prescribed by law or City
44 ordinances, or that may from time to time be prescribed by the City Manager.

1 "CHAPTER VI.

2 "AUXILIARY POLICE OFFICERS AND FIREFIGHTERS.

3 "Section 160. **Authorized.** The City Council may provide for the organization,
4 recruiting, training, equipping, and appointing of auxiliary police officers and auxiliary
5 firefighters for the City.

6 "Section 161. **Civil Liability.** The City shall be entitled to the same immunities
7 with respect to the action of auxiliary police officers and auxiliary firefighters in the
8 performance of their duties or training or otherwise, to which it is entitled with respect
9 to the actions of regular City police officers and firefighters in the performance of their
10 duties.

11 "CHAPTER VII.

12 "SPECIAL PROCEDURES AND REGULATIONS.

13 "ARTICLE I. EMINENT DOMAIN.

14 "Section 360. **Condemnation Procedure.**

15 (a) Generally. The City shall possess the power of eminent domain and may
16 acquire, either by purchase, gift, or condemnation, any real estate, right of access,
17 right-of-way, water right, privilege, easement, restrictive covenant, or any other interest
18 in or relating to real estate, water or improvements, either within or without the City
19 limits, for any lawful public use or purpose. In the exercise of the power of eminent
20 domain, the City is hereby vested with all power and authority now or hereafter granted
21 by the laws of North Carolina applicable to the City, and the City shall follow the
22 procedures now or hereafter prescribed by such laws; provided that, notwithstanding the
23 provisions of G.S. 160A-240.1 and G.S. 40A-1, in the exercise of its authority of
24 eminent domain for the acquisition of property or any interest in property to be used for
25 streets and highways; water supply and distribution systems; sewage collection and
26 disposal systems; electric power generation, transmission and distribution systems; and
27 gas storage, transmission, and distribution systems, the City is hereby authorized to use
28 the procedure and authority prescribed in Article 9 of Chapter 136 of the General
29 Statutes of North Carolina, as now or hereafter amended or recodified; provided further,
30 that whenever the words "Department of Transportation" appear in such Article 9 they
31 shall be deemed to include the "City of Rocky Mount," and whenever the words
32 "Secretary of Transportation" appear in such Article 9 they shall be deemed to include
33 the "City Manager of the City of Rocky Mount." The powers granted to the City in this
34 Charter for the purpose of acquiring property by eminent domain shall be in addition to
35 and supplementary to those powers granted in any other local act or in any other general
36 statute, and in any case in which the provisions of Article 9 of Chapter 136 are in
37 conflict with the provisions of any local act or any other provision of any general
38 statute, then the City Council may in its discretion proceed in accordance with the
39 provision of such local act or other general statute, or, as an alternative method of
40 procedure, in accordance with this Charter provision and Article 9 of Chapter 136.

41 (b) Limitation. Nothing in this section shall be construed to enlarge the power of
42 the City to condemn property already devoted to public use.

43 "ARTICLE II. LOCAL IMPROVEMENTS.

1 "Section 380. **Authority to Make Local Improvements.** The City Council shall
2 have authority to make the local improvements described in this Charter or otherwise
3 permitted by law, and to assess the cost against benefited property. The procedure set
4 forth in this Article shall not be exclusive, but shall be in addition to any other
5 procedures provided by the General Statutes of North Carolina or other provisions of
6 law.

7 "Section 381. **Separate Proceeding Not Required.** One or more local
8 improvements may be ordered in a single proceeding, and assessments for one or more
9 local improvements may be combined.

10 "Section 382. **Definitions.** Certain words and phrases will be used with the
11 following meanings with reference to local improvements, unless some other meaning is
12 plainly intended:

- 13 (1) A "roadway" is the part of a street that is used, or to be used, for
14 vehicular traffic.
- 15 (2) A "sanitary sewer" is an underground conduit for the passage of
16 wastewater and may include a pumping station and force main.
- 17 (3) The word "sewer" includes both sanitary and storm sewers unless a
18 contrary intention is shown.
- 19 (4) A "sewer lateral" is an underground conduit connecting a residential or
20 nonresidential property to a sanitary sewer main.
- 21 (5) A "sidewalk" is the part of a street used, or to be used, for pedestrian
22 traffic.
- 23 (6) A "storm sewer" is a conduit above or below ground for the passage of
24 storm water, and may include natural and constructed channels,
25 swales, ditches, drainage-ways, ponds, pipes, inlets, catch basins,
26 headwalls, pumping stations, and other physical works needed to
27 control, convey or carry off storm water.
- 28 (7) "Storm water" is rainfall or snowmelt that runs off the ground or
29 impervious surfaces and drains into natural or manmade
30 drainage-ways.
- 31 (8) A "street" is the entire width between property lines of every way or
32 place, of whatever nature, when any part thereof is dedicated or open
33 to the use of the public as a matter or right for the purpose of vehicular
34 or pedestrian traffic.
- 35 (9) "Wastewater" is water containing solid and soluble wastes and other
36 pollutants carried from dwellings, commercial buildings, industrial
37 facilities, mobile sources, treatment facilities and institutions together
38 with any groundwater, surface water and storm water that may be
39 present that is collected for treatment at the wastewater treatment
40 plant.
- 41 (10) A "water main" is an underground conduit for the transmission of
42 potable water to public and private hydrants for public and private use
43 and consumption.

1 (11) A "water service" is a pipe connecting a residential or nonresidential
2 property to a water main and may include a meter and/or backflow
3 prevention device.

4 "Section 383. **Improvements Described.** The City Council shall have authority to
5 make the following local improvements:

6 (1) Roadway paving improvements, which shall include the grading,
7 regrading, paving, repaving, and widening of roadways, or the
8 improvement thereof with any treatment designed to provide an
9 improved wearing surface, with necessary drainage, storm sewer
10 inlets, manholes, and catch basins and the construction or
11 reconstruction of retaining walls made necessary by any change of
12 grade incident to such improvement, and in any case where the
13 improvement is made upon petition if the petition so requests, or in
14 any case where the improvement is made without petition if the City
15 Council so directs, it may include the construction or reconstruction of
16 curbs, gutters, drains, and sidewalks.

17 (2) Water main improvements, which shall include the following:

- 18 a. Laying or construction of water mains and, in cases where the
19 property abutting such mains is divided into lots by map or plat
20 which is either recorded in the office of the register of deeds of
21 the county in which such land lies or is unrecorded but
22 approved by the City of Rocky Mount Planning Board, such
23 improvements may, where the City Council so directs, include a
24 tap for each lot shown on such map or plat except in cases
25 where a tap has been previously constructed to serve such lot
26 from another main;
- 27 b. The relaying where necessary of parts of paved roadways and
28 sidewalks torn up or damaged by the laying or construction of
29 such mains;
- 30 c. In any case where the improvement is made upon petition and
31 the petition so requests, or in any case where the improvement
32 is made without petition and the Council so directs, the laying
33 of water laterals.

34 (3) Sanitary sewer improvements, which shall include the following:

- 35 a. Laying or construction of a sanitary sewer main and, in cases
36 where the property abutting such mains is divided into lots by
37 map or plat which is either recorded in the office of the register
38 of deeds of the county in which such land lies or is unrecorded
39 but approved by the City of Rocky Mount Planning Board, such
40 improvements may, where the Council so directs, include a tap
41 for each lot shown on such map or plat, except in cases where a
42 tap has been previously constructed to serve such lot from
43 another main;

- 1 b. The repairing where necessary of parts of paved roadways and
2 sidewalks torn up or damaged by the laying or construction of
3 such mains;
4 c. In any case where the improvement is made upon petition and
5 the petition so requests, or in any case where the improvement
6 is made without petition and the Council so directs, the laying
7 of sanitary sewer laterals.
- 8 (4) Storm sewer improvements, which shall include the laying or
9 construction of storm sewers, the relaying, where necessary, of parts of
10 paved roadways and sidewalks torn up or damaged by the laying or
11 construction of such sewers, and in any case where the improvement is
12 made upon petition and the petition so requests, or in any case where
13 the improvement is made without petition and the Council so directs,
14 the laying of storm sewer laterals.
- 15 (5) Sidewalk improvements, which shall include the grading, regrading,
16 construction, reconstruction and repair of paved or other improved
17 sidewalks, the construction or reconstruction of retaining walls made
18 necessary by and incident to such improvements, and in any case
19 where the improvement is made without petition if the Council so
20 directs, it may include the construction or reconstruction of curbs,
21 gutters, drains, and retaining walls and the construction or
22 reconstruction of all such portions of driveways as in the judgment of
23 the Council ought to be laid in the street area.
- 24 (6) Grass plot improvements, which shall include the grading and planting
25 of grass plots and medians in a street.

26 "Section 384. **Water and Sewer Mains Between Streets.** Whenever the City
27 Council finds it in the public interest, water, sanitary sewer, or storm sewer mains, or all
28 or any of these, may be constructed between streets rather than in a street and the cost of
29 construction of such water or sewer mains and the laterals or storm sewer mains shall be
30 assessed according to the street frontage in the same manner and to the same extent that
31 it would be assessed if the improvements were constructed in a street; provided that the
32 City shall provide the rights-of-way for construction and maintenance of such mains at
33 its own expense without assessing the cost thereof.

34 "Section 385. **Assessment Against Property Abutting One Side of the Street.**
35 Any proceeding may include making any one or more local improvements in or on a
36 street or streets and for the assessment of the cost thereof wholly against the property
37 abutting one side of such street or streets or otherwise against such abutting property as
38 the City Council may determine in any of the following cases:

- 39 (1) In any case where there is park land or unimproved land abutting one
40 side, or a part of one side, of a street.
- 41 (2) In any case where the land abutting one side, or a part of one side, of a
42 street is of such a nature or is devoted to such a purpose that a special
43 assessment against it cannot be made or, if made, would probably
44 exceed the value of the land assessed.

1 (3) In any case where the owners of all the property to be assessed agree
2 thereto.

3 "Section 386. **The Petition; Certificate of Sufficiency.**

4 (a) Petition. Except as otherwise provided in subsection (b) of this section, the
5 petition for any local improvements shall designate by a general description the
6 improvement proposed and shall request that such proportion of the cost of each of such
7 improvements as may be specified in the petition be specially assessed against the
8 property abutting on the street or part thereof in which or on which such improvements
9 are proposed to be made. The petition shall be filed with the City Clerk.

10 (b) Assessments of Portions of Street. In any case where:

11 (1) The improvement is to be made on one side of a street only, the
12 petition shall request that the assessment be made only against the
13 property abutting that side of the street whereon the improvement is to
14 be made.

15 (2) It is proposed to assess the cost of any local improvement covering the
16 entire width of a street against the land abutting one side of the street
17 only or against any lands less than all of those abutting the improved
18 portion of the street, such petition shall designate the lands to be
19 assessed.

20 (c) Signatures – Generally. Except as otherwise provided in subsection (d) of this
21 section, the petition shall be signed by at least a majority in number of the owners,
22 which majority must own at least a majority of all lineal feet of frontage of the lands
23 abutting the street or streets or part of a street or streets proposed to be improved,
24 excluding street intersections.

25 (d) Signatures – Portions of Streets. Any petition for the making of:

26 (1) Local improvements on one side of a street only need be signed only
27 by a majority in number of the owners of land abutting the side of the
28 street whereon such improvements are to be made, which majority
29 must at least own a majority of all the lineal feet of frontage of the
30 lands abutting such side of the street, excluding street intersections.

31 (2) Any improvements covering the entire width of a street and the
32 assessment of the cost thereof against land abutting one side of the
33 street only or against any lands less than all of those abutting the
34 improved portion of the street shall be signed by all of the owners of
35 the lands thus proposed to be assessed.

36 (e) Rules of Construction. For the purpose of:

37 (1) The petition, all owners of an undivided interest in any land shall be
38 deemed and treated as one person and such land shall be sufficiently
39 signed for when the petition is signed by one of the owners of such
40 undivided interest.

41 (2) This section, the word "owner" shall be considered to include the
42 owners of any life estate, of any estate by the entirety, or of the estate
43 of inheritance and shall not include mortgagees, trustees of a naked

1 trust, trustees under deeds of trust to secure the payment of money,
2 lienholders, or persons having inchoate rights in the property.

3 (f) Sufficiency. Upon the filing of such petition, the City Clerk shall investigate
4 the sufficiency of the petition and, if it is found to be sufficient, shall certify the same to
5 the Council.

6 "Section 387. **When No Petition Shall be Necessary.** No petition shall be
7 necessary for the following:

8 (1) Any local improvement for which the City bears the entire cost
9 without assessment.

10 (2) In the cases set forth in subsections (3) through (8) of this section
11 where in the judgment of the City Council the abutting property to be
12 assessed will be benefited in an amount at least equal to such
13 assessment.

14 (3) Street paving improvements: When in the judgment of the City
15 Council:

16 a. Any street or part of a street is unsafe; or

17 b. The improvement of a street or part of a street not more than
18 three blocks in length is necessary to connect streets already
19 paved; or

20 c. The improvement of a street or part of a street is necessary to
21 connect a paved street, or portion thereof, within the City with a
22 paved highway beyond the City limits; or

23 d. The improvement of a street or part of a street is necessary to
24 provide a paved approach to a railroad or street grade separation
25 or any bridge; or

26 e. Any street or part of a street should be widened; or

27 f. The improvement of a street or part of a street should be made
28 in the public interest.

29 (4) Water main improvements: When in the judgment of the City Council
30 any street or part of a street, or any property within the City, is without
31 adequate public water supply, and can be served, and water service
32 should be provided in the public interest.

33 (5) Sanitary sewer improvements: When in the judgment of the City
34 Council any street or part of a street, or any property within the City, is
35 without an adequate public sanitary sewer system and can be served,
36 and sanitary sewer service should be provided in the public interest.

37 (6) Storm sewer improvements: When in the judgment of the City
38 Council any street or part of a street, or any property within the City, is
39 without adequate storm sewer facilities, and can be served, and storm
40 sewers should be provided in the public interest.

41 (7) Sidewalk improvements: When in the judgment of the City Council
42 any street or part of a street is without sidewalks and sidewalks should
43 be provided in the public interest or that any existing sidewalk is
44 unsafe and should be repaired.

1 (8) Curb and gutter improvements: When in the judgment of the City
2 Council any street or part of a street is without curb and gutter and
3 curb and gutter should be provided in the public interest.

4 (9) In any other case when, in the judgment of the City Council, the
5 abutting property to be assessed will be improved in an amount at least
6 equal to such assessment.

7 "Section 388. **Notice of Hearing.**

8 (a) Preparation; Contents. Upon the presentation of a sufficient petition for local
9 improvements, or when it is proposed to make improvements authorized to be made
10 without petition, a notice shall be prepared by the City Clerk containing substantially
11 the following:

12 (1) A statement that a sufficient petition has been filed for the making of
13 the improvements or, if it is proposed to make the improvements
14 without petition, a statement of the reasons proposed for the making
15 thereof.

16 (2) A brief description of the proposed improvements.

17 (3) A statement of the proportion of the cost of the improvements to be
18 assessed and the terms of payment.

19 (4) A statement of the time and place of a public hearing on the proposed
20 improvements.

21 (5) A statement that all objections to the legality of the making of the
22 proposed improvements shall be made in writing, signed in person or
23 by attorney, and filed with the City Clerk at or before the time of the
24 hearing and that any objections not so made will be waived.

25 (b) Publication; Service. The notice shall be published one time in a newspaper
26 published in the City which is qualified to carry legal notices, or, if there is no such
27 newspaper, the City Clerk shall cause to be posted in three public places in the City, the
28 date of publication or posting to be not less than 10 days prior to the date fixed for the
29 hearing. In addition, at least 10 days prior to the hearing, the City Clerk shall cause a
30 copy of the notice to be mailed to the owners, as shown on the county tax records, of all
31 property subject to assessment if the project should be undertaken. The certificate of the
32 person designated to mail the notices that such notices were mailed shall be conclusive
33 in the absence of fraud. The word "owners" as used in this section has the same meaning
34 as in Section 386.

35 "Section 389. **Public Hearing.** At the time for the public hearing, or at some
36 subsequent time to which such hearing shall be adjourned, the City Council shall
37 consider any objections to the improvements made in compliance with Section
38 388(a)(5), together with objections to the policy or expediency of the making of the
39 improvements, and the Council shall thereafter determine whether it will order the
40 making of the improvements. Any objections to the making of the improvements not
41 made in writing, signed in person or by attorney, and filed with the City Clerk at or
42 before the time or adjourned time of the hearing shall be considered as waived. If any
43 such objection shall be made and shall not be sustained by the Council, the adoption of
44 the resolution ordering the making of the improvements shall be the final adjudication

1 of the issues presented, unless within 10 days after the adoption of the resolution proper
2 steps shall be taken in a court of competent jurisdiction to secure relief.

3 "Section 390. **Resolution Ordering Improvements; Publication.** After the public
4 hearing, if the City Council determines to make the improvements proposed, it shall
5 adopt a resolution that shall contain:

- 6 (1) If the improvements are to be made by petition, a finding by the
7 Council as to the sufficiency of the petition, which finding shall be
8 final and conclusive.
- 9 (2) If the improvements are to be made without petition, a finding by the
10 Council of such facts as are required in order to authorize
11 improvements without petition.
- 12 (3) A general description of the improvements to be made and the
13 designation of the street or streets or parts thereof where the work is to
14 be done.
- 15 (4) If the improvement directed to be made is the paving of a roadway or
16 part thereof wherein a railroad company has tracks, a direction that
17 such company pave that part of the street occupied by its tracks, the
18 rails of the tracks, and 18 inches in width outside such tracks, with
19 such material and in such manner as the City Council may prescribe,
20 and that unless such paving is completed on or before a day specified
21 in the resolution, the City Council will cause the same to be done.
22 Where such railroad company shall occupy such street or streets under
23 a franchise or contract which provides otherwise, such franchise or
24 contract shall not be affected by this section except insofar as it may be
25 consistent with the provisions of such franchise or contract.
- 26 (5) If the improvement directed to be made includes the construction of
27 water mains, sanitary sewers, or storm sewers and, in order to provide
28 the mains or sewers in the street or streets to be improved, it is
29 necessary to extend them beyond the limits of the street or streets, the
30 resolution shall contain a provision for the necessary extension of such
31 mains or sewers and a further provision that the cost of such extension
32 shall eventually be assessed against the lots or parcels of land abutting
33 the street or streets in which such extensions are made but that
34 assessments shall not be made until such time as the City Council shall
35 thereafter determine by appropriate resolution.
- 36 (6) If the improvement directed to be made is the paving of a roadway or
37 part thereof, or the construction of sidewalks, the resolution may, but
38 need not, contain a direction that the owner of each lot abutting the
39 part of the street to be improved connect such lot with the water mains
40 or sewer pipes, or any one or more thereof, located in the street
41 adjacent to his premises.
- 42 (7) A designation of the proportion of the cost of the improvements to be
43 assessed against abutting property and of the number of equal annual
44 installments in which assessments may be made.

- 1 (8) The resolution after its passage shall be published at least once in some
2 newspaper published in the City that is qualified to carry legal notices,
3 or, if there is no such newspaper, the resolution shall be posted in three
4 public places in the City for at least five days; except that in any case
5 where the Council directs that the notice should be mailed instead of
6 being published, the resolution ordering the improvements need not be
7 either published or posted.

8 "Section 391. **Determination as to Cost of Improvements.** Upon completion of
9 the improvements, the City Council shall ascertain the total cost. In addition to other
10 items of cost, there may be included therein the cost of all necessary legal services, the
11 amount of interest paid during construction, the amount of damages paid or to be paid
12 for injury to property by reason of any change of grade or drainage, including court
13 costs and other expenses incidental to the determination of damages, and the cost of
14 retaining walls, sidewalks, or fences built or altered in lieu of cash payment for property
15 damage, including the cost of moving or altering any building. The determination of the
16 Council as to the total cost of any improvement shall be conclusive.

17 "Section 392. **Preliminary Assessment.**

18 (a) Determination. Having determined the total cost, the Council shall make a
19 preliminary assessment. The preliminary assessment shall be advisory only and shall be
20 subject to modification. Except as otherwise provided in subsection (b) of this section,
21 the preliminary assessment shall be as follows:

- 22 (1) Roadway paving: The total cost of any roadway paving improvement,
23 excluding the cost incurred at street intersections, may be specially
24 assessed against the lots and parcels of land abutting the street
25 containing the roadway paved, according to the frontages thereon by
26 an equal rate per foot of frontage, except that, where the petition so
27 requested, the cost shall be assessed against the lands on one side of
28 the street only or against such lands as were designated in the petition.
- 29 (2) Water mains, sanitary sewers, and storm sewers: The cost of water
30 mains, sanitary sewers, and storm sewers in such amount as is
31 determined by the Council within its discretion but according to a
32 predetermined policy may be assessed against the abutting property.
33 Such cost may be assessed against the lots and parcels of land
34 according to their respective frontages thereon by an equal rate per
35 foot of such frontage. If the resolution ordered the construction of any
36 pumping station, outfall, septic tank, or disposal plant, no part of the
37 cost of the same shall be specially assessed except when an outfall tap
38 is permitted. Nothing contained in this subsection shall be construed to
39 limit the power of the Council to contract with any property owner or
40 owners for the construction of any pumping station, outfall, septic
41 tank, or disposal plant or for the construction of water mains or storm
42 or sanitary sewers and for the assessment of the cost thereof according
43 to the terms of such contract. The entire cost of each water and sewer
44 lateral may be specially charged against the particular lot or parcel of

1 land for or in connection with which it was constructed, except that the
2 assessment shall be calculated as if the lateral were laid from the
3 center of the street. The cost of installing storm sewers may, however,
4 be assessed as part of the cost of roadway paving.

5 (3) Sidewalks: The total cost of constructing or reconstructing sidewalks
6 may be assessed against the lots and parcels of land abutting that side
7 of the street upon which the improvements are made according to their
8 respective frontages thereon by an equal rate per foot of such frontage,
9 the lots within a block being deemed to abut upon a sidewalk although
10 the latter extends beyond the lot to the curb line of an intersecting
11 street. The total cost of constructing portions of driveways within the
12 street area may be assessed against the lots for which they are
13 constructed.

14 (4) Grass plots: The entire cost of grading or otherwise improving or of
15 planting the grass plots in any street or part thereof may be assessed
16 against the lots and parcels of land abutting the street or part thereof
17 where or whereon the improvements are made by an equal rate per
18 front foot of such frontage; provided that this subsection shall be
19 construed to mean that when a grass plot in any street is graded or
20 planted or otherwise improved, the cost thereof may be assessed
21 against all of the property abutting the side of the street within the
22 block where such grass plot is located.

23 (b) Proportion of Cost. If the petition (or the resolution in those cases where the
24 improvement was ordered made without petition) specified that there should be
25 specially assessed against the abutting property a smaller proportion of the cost of any
26 improvement than that set forth in subsection (a)(2) of this section, there shall be
27 assessed against abutting property only the proportion of the cost as was specified in the
28 petition (or in such resolution). No restriction or denial of access to an abutting street
29 shall affect the levy or collection of any assessment for local improvements.

30 (c) State Property. The cost of paving, water, sewer, and sidewalk improvements
31 upon, in, or to any portion of a right-of-way or any property owned by the State of
32 North Carolina, or any agency or subdivision thereof, shall be assessed against the
33 right-of-way or property and shall be paid by the State or any agency or subdivision
34 thereof.

35 "Section 393. **Corner Lot Exemptions.** The City Council shall have authority to
36 determine the amount and applicability of assessment exemptions for corner lots and to
37 distinguish between different classifications of property uses. The exemptions for
38 paving, sidewalk, storm sewer, water main, and sanitary sewer improvements shall be in
39 accordance with the provisions of G.S. 160A-219. If the corner formed by two
40 intersecting streets is rounded into a curve or is foreshortened for the purpose of
41 providing sight distance or for any other purpose of construction, the frontage for
42 assessment purposes shall be calculated to the midpoint of the curve or foreshortened
43 corner.

1 "Section 394. **Preliminary Assessment Roll.** The City Council shall cause to be
2 prepared a preliminary assessment roll on which shall be entered a brief description of
3 each lot or parcel of land assessed, the amount assessed against each lot, the name or
4 names of the owner or owners of each lot (as defined in Section 386) as far as the same
5 can be ascertained; provided, that a map of the improvements on which is shown the
6 frontage and location of each affected lot, together with the amount assessed against
7 each lot and the name or names of the owner or owners thereof, as far as the same can
8 be ascertained, shall be a sufficient assessment roll. If the resolution directed the making
9 of more than one improvement, a single preliminary assessment roll for all the
10 improvements authorized by such resolution shall be sufficient, but the cost of each
11 improvement to each lot affected shall be shown separately. After the preliminary
12 assessment roll has been completed, it shall be filed in the office of the City Clerk, and
13 there shall be published in some newspaper published in the City which is qualified to
14 carry legal notices, or, if there is no such newspaper, the City Clerk shall cause to be
15 posted in three places in the City a notice of the completion of the assessment roll,
16 setting forth a description in general terms of the improvements, the amount of each
17 assessment, and stating the time fixed for the meeting of the Council for the hearing of
18 objections to the special assessment, such meeting to be not earlier than 10 days after
19 the first publication or from the date of posting of such notice. Any number of
20 assessment rolls may be included in one notice. In addition, at least 10 days prior to the
21 hearing, the City Clerk shall cause a copy of the notice to be mailed to the owners, as
22 shown on the county tax records, of all property subject to assessment. The certificate of
23 the person designated to mail the notices that such notices were mailed shall be
24 conclusive in the absence of fraud.

25 "Section 395. **Hearing; Revision; Confirmation; Lien.** At the time appointed for
26 that purpose or at some other time to which it may adjourn, the City Council shall hear
27 objections to the preliminary assessment roll of all persons interested who may appear
28 and offer proof in relation thereto. Then or thereafter, the City Council shall either annul
29 or sustain, or modify in whole or in part, the assessment either by confirming the
30 preliminary assessment against any or all lots or parcels described thereon, or by
31 canceling, increasing or reducing the same, according to the special benefits which the
32 City Council decides that each of the lots or parcels has received or will receive on
33 account of the improvements, except that assessments against railroads because of
34 contract or franchise obligations shall be in accordance with such obligations. If any
35 property is omitted from the preliminary roll, the Council may place it on the roll and
36 levy the proper assessment. The Council may thereupon confirm the assessment roll,
37 and assessments so confirmed shall be in proportion to the special benefits, except in the
38 case of franchise obligations of railroads. Whenever the governing body shall confirm
39 assessments for local improvements, the City Clerk shall enter on the Council minutes
40 and on the assessment roll the date of confirmation, and from the time of confirmation,
41 the assessments shall be a lien on the property assessed of the same nature and to the
42 same extent as County and City taxes and shall be superior to all other liens and
43 encumbrances. After the assessment roll is confirmed, a copy shall be delivered to the
44 City Collector of Revenue.

1 "Section 396. **Appeal to Superior Court.** If the owner of, or any person interested
2 in, any lot or parcel of land against which an assessment is made is dissatisfied with the
3 amount of the assessment, such person or owner may, within 10 days after the
4 confirmation of the assessment roll, give written notice to the Council that an appeal
5 will be made to the superior court of the county in which such land is situated, in which
6 case such owner or person shall, within 20 days after the confirmation of the assessment
7 roll, serve on the Mayor a statement of facts upon which the appeal is based. The appeal
8 shall be tried as other actions at law. The remedy provided in this section for any person
9 dissatisfied with the amount of the assessment against any property of which such
10 person is the owner, or in which such person is interested, shall be exclusive.

11 "Section 397. **Power to Correct Error in Assessment.** If it shall appear after
12 confirmation of any assessment roll that an error has been made, the City Clerk shall
13 cause to be published one time in some newspaper published in the City, or, if there is
14 no such newspaper, the City Clerk shall cause to be posted at three public places in the
15 City, a notice referring to the assessment roll in which the error was made, naming the
16 owner or owners of the lot or parcel of land affected by the error, if the same can be
17 ascertained, and naming the time and place fixed for a hearing by the Council for the
18 correction of the error, such meeting not to be earlier than 10 days from the publication
19 or from the date of the posting of the notice. In addition, at least 10 days prior to the
20 hearing, the City Clerk shall cause a copy of the notices to be mailed to the owners, as
21 shown on the county tax records of all property affected by the error. At the time fixed
22 in the notice or at some subsequent time to which the Council may adjourn, the Council,
23 after giving the owner or owners of the property affected and other persons interested
24 therein an opportunity to be heard, may proceed to correct the error, and the assessment
25 then made shall have the same force and effect as if it had originally been properly
26 made. No notice and hearing shall be necessary if the correction does not increase an
27 assessment against any property not owned by the City or if all of the property owners
28 affected by the correction waive notice in writing.

29 "Section 398. **Reassessment.** The City Council shall have the power, when in its
30 judgment there is any irregularity, omission, error, or lack of jurisdiction in any of the
31 proceedings relating thereto, to set aside the whole of the local assessment made by it,
32 and thereupon to make a reassessment. In such case there shall be included, as a part of
33 the cost of the improvement involved, all interest paid or accrued on notes or certificates
34 of indebtedness or bonds issued by the City to pay the expenses of such improvement.
35 The proceeding shall, as far as practicable, be in all respects as in the case of original
36 assessments, and the reassessment shall have the same force as if it had originally been
37 properly made.

38 "Section 399. **Publication of Notice of Confirmation of Assessment Roll.** After
39 the expiration of 20 days from the confirmation of the assessment roll, the City Clerk
40 shall cause to be published one time in some newspaper published in the City which is
41 qualified to carry legal notices or, if there is no such newspaper, shall cause to be posted
42 at three public places in the City a notice of confirmation of the assessment roll and that
43 assessments may be paid at any time before the expiration of 30 days from the date of
44 publication or posting of the notice, without interest from the date of confirmation of the

1 assessment roll, but that if such assessment is not paid in full within such time, all
2 installments thereof shall bear interest at the rate provided by law from the date of
3 confirmation of the assessment roll.

4 "Section 400. **Payment of Assessments in Cash or by Installments.** The property
5 owner or railroad company assessed shall have the option of paying for improvements
6 in cash or in not less than two, nor more than five, equal annual installments as may
7 have been determined in the resolution ordering the improvement. If paid in
8 installments, installments shall bear interest from the date of confirmation of the
9 assessment roll at the rate provided by law. If any assessment is not paid in cash, the
10 first installment, with interest, shall become due and payable 30 days after the
11 publication or posting of the notice of confirmation, and one subsequent installment
12 with interest shall be due and payable on the same day of the month in each successive
13 year until the assessment is paid in full; provided, however, that if the City Council shall
14 so direct, installments shall become due and payable on the same date when property
15 taxes of the City are due and payable. If any installment with interest is not paid when
16 due, it shall be subject to the same penalties as are prescribed by law for unpaid taxes, in
17 addition to the interest herein provided for. The whole assessment may be paid at any
18 time by the payment of the full amount due with accrued interest.

19 "Section 401. **Enforcement of Payment of Assessments.** Upon the failure of any
20 property owner to pay any installment when due and payable, all of the installments
21 remaining unpaid shall immediately become due and payable, and the property and
22 rights-of-way may be sold by the City under the same rules and regulations, rights of
23 redemption, and savings as are prescribed by law for the sale of land for unpaid taxes.
24 Unpaid assessments, interest, and penalties owed by railroad companies and the State of
25 North Carolina, its agencies, or subdivisions may be collected by writs of mandamus
26 issued by the superior court of the county in which such land is situated. Collection of
27 assessments with interest and penalties may also be made by the City by proceedings to
28 foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under
29 the laws of the State, and it shall be lawful to join in any bill for foreclosure any one or
30 more lots or parcels of land by whomsoever owned, if assessed for an improvement
31 ordered by the same resolution, after default in the payment of any installments. The
32 payment of such installment, together with interest and penalties due thereon, before the
33 lot or parcel of land, against which the same is a lien, is sold or such lien is foreclosed
34 shall bar the right of the City to sell the land or to foreclose the lien by reason of default.

35 "Section 402. **Assessment of Cost of Water Main, Sanitary Sewer, and Storm
36 Sewer Extensions.** If the resolution ordering the making of any improvement or
37 improvements included a provision for any necessary extension of a water main,
38 sanitary sewer, or storm sewer beyond the limit of a street or streets, at such time after
39 the completion of such extension or extensions as, in the judgment of the City Council,
40 circumstances justify the assessment of the cost thereof, the City Council shall cause a
41 preliminary assessment to be made and the procedure thereafter to be followed with
42 respect to such assessment, and the force and effect thereof shall be as already
43 prescribed for other assessments.

1 "Section 403. **Apportionment of Assessments.** In any case where one or more
2 special assessments have been made and property has been or is about to be subdivided,
3 and it is desirable that the assessments be apportioned among the subdivisions of such
4 property, the Council may, upon application by the owner or owners, apportion the
5 assessments among the subdivisions. Thereafter, each subdivision shall be relieved of
6 any part of the original assessment except the part apportioned to the subdivision, and
7 the part of the original assessment apportioned to any subdivision shall be of the same
8 force and effect as the original assessment.

9 "Section 404. **Change of Ownership.** No change of ownership of any property or
10 interest therein after the passage of a resolution ordering the making of a local
11 improvement shall affect subsequent proceedings, and the improvement may be
12 completed and assessment made as if there had been no change in ownership.

13 "Section 405. **Lands Subject to Assessment.** No lands in the City, including
14 railroad company lands and rights-of-way and property of the State of North Carolina,
15 its agencies or subdivisions, shall be exempt from special assessments, except lands
16 belonging to the United States which are exempt under provisions of federal statutes,
17 and the officers, boards of directors, trustees, or other governing bodies of all
18 incorporated or unincorporated bodies in whom is vested the right to hold and dispose
19 of real property shall have the right by authority duly given to sign the petition for any
20 local improvements.

21 "Section 406. **Proceedings In Rem.** All proceedings for special assessments shall
22 be proceedings in rem, and no mistake or omission as to the name of any owner or
23 person interested in any lot or parcel of land affected thereby shall be regarded as a
24 substantial mistake or omission.

25 "Section 407. **Council May Hold Assessments in Abeyance.**

26 (a) Procedure. The owner of any abutting lot included on the preliminary
27 assessment roll may file a petition with the City Clerk, not later than five days prior to
28 the date fixed for the hearing, stating that the improvement will not be used by the
29 owner and requesting that the assessment be held in abeyance. The City Council, after
30 confirming such assessment, may, if it determines that the improvement will not be
31 used, provide by resolution that the assessment be held in abeyance without the payment
32 of interest thereon. The resolution shall require that the owner of the lot execute a
33 statement, which shall be recorded in the office of the register of deeds of the county in
34 which the property is located, acknowledging that an assessment has been confirmed
35 against the property but is being held in abeyance until such time as the Council, upon
36 not less than 10 days' prior written notice to the owner and following a public hearing,
37 determines by resolution that the use, character, or ownership of the lot has changed.
38 Upon such determination the assessment shall be paid in accordance with the terms set
39 out in the confirming resolution. One or more of such assessments or any portion of a
40 single assessment may be held in abeyance as provided in this section without holding
41 all of such assessment or assessments in abeyance.

42 (b) Statutes of Limitations. All statutes of limitations are hereby suspended
43 during the time that any assessment is held in abeyance without the payment of interest
44 as provided in subsection (a) of this section. Such time shall not be a part of the time

1 limit for the commencement of action for the enforcement of the payment of any such
2 assessment, and such action may be brought at any time within 10 years from the date
3 of the adoption of a resolution by the Council determining that the period of abeyance
4 has ended, and the assessment shall be paid in accordance with the original resolution
5 confirming it.

6 (c) **Actions Barred.** Nothing in this section shall be construed to revive any right
7 of action that has heretofore been barred by the statute of limitation.

8 "Section 408. **Abutting Property Outside City Limits.** If any lots or parcels of
9 land abutting any local improvements are located outside the City limits, the City
10 Council may continue and delay the levy of assessments against such property until the
11 City limits are extended to include such property, or the Council may provide that no
12 water or sewer service connections shall be made to such property, pending the
13 annexation thereof, until all assessments thereon are paid. Upon annexation, if not paid
14 prior thereto, the City Council may levy assessments for such local improvements
15 against such property, and the procedure shall be the same as provided in this Charter.
16 Nothing contained in this section shall be construed to prohibit or restrict the City
17 Council and a property owner from entering into an agreement for payments in lieu of
18 assessments.

19 "Section 409. **Procedures Not Exclusive.** The procedures set forth in this article for
20 making improvements shall not be exclusive but shall be in addition to the procedures
21 for the same provided municipal corporations by the General Statutes of North Carolina
22 as now existing or as may from time to time be amended or to any other procedure
23 provided by law.

24 "ARTICLE III. FRANCHISES.

25 "Section 450. **Public Utility Franchises.** The City Council may grant franchises for
26 the operation of public utilities within the City and for the use of the streets, street
27 rights-of-way, and alleys of the City by such utilities for nonstreet and/or nonvehicular
28 purposes for such terms and upon such conditions as the public welfare demands, and in
29 its discretion may hold special elections on the question of granting franchises;
30 provided, however:

- 31 (1) The terms of such franchises shall not exceed 60 years, unless renewed
32 at the end of the period granted.
- 33 (2) All such franchises shall be revocable by the City Council for violation
34 of their conditions by the franchisees if not corrected within a
35 reasonable time after written notice from the City of such violation.
- 36 (3) No franchise so granted may be transferred without the prior approval
37 of the City Council.
- 38 (4) Such franchises shall contain such reasonable provisions as the City
39 Council in the exercise of its sound discretion deems proper, unless
40 prohibited by law.

41 "Section 451. **Annexation and Expiration of Franchise.** In the event:

- 42 (1) There is annexed to the City an area within which a utility service is
43 being furnished; or

- 1 (2) A public utility is operating within the City without previously having
2 had a franchise granted to it by the City; or
- 3 (3) A public utility is operating within the City under a franchise granted
4 by the City and such franchise expires and is not renewed or a new
5 franchise is not granted to the utility by the City, and the City is at
6 such time furnishing the same utility service to its residents or is
7 allowed by law to and has elected to begin furnishing the same to its
8 residents; the City may, at its election:
- 9 a. Acquire the facilities and properties of the public utility located
10 within the corporate limits of the City used or useful in
11 providing particular service from such public utility by
12 negotiation and the payment of just compensation; or
- 13 b. Direct the public utility to remove such facilities and properties
14 from the public streets, street rights-of-way, alleys, parks, or
15 other rights-of-way belonging to the City, subject to the
16 provisions of Section 452.

17 "Section 452. **Necessity of Franchise.** No public utility shall commence or continue
18 to operate or do business in the City unless such utility shall have first had granted to it
19 a franchise by the City under the provisions of this Charter, unless such public utility
20 shall have in effect a valid and enforceable franchise granted by the City, in which event
21 it shall not be necessary that it have granted to it a franchise under the provisions of this
22 Charter until such previously granted franchise shall have expired; provided, however,
23 if a public utility shall have been granted a franchise by the City and such franchise
24 shall have expired, such public utility shall continue to operate under the terms of the
25 expired franchise until:

- 26 (1) A new franchise is granted to the same public utility; or
- 27 (2) A franchise is granted to another public utility to furnish the same
28 service; or
- 29 (3) The City elects to and is in a position to render the same service and
30 the same is allowed by law.

31 If the City elects to grant a franchise under subsection (1) or (2) of this section, but the
32 City and the public utility after due negotiation are unable to agree upon the terms
33 thereof, the matter shall be submitted by both parties and heard by the North Carolina
34 Utilities Commission under the provisions of Article 4 of Chapter 62 of the North
35 Carolina General Statutes as if the parties thereto had agreed to such submission in
36 writing.

37 "Section 453. **Applicability.** The provisions of this article shall apply to electric,
38 natural gas, water and sewer, telephone, pay television, pay television antennae,
39 intracity buses, ambulances, and all other public utilities for which the City may grant
40 franchises.

41 "ARTICLE IV. TRAFFIC REGULATION.

42 "Section 460. **Authority of City Council to Adopt Regulations.**

43 (a) Generally. Subject to the provisions of subsection (b) of this section, the City
44 Council may adopt ordinances regulating the speeds of vehicles upon any City streets

1 and may establish truck routes (or other required routes for limited classes or vehicles or
2 traffic) applicable to any City streets. As used in this section, the term "City streets"
3 includes all public highways, roads, and streets within the City limits, including
4 numbered State highways, and highways, roads, and streets maintained, repaired,
5 constructed, reconstructed, or widened in whole or in part with State funds.

6 (b) Certification. All ordinances concerning vehicle speeds, truck routes, or other
7 required routes that apply to numbered State highways shall not become effective until
8 certified to the North Carolina Department of Transportation by the City Clerk after
9 adoption; provided, however, all such ordinances shall be prima facie deemed to have
10 been so certified by the City Clerk upon submission of an affidavit to that effect.

11 (c) General Law. The authority granted in this section to the City Council shall
12 be in addition to any authority conferred by general law upon the City Council or the
13 City to regulate vehicles, traffic, or the use of City streets.

14 "Section 461. **Power to Regulate Ambulances and Wreckers.** The City Council
15 may establish regulations governing the operation of ambulances, wreckers, and other
16 motor vehicles used in connection with emergencies, disasters, or accidents, and may
17 provide for the operation of an ambulance service or a wrecker service, or may enter
18 into a contract or contracts for the providing of such service by a private person or
19 persons.

20 "Section 462. **Power to Regulate Obstruction of Alleys.** If, in the opinion of the
21 City Council, a fire hazard is created by the obstruction of private alleys, the City
22 Council may adopt regulations prohibiting the obstruction of private alleys, either by
23 reason of the parking of motor vehicles or otherwise, but such regulations shall not be
24 construed so as to restrict or limit the legal right of the owners of interests in a private
25 alley to close the alley or to exercise other property rights therein.

26 "Section 463. **Location of Traffic Control Devices.** The City Council may
27 authorize the City Manager to designate the location of official traffic control devices,
28 upon a determination by the City Manager in writing certified to the City Council:

- 29 (1) That their installation at the location in question is necessary in order
30 to control traffic congestion or is in the interest of public safety; or
31 (2) If such a device is to be moved or removed from a particular location,
32 that the device is no longer required at such location for control of
33 traffic congestion or in the interest of public safety.

34 An "official traffic control device" as used in this section is a sign, signal, stoplight,
35 marking, or device, including a parking meter, which is intended to regulate vehicular or
36 pedestrian traffic.

37 "Section 464. **Council May Accept Civil Fines in Lieu of Criminal Penalties for**
38 **Traffic Violations.** Authority is hereby granted to the City Council, by ordinance, to
39 accept civil fines in such amounts as may be deemed reasonable by the Council in lieu
40 of satisfaction of the criminal penalties provided for the violation of traffic ordinances.
41 The City shall pay no State taxes to the State of North Carolina for civil fines accepted
42 in lieu or satisfaction of the criminal penalties referred to in this section. All civil
43 penalties so collected shall be paid into the General Fund of the City.

44 "ARTICLE V. FISCAL AFFAIRS.

1 "Section 471. **Director of Finance.** The City Manager shall appoint a Director of
2 Finance who shall have all powers and perform all duties provided by law.

3 "Section 472. **Collector of Revenue.** The City Manager shall appoint a Collector of
4 Revenue who shall serve under the direction of the Director of Finance. All funds,
5 including tax funds, owed to the City shall be collected by the Collector of Revenue and
6 delivered to the Director of Finance.

7 "Section 473. **Bonds.** The City Manager, Director of Finance, and Collector of
8 Revenue and such other persons handling funds of the City as the City Council deems
9 advisable shall, before entering upon their respective offices, give bonds payable to the
10 City in such amounts, according to such terms and with such sureties as the Council
11 shall direct. The premiums for all such bonds shall be paid by the City.

12 "ARTICLE VI. ORDINANCE PROCEDURE.

13 "Section 484. **Power to Adopt Ordinances.** In addition to the powers and
14 authorities granted municipal corporations by the Constitution and General Statutes of
15 North Carolina relative to the adoption of ordinances having the effect of law, the City
16 Council is hereby authorized and empowered to enact ordinances having the effect of
17 law for the government of the City, to establish, promote, advance, and maintain the
18 general welfare, culture, and economy of the City, its environs and inhabitants and to
19 maintain the public peace, quiet, and good order, such ordinances to be enforceable
20 within the City and for a distance of one mile in all directions of the City limits, and to
21 repeal or modify the same. The City Council may further provide for the enforcement of
22 such ordinances as provided by law.

23 "Section 485. **Code of Ordinances.**

24 (a) Generally. The City Council may adopt and provide for the publication and
25 distribution of a codification of the City ordinances, to be known and cited as the "Code
26 of the City of Rocky Mount." Each Code shall consist of two separate parts. The first
27 part shall be known as "General Ordinances", and shall include all ordinances not
28 designated "Technical Ordinances." The second part shall be known as "Technical
29 Ordinances", and shall include all ordinances regarding the construction of buildings,
30 the installation of plumbing, the installation of electric wiring, the installation of oil
31 appliances or gas appliances and equipment, and other technical ordinances designated
32 as such by the City Council.

33 (b) Official Copy. The official copy of the Code of the City of Rocky Mount,
34 including all ordinances amending or supplementing the Code, shall be kept in the
35 office of the City Clerk.

36 "Section 486. **Codification of Certain Zoning, Traffic and Related Ordinances
37 by Appropriate Entries Upon Official Map Books.**

38 (a) Generally. Every ordinance concerning the matters enumerated in subsections
39 (b) and (c) of this section may be codified by appropriate entries upon official map
40 books to be retained permanently in the office of the City Clerk. Such entries shall be
41 made by or under the direction of the City Manager. In conjunction with the
42 introduction of every proposed ordinance concerning any of these matters, a map of the
43 affected area shall be presented to the City Council.

1 (b) Zoning. The ordinances referred to in subsection (a) of this section include all
2 ordinances establishing or amending boundaries of any district under zoning
3 regulations.

4 (c) Vehicles. The ordinances referred to in subsection (a) of this section also
5 include all ordinances:

6 (1) Designating the location of official traffic control devices;

7 (2) Designating areas or zones where restrictions, prohibitions, or other
8 controls are applied with respect to parking, loading, bus stops, and
9 taxicab stands;

10 (3) Establishing speed limits;

11 (4) Designating the location of through streets, stop intersections, yield
12 right-of-way intersections, waiting lanes, one-way streets, and truck
13 traffic routes; and

14 (5) Establishing restrictions, prohibitions, or other controls upon vehicle
15 turns at designated locations.

16 "Section 487. **Ordinances of Limited Application.** The City Council shall have the
17 power to enact ordinances which shall be effective only in certain districts or sections of
18 the City, or ordinances which may except from their operations any districts or sections
19 of the City, if in the judgment of the City Council the condition in such sections or
20 districts requires them to be included in or excepted from the provisions of any such
21 ordinance.

22 "ARTICLE VII. PERSONNEL.

23 "Section 490. **Appointment and Removal of Department Heads and Employees;
24 Compensation; Duty of Council.**

25 (a) Appointments; Removals. The City Manager, except as otherwise provided in
26 this Charter, shall appoint and may suspend and remove all City employees and heads
27 of departments and, with the approval of the City Council, may employ consultants of
28 any kind when needed. The City Manager shall report to the City Council every
29 appointment and removal of a department head at the next City Council meeting
30 following the appointment or removal.

31 (b) Compensation. All pay and compensation plans shall be approved by the City
32 Council.

33 (c) Duty of Council. Neither the City Council nor any of its members shall take
34 any part in the appointment or removal of department heads and employees in the
35 administrative service of the City. The City Council and its members shall deal with the
36 administrative service solely through the City Manager, and neither the City Council
37 nor any member thereof shall give specific orders to any subordinates of the City
38 Manager, be it publicly or privately.

39 "ARTICLE VIII. ULTIMATE STREET IMPROVEMENTS.

40 "Section 510. **Intent and Purpose.** It is the intent and purpose of this article to
41 provide a method whereby the City of Rocky Mount may make provisions for the
42 ultimate widening or extension, or both, of existing streets and highways and for the
43 opening of new streets and highways by the establishment of proposed street lines, and
44 for the gradual acquisition of the lands necessary for such improvements.

1 "Section 511. **Platting of Street Lines.** From and after the time of adoption of a
2 major transportation plan by the City Council and the North Carolina Department of
3 Transportation pursuant to provisions of G.S. 136-66.2, the City Council shall have the
4 power to request, make, or cause to be made, from time to time, surveys for the exact
5 location of the lines of proposed extended, widened, or narrowed streets and highways
6 in the whole or any portion of the City and the area within one mile outside of its
7 corporate boundaries. Personnel making such surveys are empowered to enter upon
8 lands, make examinations or surveys, and place and maintain necessary monuments
9 thereon, at reasonable times and with due care for the property. A plat or plats of the
10 area or areas thus surveyed shall be prepared on which are indicated the locations of the
11 lines recommended as the planned or mapped lines of proposed streets, street
12 extensions, street widening, or street narrowing. The preparation of such plat or plats
13 shall not in and of itself constitute or be deemed to constitute the opening or
14 establishment of any street or the taking or acceptance of any land for street purposes.

15 "Section 512. **Establishment of Proposed Street Lines.** Following the preparation
16 of such plats, the City Council shall officially adopt a map or maps of planned proposed
17 streets and highways, widening, narrowing, or vacations, within the City and the area
18 within one mile outside of its corporate boundaries. Before taking any such action, the
19 City Council shall hold a public hearing thereon, notice of the time and place of which
20 shall have been given once a week for two successive weeks in a newspaper published
21 in the City or, if there is no newspaper published in the City, by posting such notice at
22 four public places in the City and at four public places within any affected area lying
23 outside of the corporate boundaries. Such notice shall be published or posted for the
24 first time not less than 15 days prior to the date fixed for such hearing. Following
25 adoption of such a map or maps, the City Council shall certify a copy to the Register of
26 Deeds of Nash or Edgecombe County as the case may be, which copy shall be duly
27 filed. The placing of any street or street line upon this official map or maps shall not in
28 and of itself constitute or be deemed to constitute the opening or establishment of any
29 street or the taking or acceptance of any land for street purposes.

30 "Section 513. **Right of City to Acquire Property Before Improvement.** From and
31 after the time when any such map or maps shall have been adopted and certified to the
32 Register of Deeds, it shall be unlawful to build upon any land within the lines of
33 proposed streets shown thereon or to repair or otherwise improve any existing buildings
34 within such lines until the City Council shall have been given an opportunity to
35 purchase or otherwise acquire such property for street purposes as provided by this
36 Article. To that end, any person proposing to build upon such land or to make repairs or
37 improvements to any existing buildings on such land shall, in writing, notify the City
38 Council of the nature and estimated cost of such buildings, repairs, or improvements.
39 The City Council shall then determine whether it will take the necessary steps to acquire
40 such land prior to the construction of such building or the making of such repairs or
41 improvements. If it fails, within 60 days from the receipt of such notice, to acquire,
42 adopt a formal resolution directing an appropriate officer to acquire, or institute
43 condemnation proceedings to acquire such property, the owner or other person giving

1 notice may proceed to erect the building or to make the repair or improvements
2 described in such notice.

3 "Section 514. **Owner Failing to Give Notice Cannot Recover for Value of**
4 **Improvements.** If any person, firm, or corporation builds upon any land included with
5 such proposed street lines, or repairs or otherwise improves that part of any existing
6 building within such lines, without giving the City Council an opportunity to acquire
7 such land free from such improvements, as provided in this Charter, the City Council
8 shall not be required to pay for the value of such building, repairs, or improvements in
9 any proceeding subsequently brought to acquire the land for the purpose shown on the
10 officially adopted map.

11 "Section 515. **Failure of City to Act Does Not Limit Power Subsequently to**
12 **Condemn.** The failure of the City Council to take action under section 513 within 60
13 days after notice shall not have the effect of limiting the right of the City Council at any
14 subsequent time to condemn the same. But in such case, the owner shall be entitled to
15 full compensation as now provided by law for the building, repair, or improvements
16 made after the giving of notice required by Section 513.

17 "Section 516. **Powers Hereby Conferred Are Supplementary.** The powers
18 granted in this Article to the City of Rocky Mount are supplementary to any powers
19 heretofore or hereafter granted by general or special laws for the same or a similar
20 purpose; and in any case where the provisions of this article conflict with or are
21 different from the provisions of any other act, the City Council may in its discretion
22 proceed in accordance with the provisions of either act."

23 **SECTION 2.** The purpose of this act is to revise the Charter of the City of
24 Rocky Mount and to consolidate herein certain acts concerning the property, affairs, and
25 government of the City.

26 **SECTION 3.** The following acts or portions of acts, having served the
27 purposes for which they were enacted, or having been consolidated into this act, are
28 hereby repealed:

29 Chapter 938, Session Laws of 1963
30 Chapter 545, Session Laws of 1965
31 Chapter 1068, Session Laws of 1965
32 Chapter 427, Session Laws of 1969
33 Chapter 943, Session Laws of 1973
34 Chapter 365, Session Laws of 1975
35 Chapter 122, Session Laws of 1983
36 Chapter 328, Session Laws of 1989
37 S.L. 2001-330

38 **SECTION 4.** No provision of this act is intended, nor shall be construed, to
39 affect in any way any rights or interests (whether public or private):

40 (1) Now vested or accrued, in whole or in part, the validity of which might
41 be sustained or preserved by reference to any provisions of law
42 repealed by this act.

1 (2) Derived from, or which might be sustained or preserved in reliance
2 upon, action heretofore taken pursuant to or within the scope of any
3 provisions of law repealed by this act.

4 **SECTION 5.** No law heretofore repealed expressly or by implication, and no
5 law granting authority which has been exhausted, shall be revived by:

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

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

9 **SECTION 6.** All existing ordinances and resolutions of the City of Rocky
10 Mount and all existing rules or regulations of departments or agencies of the City of
11 Rocky Mount not inconsistent with the provisions of this act shall continue in full force
12 and effect until repealed, modified, or amended.

13 **SECTION 7.** No action or proceeding of any nature (whether civil or
14 criminal, judicial or administrative, or otherwise) pending at the effective date of this
15 act by or against the City of Rocky Mount or any of its departments or agencies shall be
16 abated or otherwise affected by the adoption of this act.

17 **SECTION 8.** If any part of this act or the application thereof to any person
18 or circumstance is held to be invalid, such invalidity shall not affect other provisions or
19 applications of this act which can be given effect without the invalid provision or
20 application, and to this end the provisions of this act are declared to be severable.

21 **SECTION 9.** Whenever a reference is made in this act to a particular
22 provision of the General Statutes and such provision is later amended, repealed, or
23 superseded, the reference shall be deemed amended to refer to the amended General
24 Statute or to the General Statute that most nearly corresponds to the statutory provision
25 amended, repealed, or superseded.

26 **SECTION 10.** This act becomes effective January 1, 2004.