

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 597
HOUSE BILL 889

AN ACT TO AMEND CHAPTER 664 OF THE SESSION LAWS OF 1961, THE
CHARTER OF THE TOWN OF GARNER.

The General Assembly of North Carolina do enact:

Section 1. Chapter 664 of the Session Laws of 1961 is hereby further amended by inserting between Sections 32 and 33 the following additional Sections:

"Sec. 33. Assessments for Street Improvements.

"(a) In addition to any authority which is now or may hereafter be granted by general law to the town for making street improvements, the Board of Aldermen is authorized to make street improvements, and assess the cost thereof against abutting property owners in accordance with the provisions of this Section.

"(b) The Board of Aldermen may order street improvements and assess the cost thereof, exclusive of the costs incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the findings by the Board as a fact:

"(1) That the street improvement project does not exceed 1200 lineal feet, and

"(2) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvement, or

"(3) That it is in the public interest to connect two streets or portions of a street already improved, or

"(4) That it is in the public interest to widen a street or part thereof, which is already improved; provided, that assessment for widening any street or portion of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Section.

"(c) For the purposes of this Section, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, and the construction or reconstruction of curbs, gutters and street drainage facilities.

"(d) In ordering street improvements without a petition and assessing the cost thereof under authority of this Section, the Board of Aldermen 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.

"(e) The effect of the act of levying assessments under authority of this Section shall for all purposes be the same as if the assessments were levied under authority of Article 9, Chapter 160 of the General Statutes.

"Sec. 34. Establishment of Proposed Street Lines.

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

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

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

"(d) Right of Town to Acquire Property Before Improvement. From and after the time of adoption and certification to the Register of Deeds of any such map or maps, it shall be unlawful to build upon any land within the lines of proposed streets shown thereon or to repair or otherwise improve any existing buildings within said lines until the Board of Aldermen shall have been given an opportunity to purchase or otherwise acquire said property for street purposes as provided by this Section. To that end, any

person proposing to build upon such land or to make repairs or improvements to any existing building on such land shall, in writing, notify the Board of the nature and estimated cost of such building, repairs, or improvements. The Board shall then determine whether it will take the necessary steps to acquire said land prior to construction of said building or the making of said repairs or improvements. If the Board fails, within 60 days from the receipt of such notice, to acquire, adopt a formal resolution directing an appropriate officer to acquire, or institute condemnation proceedings to acquire said property, then the owner or other person giving notice may proceed to erect the building or to make the repairs or improvements described in said notice. The building inspector is authorized to withhold and refrain from issuing, for a period not exceeding 60 days from receipt by the Board of the notice herein prescribed, any building permit for the erection of any building within the said lines, or for the making of any repairs or improvements to existing buildings within said lines.

"(e) Failure to Give Said Written Notice Bars Recovery for Value of Improvements. If any person, firm or corporation builds upon any land included within said proposed street lines, or repairs or otherwise improves that part of any existing building within said lines, without giving the Board of Aldermen an opportunity to acquire said property free from improvements, as provided in this Section, the Board shall not be required to pay for the value of said building, repairs, or improvements in any proceeding subsequently brought to acquire the land for the purpose shown on the officially adopted map or maps.

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

"Sec. 35. Acceptance of Dedications. In addition to the authority granted by G. S. 160-204 and 160-205 to acquire land for street and other purposes, the town shall have power to accept by resolution the dedication of any land or interest in land for street, utility or other town purposes, both within and without the corporate limits, whether such dedication is made or offered by deed, by recorded plat, or otherwise. Notwithstanding G. S. 136-96 or any other provision of law, the acceptance of a street or street easement by resolution adopted pursuant to this Section shall constitute a completed dedication and acceptance, and such dedication shall not thereafter be withdrawn except with written permission of the Board of Aldermen.

"Sec. 36. Corner Lot Exemptions from Water-Sewer Assessments. When water or sewerage lines, or both, are constructed along both sides of corner lots and when the cost of the lines along both sides are to be assessed under authority of G. S. 160-241, the Board of Aldermen may exempt from such assessment not more than seventy-five percent (75%) of the frontage of any side of such lots, or 150 feet, whichever is greater.

"Sec. 37. Acreage Charges for Water and Sewer Connections. In addition to Section 1 of the Charter of the Town of Garner (Chapter 664 of the Session Laws of 1961) and in addition to water and sewer service charges authorized by G. S. 160-256 and

connection charges authorized by law, the Board of Aldermen may establish and collect acreage charges for making connections to the town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water mains and sewer outfalls and the replacement or enlargement of existing mains and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, the Board may establish higher acreage charges for property to be developed for commercial, institutional, or industrial use than those established for property to be developed for other uses, and may base acreage charges for residential development on the number of dwelling units per acre of land.

"Sec. 38. Contracts for Water or Sewer Extensions. Notwithstanding any provision of this Act or of any other law, the Board of Aldermen may enter contracts with any person, firm, or corporation whereby such person, firm, or corporation agrees to bear the total initial costs of water main or sewer outfall extensions, and whereby the town agrees to reimburse such person, firm, or corporation for that portion of such costs in excess of the acreage charges attributable to property owned by such person, firm, or corporation to or through which such extensions are made; provided, such reimbursement shall be made only from revenues derived from acreage charges levied against property developed subsequent to the installation of such extensions; provided, further, nothing in this Section shall be construed so as to authorize or require the town to reimburse, or to contract to reimburse, any person, firm, or corporation for any part of the costs of installing water or sewer lines within a subdivision to serve such subdivision.

"Sec. 39. Subdivision Control. Any subdivision control ordinance adopted by the Board of Aldermen pursuant to Part 3A of Article 18 of Chapter 160 of the General Statutes may include, in addition to provisions authorized by the said Part 3A, provisions for the more orderly development of subdivisions within the town's jurisdiction as defined by G. S. 160-226 by requiring 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 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; provided however, the town shall not require municipal water and sewer without consent of the owner, where said water and sewer lines are not available to the property; and, provided further, said town shall not require any of said community service facilities outside of said town in the event an investigation discloses that substantial hardship will result to the owner of said property, and provided further, in order to carry out the intention of this Section, the town shall treat each parcel of land separately, and shall have a separate hearing concerning each subdivision at which time all interested parties may be heard and after said hearing the town shall act in the public interest in giving due regard to the needs of orderly development and to the particular needs of the property affected.

"Sec. 40. Cleaning and Repair of Sidewalks. (a) It shall be the duty of every property owner in the town to maintain in good and safe repair and to keep clean and free of debris, trash, ice, snow, and other obstacles the sidewalks abutting his property.

"(b) The Board of Aldermen may by ordinance establish a procedure whereby town forces may repair or may clean any sidewalk or remove therefrom any debris, trash, ice or snow upon failure of the abutting property owner after 10 days notice to do so. In such event, the cost of such repair, cleaning, or removal shall become a lien upon the abutting property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the town or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs and penalties as provided by law for the foreclosure of the lien on real estate for ad valorem taxes.

"Sec. 41. Refuse, Weeds, and Trash. (a) It shall be the duty of every property owner in the town to keep his property free from noxious weeds, trash, and all other forms of offensive animal or vegetable matter or refuse which may be dangerous or prejudicial to the public health or which may constitute a public nuisance.

"(b) The Board of Aldermen may by ordinance establish a procedure whereby town forces may clean, cut, and remove any weeds, trash, refuse, or other offensive matter from any property upon failure of the owner or occupant after 10 days notice to do so. In such event, the cost of such cleaning, cutting, and removal shall become a lien upon the particular property equal to the lien for ad valorem taxes and may thereafter be collected either by suit in the name of the town or by foreclosure of the lien in the same manner and subject to the same rules, regulations, costs, and penalties as provided by law for the foreclosure of the lien on real property for ad valorem taxes.

"Sec. 42. Claims Against the Town. (a) All claims or demands against the Town of Garner arising in tort shall be presented to the Board of Aldermen in writing, signed by the claimant, his attorney or agent, within 90 days after the claim or demand is due or the cause of action accrues, and no suit or action shall be brought thereon within 30 days or after the expiration of 12 months from the time said claim or demand is so presented. Unless the claim or demand is so presented within 90 days after the cause of action accrues, and unless suit is brought within 12 months thereafter, any action thereon shall be barred.

"(b) No action shall be instituted against the town in ejectment or on account of damages to or compensation for real property taken or used by the town for any public purpose of any kind unless, within two years after such alleged use, the owner, his executor, administrator, guardian, or next friend shall have given notice in writing to the Board of Aldermen of the claim, stating in the notice the date that the alleged use commenced, a description of the property alleged to have been used, and the amount of damage or compensation claimed.

"(c) Notwithstanding the provisions of subsections (a) and (b) of this Section, if a complainant suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given by him or on his behalf within six months after the termination of the incapacity, provided that minority shall not of itself constitute physical or mental incapacity. If the complainant is a minor, his action shall not be barred if notice of claim is given on his behalf within

three years after the happening or the infliction of the injury complained of; or, if the minor suffers from physical or mental incapacity that renders it impossible for him to give notice, his action shall not be barred if notice of claim is given on his behalf within six months after termination of the incapacity, or within three years after the happening or the infliction of the injury complained of, whichever is the longer period. The town may at any time request the appointment of a next friend to represent any person having a potential claim against the town and known to be suffering from physical or mental incapacity.

"(d) The Board of Aldermen may authorize the Town Manager to settle claims against the town for (1) personal injury or damages to property when the amount involved does not exceed the sum of one hundred dollars (\$100.00) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expense actually incurred. All such releases shall be approved by the Town Attorney."

Sec. 2. Chapter 664 of the Session Laws of 1961 is hereby further amended by renumbering Sections 33 through 35 thereof as Sections 43 through 45, respectively.

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall be effective upon its ratification.

In the General Assembly read three times and ratified, this the 24th day of May, 1967.