

NORTH CAROLINA GENERAL ASSEMBLY  
1979 SESSION

CHAPTER 557  
HOUSE BILL 766

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF FAYETTEVILLE AND TO REPEAL EXISTING CHARTER AND SPECIAL ACTS.

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE CITY OF FAYETTEVILLE.

"Chapter I. Incorporation and Corporate Powers.

"§ 1.1. Incorporation and corporate powers. The inhabitants of the City of Fayetteville are a body corporate and politic under the name of the 'City of Fayetteville'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"Chapter II. Corporate Boundaries.

"Article 1. City Boundaries.

"§ 2.1. City boundaries. The boundaries of the City of Fayetteville are set out on a map entitled 'Boundary Map of the City of Fayetteville, North Carolina'. The map shall be maintained in the office of the city clerk, as required by G.S. 160A-22. The corporate limits shall include the area comprising the Fayetteville Municipal Airport.

"Article 2. Annexation.

"§ 2.2. Amendments to G.S. 160A-44 and G.S. 160A-56. G.S. 160A-44 and G.S. 160A-56 are each hereby amended by striking out of each section the following: 'Cumberland,'.

"§ 2.3. Amendments to G.S. 160A-34 and G.S. 160A-46. G.S. 160A-34 and G.S. 160A-46 are hereby amended to add the following provision: Provided, that the municipality shall not annex an area if, within 30 days after publication of the notice of intent has been completed, a petition signed by a majority of the registered voters residing in the area to be annexed is filed with the governing body stating that the signers are opposed to annexation.

"§ 2.4. Amendments to G.S. 160A-43 and G.S. 160A-56. G.S. 160A-43 and G.S. 160A-56 are each hereby each amended by adding at the end thereof the following: 'Notwithstanding the other provisions of this section, all the provisions of Part 1 of this Article shall remain in full force and effect as alternative annexation procedures for municipalities in Cumberland County.'

"Chapter III. Governing Body.

"§ 3.1. Composition of city council. The city council shall consist of six members and the mayor to be elected by the qualified voters of the city voting at large in the manner provided in Chapter IV.

"§ 3.2. Term of office of members of the council and mayor. Members of the council and the mayor are elected to two-year terms.

"§ 3.3. Residency requirement. No person shall be eligible to be a candidate or be elected as mayor or as a member of the city council or to serve in such capacity, unless he is a resident and qualified voter of the city.

"Chapter IV. Elections.

"§ 4.1. Conduct of city elections. City officers shall be elected on a nonpartisan basis and the results determined by a majority of votes cast, with a run-off election if necessary, as provided by G.S. 163-294.

"§ 4.2. Manner of election of council and mayor. The qualified voters of the entire city elect the members of the council and the mayor.

"§ 4.3. Failure of officer to qualify. If any person elected or appointed mayor, councilman, or other officer of the City of Fayetteville, shall after being duly notified, neglect or refuse to qualify within 60 days after his election, unless good cause be shown therefor, such office shall be declared vacant and filled by the city council as herein provided.

"Chapter V. Administration.

"Article 1. Administrative Organization.

"§ 5.1. City to operate under council-manager plan. The City of Fayetteville operates under the council-manager plan as provided in G.S. Chapter 160A, Article 7, Part 2.

"§ 5.1(1). Public works commission not subject to control of city manager. The city manager shall have no right or power to appoint or remove the superintendent, manager, or other employees of the Public Works Commission of the City of Fayetteville.

"Article 2. Civil Service Commission.

"§ 5.2. Commission continued. A commission of the City of Fayetteville known as the Civil Service Commission for the police and fire departments heretofore created is hereby continued. It shall consist of five members each of whom shall be a resident and citizen of said city. The appointments made by the resident superior court judge in June of 1977, by the Board of Education of Cumberland County in June of 1977, by the Board of Health of Cumberland County in June of 1977, by the Clerk of Superior Court of Cumberland County in June of 1975, and the appointment by the city council in June of 1975 are hereby continued for the term of their respective appointments; thereafter all successors of such original appointees on said commission shall be appointed for a term of four years by the authority by which the members, whose terms are expiring, were originally appointed. All subsequent appointments shall be made during the month of June of those years in which the terms of office expire and all appointees shall take office on the first Monday in July following such appointment. Appointments to fill vacancies for any unexpired term, whether such vacancy shall be caused by death, resignation, or disqualification, shall be made by the authority which appointed the member whose office has expired or whose office has by some reason been vacated; and the person appointed to fill such vacancy shall take office as soon as practicable, after

his appointment. Any member of said board shall be eligible for reappointment. No official or employee of the City of Fayetteville shall be eligible for appointment to membership of the said civil service commission, and no attorney practicing in any of the criminal courts of Cumberland County shall be eligible for appointment to membership on the said commission.

"§ 5.3. Suits by and against. In the name of the Civil Service Commission of the City of Fayetteville, it may sue and be sued in all matters and things relating to or in any way connected with this act, as amended.

"§ 5.4. Oath of members. The members of the commission, before entering upon the duties of their office, shall take and subscribe an oath of office, which shall be filed in the office of the city clerk, to support the Constitution of the United States and the Constitution of the State of North Carolina, to obey all the laws not inconsistent therewith, to strive to secure and maintain an honest and efficient administration of the civil service commission, free from partisan distinction and control, and otherwise to perform the duties as members of the civil service commission, to the end that more efficient personnel be made available to the City of Fayetteville.

"§ 5.5. Members not to be candidates for office. No person while a member of said commission shall be a candidate for any office of public trust filled by election by the people.

"§ 5.6. Power to determine qualifications and eligibility for appointment to police department and fire department; removal of policemen and firemen. The civil service commission shall have full and complete power of determining the qualifications and eligibility of all persons to be appointed to the police department and fire department of the City of Fayetteville, except the chief of the said departments. The commission, subject to the terms of this act, shall have full power and authority to remove and discharge any employee from the police or fire departments of the City of Fayetteville.

"§ 5.7. Majority action of commission required for eligibility, termination or discharge of members of police or fire departments; rules and regulations for departments. No person shall be eligible under the terms of this act for employment as a member of the police department or fire department, nor shall any member of either department be removed, suspended or discharged therefrom except by the majority action of the civil service commission; and said commission shall prescribe and make available all necessary rules and regulations relating to the qualification of the applicants for positions in each department and shall establish such rules and regulations as may be necessary for the maintenance of a high standard of service in each department. All rules and regulations so prescribed shall be subject to the approval of the city council and printed and made available for public inspection for the guidance of employees and applicants for employment in each department. Provided, however, that all such administrative or supervisory powers and authority of each department that are not specifically delegated in this act shall be retained by the City Council of the City of Fayetteville.

"§ 5.8. Examinations for positions in police or fire departments. All applicants for positions in the police or fire departments of the City of Fayetteville shall be required to take a written examination prepared by and conducted under the supervision of the

commission, which examination shall be competitive and open to all persons possessing the right of suffrage, and otherwise qualified under the terms of this act as to age, residence, health and moral character. Such examinations shall be practical in their character and shall relate to subjects tending fairly to test the mental, physical, professional and moral fitness of the applicants for the positions designated in the examination. No applicant in the course of such examination shall be examined in any manner touching his religious or political opinion or qualifications.

"§ 5.9. Credit to applicants for former service in police or fire departments. The civil service commission shall provide in its system for grading applicants that all applicants who have had former service in the police or fire departments of the City of Fayetteville and who are now employed by either department shall be given 10 points credit upon the mental requirements on account of such former service and experience. Provided, however, no applicant shall be allowed any credit for his former service if he shall have been dismissed from either department on account of incompetence, moral unfitness, or because of the violation of any regulation incident to his service.

"§ 5.10. Notice of examinations. Notice of the time and place of all examinations conducted by the commission under this act shall be made by publication once a week for two successive weeks immediately preceding such examination in a newspaper published in the City of Fayetteville and by placing a notice in a conspicuous place in the office of the civil service commission and on the bulletin board at the police station or fire department for at least two weeks preceding such examination.

"§ 5.11. Record of grades made at examination; certification of two highest grades for appointment. Said commission shall prepare and keep a permanent record of all persons successfully passing such examinations, accurately reflecting the grades made by the applicants, and upon vacancy in the police department or in the fire department, the said commission shall certify to the governing body for the City of Fayetteville two names of men whose grades are highest, the two being certified for each appointment, and appointment shall be made from the list of two men certified for each vacancy.

"§ 5.12. Appointment of police chief and fire chief; terms; removal or demotion; promotions in police or fire departments; preference in duties to members in accordance with seniority. The chief of police and the chief of the fire department shall be appointed by the city council of the City of Fayetteville, by and with the approval of the civil service commission. The chief of police and the chief of the fire department so appointed need not be residents of the City of Fayetteville at the time of their appointment.

The terms of office of the chief of police and of the chief of the fire department shall be four years from and after the date of their qualification for such offices or positions, and they shall not be removed from their offices or from their positions except for cause, and then only after notice and full hearing and by the majority action of the civil service commission, unless such dismissal or demotion was the result of such conduct as to disqualify them, or either of them, for holding a position as a police officer or as a fireman.

In the event the chief of police or the chief of the fire department is dismissed or demoted from his office or position, they shall be eligible for employment, as to the

chief of police, in the police department, and as to the chief of the fire department, in the fire department, when approved by the civil service commission, unless such dismissal or demotion was the result of such conduct as would disqualify the chief of police for holding a position as a police officer, or would disqualify the chief of the fire department for holding a position as a fireman or other position with the fire department.

In the event the chief of police is or may be appointed or elected from the police department or the chief of the fire department is or may be appointed or elected from the fire department, it shall be his privilege, subject to the limitations hereafter set out in this section to return at any time to employment in the respective departments aforesaid at the same rating held by him at the time of accepting the position of such chief. Provided, that at the time of exercising the right to return to the ranks, any such chief must be in good standing, with no charges preferred by his chief administrative superior outstanding against him; and provided further, that such return to former status in the ranks of the department must have the approval of the civil service commission of the City of Fayetteville.

Promotions in the police department shall be made by the chief of police, and promotions in the fire department shall be made by the chief of the fire department, by and with the approval of the city council and the civil service commission.

The chief of police and the chief of the fire department in the assignment of their various duties to the members of the police department or fire department from time to time, and so far as may be practicable without diminishing the efficiency of either department, shall give preference in such duties to members in accordance with their seniority or length of service on the force.

"§ 5.13. Dismissal, suspension or fining of member of police or fire departments. No officer or employee other than a probationary employee of the police or fire department of the City of Fayetteville shall be fined, suspended or discharged except for cause and upon written complaint and after he shall have been given reasonable opportunity for an open hearing by the commission. In the event charges preferred against any officer shall be sustained, the said civil service commission, in the exercise of its discretion, and upon a majority vote, may either dismiss the accused officer or employee from the service, suspend him without pay for not more than three months; or impose a fine against him in an amount not in excess of 30 days' pay. The commission, in its discretion, may suspend an officer or employee against whom charges have been preferred, pending a hearing, such suspension, however, not to exceed 30 days, or to act in any way prejudiced to the hearing of the complaint.

In the event a member of the police or the fire department commits any flagrant offense he may be suspended immediately by the chief of police or chief of the fire department for a period not exceeding 30 days, in order that a hearing relative to the charges against such policeman or fireman may be had by the civil service commission. In the conduct of all trials or investigations by the commission, the commission shall have the power and authority to issue subpoenas requiring the attendance of witnesses and the production of records necessary for a proper investigation and complete hearing of the matter at issue, and conduct itself as a court of inquiry and follow the usual

procedure with reference to evidence. No promotions or demotions in rank of any member of the police or fire department and no reorganization of said police or fire department shall be made by the city council or other governing board of said city, without the consent and approval of the said commission. The action of said civil service commission with respect to the matters contained in this section shall be final and conclusive.

"§ 5.14. Compensation of members of police and fire departments. The prevailing wage scale in the Fayetteville police and fire departments in effect on the date of the ratification of this Charter shall constitute the basic pay of the police officers of the various ranks, and such compensation shall neither be increased nor decreased without consent and approval of the said civil service commission.

"§ 5.15. Annual report. Said commission at the end of the fiscal year, shall make an annual report, of its administration for the preceding year, and it may include in said report the opinions of the said commission as to the practical effects of the rules, plans, or system in use, together with recommendations for the improvement of each department, which annual report shall be kept in the office of the commission and a copy transmitted to the city council of the City of Fayetteville.

"§ 5.16. Chairman and secretary. Said commission, as soon as practicable, after its appointment, shall meet and organize by electing one of its members chairman and one as secretary. The secretary shall keep the minutes of the proceedings and shall be the custodian of all papers, books and records pertaining to the business of the commission. The secretary shall keep a record of all examinations held and perform other duties as may be prescribed by the commission, for which he shall be paid a salary to be fixed by the city council of the City of Fayetteville in an amount not less than one hundred fifty dollars (\$150.00) per year, to be paid monthly out of the general fund of the city.

"§ 5.17. City to provide rooms for commission and space for examinations, etc.; city to pay expenses of commission. The governing body of the City of Fayetteville shall provide suitable rooms for the said commission and allow such reasonable use of the public buildings for conducting examinations and hearings by the commission as may be necessary. The City of Fayetteville shall also pay all necessary expenses of the said commission incident to its operation, and the governing body shall include in its budget such necessary expenses. However, any legal expenses incurred as the result of any action initiated against said commission shall only be payable by the city council pursuant to North Carolina General Statute 160A-167.

"§ 5.18. Salaries. The members of the civil service commission shall be paid from the general funds of the City of Fayetteville, a salary of not less than one hundred dollars (\$100.00) per year, except the secretary of the commission, whose salary is otherwise provided for.

"§ 5.19. Promotions and demotions. No promotions or demotions in rank of any member of the police or fire department and no reorganization of said police or fire department shall be made by the city council or governing bodies of said city without the consent and approval of said commission.

"§ 5.20. Quorum. Three members shall constitute a quorum to transact the business of the commission and no appointment or action shall be taken without a quorum present.

"Chapter VI. Public Works Commission.

"§ 6.1. Commission continued; election and term of members; vacancy. A commission of the City of Fayetteville to be known as the 'public works commission' as heretofore created, established and now existing, and consisting as it now does of three members, is hereby continued, and the term of office of one member of which shall expire in June each year as heretofore, and the city council shall, at its regular meeting in June of each year as heretofore, elect a member of said commission for a term of three years, and any vacancy occurring upon said commission shall be filled for the unexpired term by the city council at any regular or special meeting, but it shall require only a majority vote of the members of the city council to elect a member of said commission.

"§ 6.2. Qualifications of commissioners. The members of said commission shall be resident freeholders and taxpayers of the City of Fayetteville, and shall be persons of recognized ability and good business judgment and standing who, in the opinion of the city council, can and will perform their official duties to the best interest of said city and its inhabitants.

"§ 6.3. Duties of commission. Said commission shall have full charge and control and the general supervision and management of the electric utility plant, the waterworks and sewerage, and shall collect all rents and profits accruing therefrom and shall make all disbursements on account of the same.

"§ 6.4. Organization; chairman, secretary, and treasurer. The members of the commission shall meet as soon after their election as possible, and shall elect out of their number a chairman, secretary, and treasurer, each of whom shall be a different person. The duties of each shall be such as is prescribed by said commission from time to time, not inconsistent with the provisions of this act.

"§ 6.5. Records and accounts. Said commission shall keep a full and complete record of all meetings held and official action taken, and of all other transactions, items and facts, necessary to the proper and intelligent conduct of the business affairs, and shall keep a separate account of each item of property under their control, showing in detail the income from each, the disbursements on account of each, and the net income or loss on each of the same.

"§ 6.6. Receipts and disbursements. All funds handled by said commission shall be paid over to the treasurer thereof, and all disbursements by said commission shall only be made by order upon the treasurer, signed by the secretary and countersigned by the chairman thereof, and all orders shall state for what object the same is drawn, and a record shall be kept of all such orders.

"§ 6.7. Supervision of electric light, water and sewerage plants. Said commission shall have charge of and control over, and shall supervise the construction, repairing, alteration or enlargement of the electric light plant, the waterworks plant and the sewerage plant with power and authority to make all necessary contracts relating to the same, including the purchase of all necessary sites, machinery, supplies and other

property and the employment of necessary labor and other help in said construction, repairing, alteration or enlargement but no appropriation of moneys or expenditures or contracts in excess of ten thousand dollars (\$10,000) shall be made by the said commission until the same shall have been approved by the city council provided no such appropriation, expenditure or contract shall be approved on the date on which it is submitted except by an affirmative vote equal to or greater than two-thirds of the members of the council.

"§ 6.8. Contracts; title to property. No contract shall be entered into by said commission without the concurrence of at least two members thereof, and all contracts made by said commission, required to be in writing, shall be in the name of the City of Fayetteville, signed by the chairman and attested by the secretary of the said commission and sealed with the corporate seal of the said city. The title to all property under the management and control of said commissioners shall be and remain in the City of Fayetteville, and the title to all property purchased or acquired by said commission shall vest in said city; provided, that nothing in this act shall be construed as conferring upon said commission any power or authority to convey title to any public utilities, buildings, or other real property under their management and control.

"§ 6.9. Proceeds of bonds and special funds to be paid to treasurer; disbursement. The proceeds from the sale of any bonds, and all other special funds to be used in the construction, repairing, alteration or enlargement of any public utilities, building or other property mentioned in Section 6.7, shall be paid over to the treasurer of said commission, who shall disburse the same as provided in this act.

"§ 6.10. Powers of commission in management of property. Said commission is hereby fully authorized and empowered to make all necessary contracts in the property management of said public utilities and other property under its management and control, and to employ and discharge all necessary superintendents, clerks, accountants, laborers, artisans and other help in said management; to prescribe the duties and fix the salaries of each, and to require such bonds of each as said commission may deem proper to the successful management of said property.

"§ 6.11. Rates and rents. Said commission is hereby fully authorized and empowered to fix all rates, rents for water, light and sewage, scales, and all other public property under their control, subject to the limitations fixed in any franchise heretofore granted or which may hereafter be granted for the same. All such rates and rents shall be established upon such terms and conditions as said commission shall deem for the best interest of the city.

"§ 6.12. Monthly reports; special reports. Said commission shall render a full report to the city council of the City of Fayetteville, not later than the second Monday of each month, and shall pay over to the treasurer of said city all balances in excess of necessary expenses and disbursement to said date, as shown by said report. Said report shall show among other things:

(1) the several items of public property under the control and charge of said commission, the value of same, and the floating and bonded indebtedness outstanding against the same;

(2) the amount received from each item of public property, and the amount disbursed on account of same, separately;

(3) all amounts received and disbursed on account of construction, repairing, alteration or enlargement of said property;

(4) the physical condition of the property;

(5) the amount of insurance carried upon said property;

(6) the names of all delinquents to said city, three months or more in arrears, and the amount of such delinquency;

(7) all other facts, items and information pertaining to the condition and management of said property.

Said commission shall also furnish to the city council of said city such additional and special reports as the said council may request from time to time.

"§ 6.13. Annual report. At the end of each fiscal year said commission shall publish a complete report for the year, which shall include all financial operations of said commission during the year, and all items, facts and information required by the provisions of this Chapter to be reported monthly to the said city council.

"§ 6.14. Bonds of chairman, secretary and treasurer. The chairman and secretary of said commission shall each give bond to the City of Fayetteville in the sum of one thousand dollars (\$1,000) each, and the treasurer of said commission shall give bond in double the amount of any funds in his hands. All bonds required by this section shall be filed with the city clerk.

"§ 6.15. Compensation. The members of said commission shall receive a salary as set by the council on an annual basis.

"§ 6.16. Audit of books and accounts. At the end of each fiscal year the books, accounts and records of said commission shall be audited by the city council.

"§ 6.17. Neglect of duty by member. If any member of said commission shall willfully neglect or fail to perform any duty required by the provisions of this Chapter, or required by any rule or regulations made by said commission in pursuance of the authority contained in said act, he shall be guilty of a misdemeanor, and upon conviction shall be removed from office by the city council.

"§ 6.18. Budget. Said commission shall cause to be prepared and published in a newspaper published in Cumberland County a budget in the same manner as is required of the city council.

"§ 6.19. Sale of electricity, water and sewer in Cumberland County. The Public Works Commission of the City of Fayetteville is hereby authorized and empowered to extend its electric system, water system and sewerage system anywhere in Cumberland County, and to sell water, sewer service, and electricity anywhere in Cumberland County.

"§ 6.20. Retirement system. The City Council of the City of Fayetteville is authorized to establish by ordinance an actuarially sound retirement system for the payment of retirement benefits to the employees of the Public Works Commission. The city council is authorized to appoint a board of trustees and to delegate to the board of trustees such powers and duties as may be deemed necessary to administer the retirement fund; however, if a board of trustees is appointed, they shall employ an

actuary and designate a trustee for the investment, care, or administration of the funds of the retirement system.

Any retirement system established by the city council for the employees of the Fayetteville Public Works Commission shall be jointly financed by employee contributions and appropriations from the funds of the Public Works Commission and shall be maintained on a solvent actuarial reserve basis for all benefits at the date of the establishment of the fund, excepting the present value of benefits based on prior service. The contributions of the Fayetteville Public Works Commission shall be sufficient to fund the liability for such prior service in not more than 30 years from the date of the establishment of such fund.

Any retirement system heretofore created for the employees of the Fayetteville Public Works System and in existence on the date of the ratification of this act shall continue in existence and remain in full force and effect after the date of the ratification of this act, the intent herein being to continue any existing retirement system under the same established requirements and criteria stated herein.

"Chapter VII. Planning and Regulatory Powers.

"Article 1. Eminent Domain.

"§ 7.1. Authority to use Chapter 136 of the General Statutes. In exercising the power of eminent domain, the City of Fayetteville, in addition to the provisions of Chapter 40 and Article 11, Chapter 160A of the General Statutes, is hereby authorized to use the procedures of Article 9, Chapter 136 of the General Statutes, subject expressly to the provision of G.S. 136-104.1.

"§ 7.1(1). Special provision in using Chapter. Chapter 136 of the General Statutes is hereby amended by adding a new section to read as follows:

**"§ 136-104.1.** Upon the filing of the complaint and declaration of taking and deposit into court by any condemning authority utilizing the provisions of this Article in the exercise of its power of eminent domain, except the Department of Transportation and the Department of Administration, the clerk shall issue an order to be served upon and directing the persons alleged to have an interest in the said land to appear before a judge at a time certain, but not less than 10 days from service of the order, to show cause why title to the said land or such other interest therein specified in the complaint and declaration of taking, together with the right of possession thereto, should not vest in the condemning authority. Failure of the persons to whom the order is directed to appear at the appointed place and time and show sufficient cause shall constitute an admission of the right of the condemning authority to appropriate the title to the said land or other interest therein specified in the complaint and declaration of taking. Unless otherwise ordered by the judge at the show cause hearing, the title and right of possession shall vest in the condemning authority as provided by G.S. 136-104.2; provided, however, that the provisions of this section shall not apply with regard to properties owned by public service corporations as defined in G.S. 160A-243(c) unless the exercise of such power of eminent domain is either consented to by the owner of the property to be acquired by the city or, otherwise, first adjudicated after notice and a hearing that such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and the operation by such public use of such properties and the

operation by such public service corporation. The provisions of this act shall not preclude the owner's remedy of injunction.

"§ 7.1(2). Renumbering of General Statutes. G.S. 136-104 is hereby renumbered G.S. 136-104.2.

"§ 7.1(3). Prospective in nature. This act shall not affect pending litigation.

"Article 2. Special Assessments.

"§ 7.2. Street or sidewalk improvements. The city council shall have the authority to order with or without petition street or sidewalk improvements and to assess for said improvements in the same manner as provided by general law for all other assessments.

"§ 7.2(1). Lighting improvements. In addition to those improvements authorized by general law, the City of Fayetteville shall have the authority to order with or without petition lighting improvements which include the construction of street lighting systems, consisting of ornamental lights or of lights of greater strength, or lights placed at more frequent intervals, or both, than is ordinarily provided by the municipality making the improvement for streets of such character at public expense.

"§ 7.2(2). Annual assessment for maintenance and operation of light improvement. After any lighting improvement is made as provided in this act, the municipality making the same is hereby authorized, as long as said lighting system shall be maintained, to make an annual assessment against the lands assessed with the original cost of the improvements sufficient to cover the excess of actual cost of maintenance and operation of said lighting system over and above the cost of maintenance and operation of such system of lighting as the municipality provides at public expense for streets of the same character as that whereon said lighting improvement is made. To that end the governing body of the municipality shall cause to be prepared a preliminary assessment which shall, as far as practicable, conform to the requirements of North Carolina General Statutes 160A-227, and the procedure thereafter to be followed with respect to such assessment and the force and effect thereof shall be as prescribed in this general law.

"§ 7.3. Change in ownership after resolution ordering improvement. No change of ownership of any property or interest therein after the passage of a resolution ordering the making of any improvements authorized by this act shall in any manner affect subsequent proceedings, and such improvement may be completed and assessments made therefor as if there had been no change in such ownership.

"§ 7.4. Mistake or omission as to name of owner of land. No mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission.

"§ 7.5. Separate proceedings not required. One or more local improvements may be made in a single proceeding, and assessments for one or more local improvements may be combined.

"Article 3. Roads and Streets.

"§ 7.6. Establishment of proposed street lines. Whenever, in the opinion of the city council, it is in the best interest of the city that any street should be widened or extended, or both, or that a new street should be opened, the council may pass an ordinance declaring that such street should be widened or extended, or both, or that such new street should be opened, and shall lay out in the ordinance the lines within which

such street should be widened, extended or opened. If any street under the provisions of such ordinance is to be widened, it need not be widened on both sides; and if it is to be widened on both sides, the distance to be widened on both sides need not be the same. Any ordinance introduced for the purpose of widening, extending or opening any street under the provisions of this Charter may not be adopted until the proposed ordinance is published in a newspaper of general circulation in the city and qualified to carry legal notices at least two times on separate days at least 10 days before the passage of the ordinance, or if there be no such newspaper, posted in three public places in the city. There shall be posted or published with the ordinance a notice stating when property owners may be heard by the council. A public hearing on the question of the adoption of such ordinance shall be held prior to the passage of the ordinance.

"§ 7.6.1. Registration of ordinance. Subsequent to the adoption of any ordinance pursuant to this Article, the city council shall have recorded in the office of the Register of Deeds for Cumberland County said ordinance showing the owners of said property as grantors and the city as grantee. The city shall also have recorded in the register of deeds a plat showing the proposed right-of-way incorporated by reference in the ordinance.

"§ 7.7. Notice to city required before improvement. After the passage of such ordinance, it shall be unlawful for any land within the proposed street lines established by such ordinance to be built upon or improved or for any part of any existing building within said lines to be repaired or otherwise improved until the city shall have first been given an opportunity to purchase or otherwise acquire said property for street purposes as provided in this Charter. To that end, any person proposing to build upon such land or to make repairs or improvements to that part of any existing building situated thereon shall, in writing, notify the city council of the nature and estimated cost of such building, repairs or improvements. The council shall then determine whether it will take the necessary steps to acquire said land prior to the construction of said building or the making of such repairs or improvements, and if it fails within 60 days from date of receipt of said notice to acquire, or to institute condemnation proceedings to acquire said property, the owner or other person giving such notice may proceed to erect the building in accordance with the ordinances and regulations of the city or to make the repairs or improvements described in said notice.

"§ 7.8. Failure to give notice bars recovery. If any person, firm or corporation builds upon any land included within proposed street lines or repairs or otherwise improves that part of any existing building within proposed street lines without giving the city an opportunity to acquire said land free from said improvements, as provided in the preceding section, the city shall not be required to pay for the value of the building, repairs or improvements in any proceeding subsequently brought to acquire said land for the purpose set out in said section.

"§ 7.9. Acquisition of land. If, upon receiving any notice in compliance with Section 7.7 the city council determines to acquire said land immediately, it may acquire the same by grant, purchase or condemnation. If the council determines to proceed by condemnation, the condemnation shall be as set forth in the Charter.

"§ 7.10 Cost of land acquired for street widening to be assessed as part of improvement. After any land has been purchased or condemned for the purpose of widening, extending or opening any street, and the land purchased or condemned lies within the limits of an improvement directed in said proceedings, then the amount paid by the city for the land purchased or condemned, together with the cost of the condemnation proceeding and interest on said amount paid and costs at the rate of eight percent (8%) per annum from the date of payment, may be included in the cost of said improvement and may be assessed as provided by law against the property to be assessed for the improvements.

"§ 7.11. Exercise of condemnation power after failure to condemn following notice. The failure of the city to acquire any land within 60 days after receiving notice that the same is to be built upon or that a building thereon is to be repaired or otherwise improved, or its failure within said time to institute proceedings to condemn the same, shall not limit the right of the city at any subsequent time to condemn the same; but in such case, the owner shall be entitled to compensation as now provided by law for the building, repairs or improvements made after the giving of the required notice and the failure of the city to acquire said land free of said improvements.

#### "Article 4. Drainage.

"§ 7.12. Standing water-power to abate nuisance. When there is any lot, lots, or alleys, owned by one or more persons, upon which water shall collect, either by falling upon the said lot, lots or alleys, or collected thereon by drainage or otherwise from adjacent lots, no adequate drainage from which is provided by natural means, the city council of the city, on their own motion, or any of them, when in their opinion said conditions are or are liable to become a nuisance or menace to health, or upon being advised by the health officer of the city or county that the conditions so existing are or are liable to become, a nuisance or menace to health, the city council is authorized to abate the nuisance, and to that end may proceed to abate it in the following manner.

"§ 7.13. Same - survey; notice to lot or alley owners. The city shall cause a survey to be made by a competent engineer to ascertain the means and methods and costs of providing an adequate drainage from such lot, lots or alleys and such engineer shall prepare plans and specifications to provide such drainage with the estimated cost thereof. The city is authorized to pave said lot, lots or alleys in order to secure proper drainage of said lot, lots or alleys. In making such survey, the engineer shall include therein the area of adjoining and adjacent lots or alleys which will be drained by such systems of drainage. He shall also include in such survey the area of all adjoining and adjacent lots or alleys from which water flows and is gathered upon the lot, lots or alleys which are to be drained. The city council shall thereupon cause written notice to be served upon the owner of the lot, lots or alleys drained and the owners of such adjacent lots or alleys as shall be affected, as herein set forth, which notice shall state in general and briefly the fact that a nuisance has been or is liable to be created and so declared; that it is the purpose of the city to abate the same by causing a system of drainage and paving to be put in, and the assessed cost against every such owner as hereinafter provided; that the report of the engineer is on file and subject to inspection, and that on a date to be named in the notice a hearing will be had before the council as

to whether the plan shall be adopted and the assessment shall be made, at which hearing the persons affected may be present and present such objections as they may have to the adoption of the report of the engineer and the doing of the work.

"§ 7.14. Hearing, contract for drainage. At the hearing provided for, if the city council of the city shall determine that the work shall be done, and that the plans and specifications of the engineer are proper, it may adopt the said plans and specifications, and have the work done, either by letting a contract therefor or otherwise, and in the event a contract is let, it shall be advertised as is provided for in other cases of municipal construction.

"§ 7.15. Assessment and payment of costs. The city shall bear one-third of the total cost involved in the paving and drainage of said lot, lots or alleys. The remaining two-thirds of said total cost of paving and drainage shall be assessed against each and every owner of a lot, lots or alleys affected by the plan or system, upon the following basis, that is to say, he or she shall pay such proportion of two-thirds of the total cost as the area of his lot, lots or alley may bear to the total area, as shown by the plans and engineer when adopted by the city council, which sum shall be due in such annual installments as the city council may determine which shall not exceed five in number and such installments shall bear interest not to exceed eight percent (8%) per annum.

"§ 7.16. Areas declared 'special improvement district'. The area which shall be included within and drained and/or paved by the plans and specifications as herein provided for is hereby declared to be a 'special improvement district'.

"§ 7.17. Collection of assessments. The assessments, when made, shall be a lien upon the property benefited, and shall be collectible by the same means and methods as are other assessments for local or special improvements as is provided for in this Charter and the general laws of North Carolina.

"§ 7.18. Notes of city to pay for improvements. For the purpose of enabling the city council of the city to obtain money with which to pay for the improvements herein authorized to be made, such city council is hereby authorized and empowered to execute the notes of the city, payable in such installments as are the assessments, and the assessments made shall be pledged for the payment of the said notes; such notes shall bear a rate of interest not exceeding six percent (6%) and may be sold publicly or privately at not less than par and accrued interest, and shall be due in not more than five years, and each time and in such installments as the assessments made shall be due; provided, the due date of the notes may be made 60 days after the date of any of the assessments.

"§ 7.19. City's full faith and credit pledged. The full faith and credit of the city shall be pledged for the payment of the said notes and interest when due.

## "CHAPTER VIII. Miscellaneous.

### "Article 1. Supplemental Retirement Fund for Firemen.

"§ 8.1. Supplemental retirement fund continued. The board of trustees of the Local Firemen's Relief Fund of the City of Fayetteville, as established in accordance with G.S. 118-6, hereinafter called the board of trustees, shall continue to maintain a separate fund to be called the Fayetteville Firemen's Supplemental Retirement Fund, hereinafter called the Supplemental Retirement Fund, and shall maintain books of account for such fund

separate from the books of account of the Firemen's Local Relief Fund of the City of Fayetteville, hereinafter called the Local Relief Fund. The board of trustees shall pay into the Supplemental Retirement Fund the funds prescribed in this act.

"§ 8.2. Transfers of funds and disbursements. Notwithstanding the provision of G.S. 118-7, the board of trustees of the Local Firemen's Relief Fund of the City of Fayetteville shall:

(a) continue to transfer to the Supplemental Retirement Fund all funds, including earnings on investments, of the Local Relief Fund in excess of ten thousand dollars (\$10,000);

(b) in each calendar year, and within 30 days after receipt from the city treasurer of the annual funds paid to the Local Relief Fund by authority of G.S. 118-5, transfer to the Supplemental Retirement Fund such fund;

(c) at any time when the amount of funds in the Local Relief Fund shall, by reason of disbursements authorized by G.S. 118-7, be less than ten thousand dollars (\$10,000) transfer from the Supplemental Retirement Fund to the Local Relief Fund an amount sufficient to maintain in the Local Relief Fund the sum of ten thousand dollars (\$10,000);

(d) as soon as practicable after January 1 of each year, but in no event later than July 1, divide the income earned in the preceding calendar year upon investments of funds belonging to the Supplemental Retirement Fund and upon investments of funds belonging to the Local Relief Fund into equal shares and disburse the same as supplemental retirement benefits in accordance with Section 8.3.

"§ 8.3. Supplemental retirement benefits. (a) Each retired fireman of the city who has retired with 20 years service or more as a city fireman shall be entitled to and shall receive in each calendar year following the calendar year in which he retires an annual supplemental retirement benefit equal to one share for each full year of service as a fireman of the city; provided, in no event shall any retired fireman be entitled to or receive in any year an annual benefit in excess of six hundred dollars (\$600.00).

(b) Any former fireman of the city who is not otherwise entitled to supplemental retirement benefits under subsection (a) of this section, shall nevertheless be entitled to such benefits in any calendar year in which the board of trustees makes the following written findings of fact:

- (1) that, he initially retired from his position as fireman because of his inability, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (2) that, within 30 days prior to or following his initial retirement as a fireman, at least two physicians licensed to practice medicine in North Carolina certified that he was at such time unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (3) that, at the time of his initial retirement as a fireman, there was not available to him in the fire department or in any other department of the city a position of employment the normal duties of which he was capable of performing; and

- (4) that, since the preceding January 1, at least two physicians licensed to practice medicine in North Carolina have certified that he remains unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and
- (5) that, there is not available to him in the fire department or in any other department of the city a position of employment the normal duties of which he is capable of performing; provided, that the board of trustees, after initially making the findings of fact specified in (1), (2), and (3) of this subsection, need not specify such finding in subsequent calendar years.

"§ 8.4. Intention. It is the intention of Section 8.3 to authorize the disbursement as supplemental retirement benefits only of the income derived in any calendar year from the investments of funds belonging to the Supplemental Retirement Fund and to the Local Relief Fund. It is the intention of Section 8.2 to require that the funds paid into the Supplemental Retirement Fund pursuant to subsections (a) and (b) thereof shall be held in trust, and that no funds paid into the Supplemental Retirement Fund pursuant to subsections (a) and (b) thereof or as a gift, grant, bequest, or donation to such Fund shall ever be disbursed except as and when required by subsection (c) thereof.

"§ 8.5. Investment of funds. The board of trustees is hereby authorized to invest any funds, either of the Local Relief Fund or of the Supplemental Retirement Fund, in any investment named in or authorized by G.S. 159-28.1, only in accordance with the provisions thereof, and is hereby directed to invest all of the funds of the Supplemental Retirement Fund in one or more of such investments.

"§ 8.6. Acceptance of gifts. The board of trustees is hereby authorized to accept any gift, grant, bequest, or donation of money for use of the Supplemental Retirement Fund.

"§ 8.7. Bond of treasurer. The bond given by the City Finance Director as required by G.S. 159-29 shall indemnify the Firemen's Relief Fund and the Firemen's Supplemental Retirement Fund of the City of Fayetteville.

"§ 8.8. Appointment of finance director to board of trustees. The governing body of the City of Fayetteville shall appoint the Finance Director of the City of Fayetteville to the Board of Trustees of the Local Firemen's Relief Fund of the City of Fayetteville as one of the two members which said governing body elects to serve on said board of trustees.

"§ 8.9. Election of treasurer. The Board of Trustees of the Local Firemen's Relief Fund of the City of Fayetteville shall elect the Finance Director of the City of Fayetteville as Treasurer of the Board of Trustees of the Firemen's Relief Fund.

"§ 8.10. Deposit of funds. The Finance Director, upon receipt of funds from the Insurance Commission, shall deposit same in the Firemen's Relief Fund and/or the Supplemental Firemen's Retirement Fund.

## "Article 2.

### "Withdrawal of Street Dedication.

"§ 8.11. Notice of withdrawal of dedicated streets. No street or road located within the corporate limits of the City of Fayetteville shall be withdrawn from dedication after 15 years from the date of such dedication until the dedicator or one claiming under him

notifies the city in writing of his intent to withdraw the dedication and affords the city reasonable opportunity to accept the dedication before its withdrawal.

"Article 3.

"Boxing and Wrestling Commission.

"§ 8.12. Appointment; composition; term; compensation. The County Commissioners of Cumberland County and the City Council of the City of Fayetteville are hereby empowered and authorized to appoint two members of a boxing and wrestling commission, which members shall choose a third member of such boxing and wrestling commission, to serve for terms of two years each, and until their successors are appointed and qualified. Such members of the boxing and wrestling commission shall serve without compensation.

"§ 8.13. Boxing and wrestling regulated. It shall be lawful to engage in, manage or promote boxing and wrestling exhibitions in Cumberland County, North Carolina, provided that the boxing exhibitions shall not be more than 12 rounds in length. The boxing and wrestling commission shall have full power and authority to make such rules and regulations as in its judgment and discretion may be necessary for the proper regulations of such boxing and wrestling exhibitions, even after consent has been given for the holding of such exhibitions.

"§ 8.14. Penalty. Any person or persons guilty of engaging in or promoting, aiding or abetting any professional sparring or wrestling matches without first having the written consent of said boxing and wrestling commission, and any person or persons violating the rules and regulations of said commission, or refusing to obey the orders of said commission controlling a sparring or wrestling match shall be guilty of a misdemeanor and shall be fined not more than fifty dollars (\$50.00) or imprisoned not less than 10 days nor more than one month in the discretion of the court.

Article 4. Open Air Markets.

"§ 8.15. Authority to establish open air market. The City Council shall have the power to provide for the establishment, maintenance and regulation of open air or enclosed markets, may prescribe the time and place of sale of fresh meats, fish, and other marketable products therein; may rent the stalls in such manner and at such prices as it may deem best; may appoint a keeper of the market or other persons, who may summarily condemn all unsound products offered for sale in the city for food, and cause the same to be removed at the expense of the person offering it for sale, and may from time to time adopt such ordinances, rules and regulations as it shall deem best governing and controlling in every detail the building, renting, use and operation of any market or market house, or any room or building, used as such in which fresh meat or fish of any description are kept or offered for sale. The City Council shall have and is hereby given the right to acquire under its eminent domain authority title to any property needed for the purposes described herein.

"Article 5. Authority to Offer and Pay Rewards.

"§ 8.16. Authority to offer and pay rewards. The governing body of the City of Fayetteville is authorized to offer and pay rewards in an amount not exceeding five hundred dollars (\$500.00) for information leading to the arrest and conviction of any person or persons who willfully deface, damage or destroy property, either personal or

real, or take personal property belonging to or under the control of the City of Fayetteville, and to further offer and pay like rewards for information leading to the arrest and conviction of any person or persons who willfully injure or take the life of any employee or officer of the City of Fayetteville while such employee or officer is engaged in the performance of his official duties. The governing body shall fix the terms, conditions and amounts of such rewards and shall be the sole judge as to those persons entitled to receive any reward offered. Such rewards shall be paid only by order of the governing body out of nontax revenues."

**Sec. 2.** The purpose of this act is to revise the Charter of the City of Fayetteville and to consolidate herein certain acts concerning the property, affairs, and government of the city. It is intended to continue without interruption those provisions of prior acts, which are consolidated into this act, so that all rights and liabilities that have accrued are preserved and may be enforced.

**Sec. 3.** This act shall not be deemed to repeal, modify, nor in any manner to affect any of the following acts, portions of acts, or amendments thereto, whether or not such acts, portions of acts, or amendments are expressly set forth herein: (a) any acts concerning the property, affairs, or government of public schools in the City of Fayetteville; and (b) any acts validating, confirming, approving, or legalizing official meetings, actions, contracts, or obligations, of any kind.

**Sec. 4.** The following acts or portions of acts, having served the purposes for which enacted, or having been consolidated into this act are hereby repealed:

<u>PRIVATE LAWS</u>		<u>SESSION LAWS</u>		<u>SESSION LAWS</u>	
<u>YEAR</u>	<u>CHAPTER</u>	<u>YEAR</u>	<u>CHAPTER</u>	<u>YEAR</u>	<u>CHAPTER</u>
1925	28	1947	41	1967	838
1927	137	1947	456	1969	351
1927	145	1947	498	1969	560
1927	224	1949	93	1969	582
1929	133	1949	427	1969	699
1929	172	1949	744	1969	715
1929	190	1949	753	1969	1058
		1949	761	1971	554
		1949	853	1971	660
<u>PUBLIC-LOCAL LAWS</u>		1951	131	1971	620
		1951	213	1971	493
		1953	312	1975	869
<u>YEAR</u>	<u>CHAPTER</u>	1953	318		
		1953	588		
1929	62	1953	589		
1931	289	1953	902		
1933	206	1953	1235		
1937	554	1955	346		
1939	74	1955	446		
1939	609	1955	516		
1941	18	1955	602		

1941	77	1955	826
1941	80	1955	1104
1941	92	1957	1090
1941	108	1957	1383
		1959	541
		1959	542
	<u>SESSION LAWS</u>	1959	676
		1959	949
<u>YEAR</u>	<u>CHAPTER</u>	1959	1090
		1961	8
1943	49	1961	224
1943	300	1961	1211
1945	4	1963	150
1945	108	1965	20
1945	120	1965	25
1945	164	1965	384
1945	166	1968	1162
1945	184	1967	91

**Sec. 5.** No provision of this act is intended, nor shall be construed, to affect in any way, any rights or interest (whether public or private): (a) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

(b) derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

**Sec. 6.** No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

- (a) the repeal herein of any act repealing such law, or
- (b) any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

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

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

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

**Sec. 9.** All laws and clauses of laws in conflict with this act are hereby repealed.

**Sec. 10.** This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of May, 1979.