

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 910
SENATE BILL 865

AN ACT TO REVISE, CONSOLIDATE AND RESTATE THE CHARTER OF THE
CITY OF GASTONIA AND TO REPEAL ALL PRIOR CHARTER ACTS.

The General Assembly of North Carolina do enact:

Section 1. The Charter of the City of Gastonia is hereby amended, revised, consolidated and restated to read as follows:

"THE RESTATED CHARTER OF THE CITY OF GASTONIA

"CHAPTER I. ORGANIZATION AND POWERS

"SUBCHAPTER A. INCORPORATION: CORPORATE POWERS AND THEIR
EXERCISE

"Section 1.01. Incorporation and corporate powers. The City of Gastonia shall continue to be a body politic and corporate by the name of 'City of Gastonia'. Under that name the city shall continue to be vested with all of the property and rights of property which now belong to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to or otherwise acquired by it, and from time to time may hold or invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

"Section 1.02. Exercise of power. All powers, functions, rights, privileges and immunities of the city, its officers, agencies, or employees, shall be carried into execution as provided by this Charter or, if this Charter makes no provision, as provided by ordinance or resolution of the city council, and as provided by the general laws of North Carolina pertaining to municipalities, and their officers, agencies, and employees.

"SUBCHAPTER B. MUNICIPAL CORPORATE BOUNDARIES

"Section 1.21. Existing city limits. (a) The corporate boundaries of the city shall be those existing at the time of ratification of this restated Charter with such alterations as may be made from time to time in the manner provided by law. The city engineer shall prepare a map of such boundaries to be entitled 'Map of Gastonia City Limits' and shall also prepare a written description of the corporate boundaries as shown on said map to be designated 'Description of Gastonia City Limits'. Said map and description shall be retained permanently in the office of the city clerk as the official map and description of the corporate boundaries of the city. The city engineer shall indicate any alteration by making appropriate changes in or additions to said map and description. Photographic, typed or other copies of said official map or description, certified by the city clerk, shall

be admitted in evidence in all courts and shall have the same force and effect as would the original map or description.

(b) When required from time to time, the city council may provide for the redrawing of the official map or the rewriting of the official description. A redrawn map and a rewritten description shall supersede for all purposes the earlier map and description which are respectively replaced.

"SUBCHAPTER C. CHARTER AMENDMENTS

"Section 1.41. Incorporation of amendments. (a) As soon as possible after the adjournment of each General Assembly, the city attorney shall present to the city council copies of all local laws relating to the property, affairs and government of the city that were enacted by such General Assembly, whether or not in terms amending this Charter, which he recommends to be incorporated into this Charter. Such recommendations may include suggestions for renumbering or rearranging the provisions of such laws, for providing titles and catch lines, and for such other changes in arrangement and form that do not change the law as may be thought necessary to implement the purposes of this section.

(b) After considering the recommendations of the city attorney, the city council may provide for the incorporation of such laws into this Charter.

(c) The purpose of this section is to enable the city to maintain at all times a current and accurate Charter, organized in clear and orderly fashion, and embracing all local laws relating to the property, affairs and government of the city.

"CHAPTER II. MAYOR AND COUNCIL

"SUBCHAPTER A. COUNCIL, COMPOSITION, TERMS, QUALIFICATIONS, COMPENSATION

"Section 2.01. Composition of the city council. The membership of the city council shall consist of a mayor and six (6) councilmen who shall be elected in the manner provided by Chapter VI of this Charter.

"Section 2.02. Qualifications, terms and vacancies. (a) The mayor and councilmen shall serve for terms of two (2) years, beginning the day and hour of the organizational meeting of the council, and they shall continue to serve until their successors are elected and qualified.

(b) No person shall be eligible to be elected to the council or to serve thereon unless he is a qualified voter and resident of the city.

(c) If any person elected as a councilman shall refuse to be qualified, or if there is a vacancy occurring after his election and qualification, or if any such person becomes unable to discharge the duties of the office of councilman, the council shall choose some person for such unexpired term to act as councilman in his place and stead. Councilmen so selected shall have all authority and powers given by this Charter to regularly elected councilmen.

(d) If any person elected as mayor shall refuse to be qualified, or if there is a vacancy occurring after his election and qualification, or if any such person becomes unable to discharge the duties of the office of mayor, the council shall choose from its membership some person for the unexpired term to act as mayor in his place and stead.

The member from the council so selected shall have all authority and powers given by this Charter to the regularly elected mayor.

(e) No person elected to the council, whether he qualifies or not, shall, during the term for which he was elected, be appointed to or serve in any other position or office of trust or profit in the city government. However, when a vacancy exists or shall occur in the office of mayor, a member of the council shall not be barred from selection as mayor for the unexpired term.

"Section 2.03. Compensation of governing bodies. The council may fix the compensation of the mayor and the councilmen and any other elected officers of the city in such sums as may be just and reasonable. Any increase in the compensation of the mayor or councilmen shall not take effect until after the next succeeding regular municipal election. The mayor, councilmen or other elected officers shall be entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees.

"Section 2.04. Oaths of office. Each newly elected or appointed mayor and council, before entering his duties, shall meet at the city hall or some other place by them appointed and shall then and there take an oath to support the Constitution and laws of the United States of America and the Constitution and laws of the State of North Carolina and to discharge the duties imposed upon them by virtue of their office as mayor and members of the council with fidelity and integrity and to the best of their ability, which oath shall be administered by some person authorized by law to do so. Any one who is not present at the time and place provided for by this section may take the oath at any time thereafter.

"SUBCHAPTER B. ORGANIZATION AND PROCEDURES

"Section 2.21. Organizational meeting. The organizational meeting of each council shall be held on the next Tuesday following the date of the election of its members. The council shall choose from its members a mayor pro tempore, who shall hold office for a term of two years. The organization of the council shall take place notwithstanding the absence, death, refusal to serve or nonelection of one or more members; provided, that at least four of the persons entitled to be members are present.

"Section 2.22. Regular and special meetings. (a) The council shall fix the time for its regular meetings, which shall be as often as twice monthly. The mayor, or in the absence of the mayor, the mayor pro tem, or any two members of the council may at any time call a special meeting by signing a written notice stating the time, place and purpose of the meeting, which notice shall be delivered to each member or left at his dwelling and also at his place of business at least six (6) hours before the meeting. Only the business stated in the written notice may be transacted at a special meeting so called, except when the mayor and all other members of the council are present and consent to the transaction of other business. Meetings of the council may also be held at any time when the mayor and all other members of the council are present and consent thereto or when called or announced at a duly constituted meeting of the council at which all members of the council are present.

(b) Except where otherwise specifically provided by this Charter, the council shall have authority to make such provisions as it may deem wise relative to regular,

special, adjourned and continued meetings, to adopt rules of procedure, and generally to regulate the time, place, manner and method of the exercise of its powers. No ordinance, resolution, rule or directive may be adopted, amended or repealed, however, except in a public meeting. All meetings of the council shall be held at the city hall, unless the council decides otherwise. In the event the council holds a joint meeting with the governing body of another municipality or political subdivision of the State of North Carolina, it may in its discretion meet at a designated place within the area subject to the jurisdiction of the other governing body.

"Section 2.23. Quorum; voting. (a) A majority of the members of the council shall constitute a quorum. However, a majority vote of the membership of the council shall be required to constitute action, except when a greater vote is required by law.

(b) No councilman shall be excused from voting except upon matters involving the consideration of his own official conduct or involving matters in which he has a financial or prejudicial interest. In all other cases a failure to vote by a councilman who is present shall be deemed as an affirmative vote and shall be so recorded. A councilman who has withdrawn from a meeting without being excused shall be counted as present for the purpose of determining whether or not a quorum is present.

(c) The mayor shall have the same power as the other members of the council to vote on all matters coming before the council, but shall not be required to vote except when his vote is necessary for determinative action. On any such matters when his vote is required for determinative action the mayor shall not be excused from voting except on matters in which he has a financial or prejudicial interest. Failure of the mayor to vote when present on any such matters when his vote is required by this section shall be deemed an affirmative vote and shall be so recorded. When the mayor has withdrawn from a meeting without being excused he shall be counted as present for the purpose of determining whether or not a quorum is present.

(d) Continuance of public hearings. The council may continue any public hearing without further advertisement. If a quorum is not present at the time fixed for such hearing, it shall automatically be continued to the next regular council meeting.

"SUBCHAPTER C. COUNCIL; POWERS AND DUTIES

"Section 2.41. Exercise of powers. (a) The city council shall direct the exercise of all of the powers of the city, except as otherwise provided by the Charter.

(b) In addition to other powers conferred upon it by law, the council may adopt and provide for the execution of such ordinances, rules and regulations, not inconsistent with this Charter, as may be necessary or appropriate for the preservation of the comfort, convenience, security, good order, better government or general welfare of the city or its inhabitants; may enforce the same by imposing penalties for violations; and may compel the performance of the duties imposed upon others by suitable penalties.

(c) The council shall have the power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this section, the council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the courts shall have jurisdiction to issue such order after notice to all proper parties. No testimony of any witness before the council pursuant to a

subpoena issued in exercise of the power conferred by this section may be used against him in the trial of any civil or criminal action other than a prosecution for the false swearing committed on the examination. If any person, swearing under oath at an investigation by the council, willfully swears falsely, he shall be guilty of a misdemeanor.

"SUBCHAPTER D. MAYOR AND MAYOR PRO TEM

"Section 2.61. Powers and duties of mayor. (a) The powers and duties of the mayor shall be such as are conferred upon him by this Charter and by general law, together with such others as may be conferred by the council pursuant to law.

(b) The mayor shall preside at all meetings of the council.

"Section 2.62. Mayor pro tem. During the disability of the mayor or his absence from the city, the functions of his office shall devolve upon the mayor pro tem. The mayor pro tem shall preside at all meetings of the council in the absence of the mayor but shall only vote when so presiding as herein provided for the mayor. In the absence of both mayor and mayor pro tem, a chairman pro tem shall be chosen to preside at such meetings and when so presiding he shall have the right to vote upon all questions but shall have no additional vote in case of a tie.

"SUBCHAPTER E. COUNCIL: ORDINANCE PROCEDURE

"Section 2.81. Applicable general law. Except as otherwise herein provided, the adoption, amendment and repeal of ordinances shall be governed by provisions of general laws applying to municipalities.

"Section 2.82. Ordinances effective on city property outside limits. Unless otherwise provided in the ordinance, all ordinances shall apply to property and rights of way belonging to the city and located outside the corporate limits.

"Section 2.83. Code of ordinances. The council shall adopt and issue a code of its ordinances. The code may be reproduced by printing, mimeographing, photoduplication, offset or similar process and may be issued as a securely bound book or books with periodic separately bound supplements or as a loose leaf book maintained by replacing pages. Supplements or replacement pages should be issued at least annually unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the 'general ordinances' and the 'technical ordinances'. The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance and technical ordinances designated as such by the council. The council may omit from the code designated classes or ordinances of limited interest or transitory nature, but the code should clearly describe the classes.

"Section 2.84. Pleadings and proving ordinances. (a) In all civil and criminal cases it shall be sufficient to plead a city ordinance by its caption, or by its caption and the number assigned to it in the code of ordinances.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

- (1) The city code when it contains a statement that the code published by order of the council.
- (2) Photoduplicated copies of any part of the official map book certified under seal by the city clerk as having been adopted by council and maintained in accordance with its direction.
- (3) A photoduplicated copy of an ordinance as set out in the minutes, code or ordinance book of the council certified under the seal of the city clerk as a true copy.

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which having been duly pleaded or submitted in evidence, shall be upon the party asserting such modification or repeal.

(d) The official copy of the code of ordinances shall be kept in the office of the city clerk and designated as the official copy as adopted by the council. It shall be the duty of the clerk to insert at the appropriate places in the code all amendments and additions thereto and to extract from said code all provisions which from time to time may be repealed by the council.

"CHAPTER III. ADMINISTRATIVE OFFICES

"SUBCHAPTER A. ORGANIZATION OF CITY GOVERNMENT

"Section 3.01. Council to organize city government. The council may create, change, abolish and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs, except as may be otherwise provided by this Charter and by the applicable general laws of the State of North Carolina.

"SUBCHAPTER B. CITY MANAGER

"Section 3.21. Appointment. The city council shall appoint a city manager to serve at its pleasure. He shall be appointed solely on the basis of his executive and administrative qualifications, and the city manager need not be a resident of the city or state at the time of his appointment. He shall receive such compensation as the council may fix.

"Section 3.22. Powers and duties of manager. The city manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge and shall have the following powers and duties:

(a) He shall appoint and suspend or remove all city employees, except the city attorney and the city tax collector, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.

(b) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.

(c) He shall attend all meetings of the council and recommend any measures that he deems expedient.

(d) He shall see that all laws of the State, the Charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.

(e) He shall prepare and submit the annual budget and capital program to the council.

(f) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.

(g) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.

(h) He shall be a proper party to receive and accept service of all complaints, notices, legal process and other documents of a judicial nature on behalf of the city.

(i) He shall perform any other duties that may be required or authorized by the council.

"Section 3.23. Acting city manager. By letter filed with the city clerk, the manager may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of manager during his temporary absence or disability. During this absence or disability, the council may revoke that designation at any time and appoint another to serve until the manager returns or his disability ceases.

"Section 3.24. Interim city manager. When the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled.

"Section 3.25. Mayor and councilmen ineligible to serve or act as manager. Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager.

"SUBCHAPTER C. PERSONNEL

"Section 3.41. Compensation. The council shall approve the schedule of pay, expense allowances and other compensation of all city employees and may adopt position classification plans. The council may purchase life insurance and health insurance for the benefit of all or any class of city employees as a part of their compensation, and may provide other fringe benefits for city employees.

"Section 3.42. Retirement benefits. The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan offered by any reputable insurance company subject to regulation by the Commissioner of Insurance, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

"Section 3.43. Special funds. The council may continue any existing special funds or may create new special funds, and administer the same, for the relief of members of the police and fire departments who have been retired for age or for disability or injury incurred in the line of duty. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid. The Commissioner of

Insurance must certify that any retirement system or plan established or continued by the council is actuarially sound.

"Section 3.44. Personnel rules. The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent and honest career employees.

"Section 3.45. Participation in Social Security Act. The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act.

"Section 3.46. Defense of employees and officers. Upon request made by or in behalf of any employee or officer, or former employee or officer, the council, in its discretion, may provide for the defense of any civil or criminal action or proceeding brought against such employee or officer either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city. The defense may be provided by the city by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense.

"SUBCHAPTER D. CITY CLERK

"Section 3.61. Appointment and duties. The city clerk shall be appointed by and shall serve at the pleasure of the city manager. He shall give notice of meetings of the council, keep a journal of the proceedings of the council, be custodian of all city records entrusted to him, and shall perform any other duties that may be required by law, by the council or by the city manager. In addition, the city manager may appoint or provide for one or more deputy city clerks who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council.

"SUBCHAPTER E. CITY ATTORNEY

"Section 3.81. Appointment and duties. The council shall appoint a city attorney to serve at its pleasure, shall prescribe his duties and fix his rate of compensation. The council may appoint or provide for one or more associate or assistant city attorneys who shall receive such compensation as may be fixed by the council and shall have full authority to exercise and perform any of the powers and duties of the city attorney that may be specified by the council or the city attorney.

"SUBCHAPTER F. TAX COLLECTOR

"Section 3.101. Appointment and duties. The council shall appoint a tax collector to collect taxes levied by the council. The council may in its discretion designate some official or employee of the city who has other duties to perform also the duties of tax collector. The council shall fix the compensation of the tax collector and the tax collector shall serve at its pleasure. It shall be the duty of the tax collector to employ all lawful means of all taxes levied by the council and to perform such other duties as are prescribed by law or as might be directed by the council. The council at its discretion

may appoint one or more deputy tax collectors to serve at its pleasure and to receive such compensation as fixed by the council. Deputy tax collectors shall have the authority to do and perform under the direction of the tax collector any act which the tax collector himself might perform unless the scope of authority of the deputy tax collector is specifically limited by the council or by law.

"SUBCHAPTER G. MISCELLANEOUS

"Section 3.121. Official bonds. The officers and employees of the city, both elective and appointive shall execute such official bonds in such amounts and upon such terms and conditions as the council may from time to time require. The city may purchase and pay the premium for such bonds if it elects to do so.

"Section 3.122. Oaths of certain officers and employees. Before entering upon the discharge of their duties, the holders of the following offices and positions shall be required to take and subscribe before the mayor or some other officer authorized to administer oaths in such cases the oath prescribed for public officers that they will faithfully and impartially discharge the duties of their respective offices or positions according to law: city clerk, chief of police and each member of the police force, tax collector and assistant tax collector, inspections superintendent and each building inspector empowered to enforce the building code, fire chief and each member of the fire department. All such oaths shall be filed with the city clerk.

"SUBCHAPTER H. FINANCES AND FISCAL MATTERS

"Section 3.141. General authority to levy and collect taxes. To raise revenue for defraying expenses incident to the proper government of the city, the council may, except as otherwise provided by law, levy and collect (1) a tax on real and personal property and on all other property subject to taxation; (2) a tax on all trades, occupations, professions, businesses and franchises carried on within the city; and (3) any other taxes authorized by general law, by local act of the General Assembly or by a vote of the citizens of the municipality. The power to impose the tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose the tax shall also include the power to provide for its administration in the manner not inconsistent with the statute authorizing the tax.

"SUBCHAPTER I. PROCUREMENT AND PROPERTY MANAGEMENT

"ARTICLE 1. CONTRACTING, PURCHASING AND PROPERTY

"MANAGEMENT PROCEDURES

"Section 3.161. Contract procedures. All contracts, except as otherwise provided for in this Charter, or by laws, shall be authorized and approved by the council and reduced to writing in order to be binding upon the city. All contracts and all ordinances or resolutions authorizing the same shall be drawn by or approved by the city attorney before any contract is executed by the city. No construction or repair work or purchase of apparatus, supplies, materials or equipment, except in cases of emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be made or awarded therefor, unless compliance is made with the provisions of

Article VIII, Chapter 143 of the General Statutes of North Carolina, or as the same may hereafter be amended, except that:

(a) The provisions of said Article VIII shall not apply to the city in the discretion of the council in the expenditure of public funds when the estimated total costs of any repairs, completed project, building or structure shall not exceed the sum of Twenty-Five Thousand Dollars (\$25,000.00), if the repairs, completed project, building or structure are performed or accomplished by or through the duly appointed officials or agents of the city, and

(b) The provisions of said Article VIII requiring the public advertisement for bids, the taking of formal bids, and the awarding of contracts pursuant thereto shall not apply to the city in connection with the purchase of apparatus, supplies, materials or equipment requiring an estimated expenditure of public funds in an amount of Five Thousand Dollars (\$5,000.00) or less. In all respects not provided for by this Chapter, formal requirements concerning the making and execution of contracts by the city shall be governed by general law.

"ARTICLE 2. SALE AND DISPOSITION OF PROPERTY

"Section 3.162. Sale, lease, exchange and joint use of property. The city by private sale, sale on sealed bids or public auction may upon such terms and conditions as it deems wise exchange, enter into agreements regarding the joint use of, lease or sell any interest in real or personal property which it may own provided that:

(a) Private sale or sale by sealed bids may be used only with respect to personal property valued at less than \$5,000 for any one item or group of similar items. No resolution authorizing any such private sale or sale by sealed bids shall be adopted by the council until after a public hearing on the proposed action, notice of which shall be published twice in a newspaper of general circulation in the city, the first publication of which shall have been published at least fifteen (15) days prior to the date set for the public hearing.

(b) The council may upon such terms and conditions as it deems wise exchange for any interest in other real property or enter into an agreement regarding the joint use of any interest in real property which it may own. Action authorizing any such exchange or agreement for joint use shall be taken only after a public hearing on the proposed exchange or agreement for joint use, notice of which shall be published twice in a newspaper of general circulation in the city, the first publication of which shall have been published at least fifteen (15) days prior to the date set for the public hearing.

(c) When it is proposed to sell real or personal property by public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require that the highest bidder at the sale make a bid deposit in an amount specified in the resolution. The council shall then publish a notice of the sale once a week for four successive weeks. The last publication may be on the day of the sale. The notice shall contain a general description of the real or personal property sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the

council, and the council shall accept or reject it within thirty (30) days thereafter. If the bid is rejected, the council may re-advertise the property for sale.

(d) Any property owned by the city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than fifteen (15) years and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may only be rented or leased pursuant to a resolution of the council authorizing the execution of the lease or rental agreement.

"Section 3.163. Grant of easements. The city shall have authority without complying with the provisions of this Article to grant easements over, through, under, or across any city property or the right of way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right of way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right of way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right of way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as the grant of an easement.

"Section 3.164. Warranty deeds. The city is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the city council, it is in the best interest of the city to convey by warranty deed. Members of the city council are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to city-owned property unless they act in fraud, malice, or bad faith.

"Section 3.165. Conflict of interest. Any officer, department head, employee or member of the council who has financial interest, direct or indirect, in any proposed contract with the city or in any proposed sale of any land, materials, supplies or services to the city or to a contractor supplying the city shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such contract or sale. Any officer, department head, employee or member of the council who willfully conceals such a financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position. A violation of this section with the knowledge expressed or implied of the person or corporation contracting with or making a sale to the city shall render the contract void.

"CHAPTER IV

"REGULATORY AND PLANNING FUNCTIONS

"SUBCHAPTER A. ADMINISTRATION OF JUSTICE

"Section 4.01. Rewards for conviction of certain offenses. The council may offer and pay rewards for the conviction of any person or persons alleged to have committed criminal offenses which, in the judgment of the council, involve serious danger to the public peace or public safety. The council shall fix the terms, conditions and amounts of such rewards. Rewards shall be paid only by order of the council from nontax revenues

in the general fund of the city; and the council shall, in its discretion, determine who shall be entitled to the collection of any reward. In addition, the council may allocate funds from nontax revenues in the general fund of the city for the payment of informant's fees concerning such criminal offenses.

"SUBCHAPTER B. ALCOHOLIC BEVERAGE CONTROL

"Section 4.21. Board of alcoholic control: selection, composition and terms. The City of Gastonia Board of Alcoholic Beverage Control is hereby continued under this Charter. It shall be composed of five (5) members each of whom shall be a resident of the city and shall be well known for his good character, ability and business acumen. No member of the City of Gastonia Board of Alcoholic Beverage Control shall be an employee of said board. The council shall appoint the members of said board for three-year overlapping terms, shall fix their compensation and shall annually designate one of the members as chairman. Vacancies occurring otherwise than by expiration of term shall be filled by the council for the unexpired term. The council shall have the right to remove any member from said board for any cause it shall determine sufficient.

"Section 4.22. Board of alcoholic control: powers and duties. The City of Gastonia Board of Alcoholic Beverage Control shall have all the powers and duties prescribed for county boards of alcoholic control by Section 18-45 of the General Statutes of North Carolina except the powers contained in G.S. 18-45(15), and shall be subject to the powers and authority of the State Board of Alcoholic Control to the same extent as are county boards of alcoholic control set forth in G.S. 18-39, except as to the powers and authority of said State Board contained in G.S. 18-39(10). The City of Gastonia Board of Alcoholic Beverage Control shall be subject to the provisions of Article 3 of Chapter 18 of the General Statutes except to the extent that such provisions may be in conflict with this Charter. Whenever the word 'county' board of alcoholic control appears in said Article it shall apply to and include the City of Gastonia Board of Alcoholic Beverage Control. The City of Gastonia Board of Alcoholic Beverage Control shall have the authority to employ legal counsel, accountants, and such other agents or employees as it may deem necessary and fix their compensation.

"Section 4.23. Board of alcoholic control: disposition of revenue. The City of Gastonia Board of Alcoholic Beverage Control shall, out of the gross revenue derived from the operation of alcoholic beverage control stores, pay all salaries, costs and operating expenses and retain a sufficient and proper working capital, the amount thereof to be determined by the City Board of Alcoholic Beverage Control. The remaining revenue, as determined by quarterly audit, shall be paid quarterly by the City of Gastonia Board of Alcoholic Beverage Control into the general fund of the city. The Council is hereby authorized to expend revenue derived from the operation of the alcoholic beverage control stores for any and all purposes for which it may expend tax and nontax revenue.

"Section 4.24. Board of alcoholic control: issuance of licenses. Only licenses permitting the off-premises consumption of beer and wine as defined in Section 18-64 of the General Statutes of North Carolina shall be permitted notwithstanding any public, special, local or private act to the contrary. The City of Gastonia Board of Alcoholic

Beverage Control shall set up and operate alcoholic beverage control stores only in the city.

"Section 4.25. Closing of stores as the result of subsequent election. If a subsequent election shall be held and at such election a majority of the votes shall be cast 'Against Alcoholic Beverage Control Stores', the City of Gastonia Alcoholic Beverage Control Board shall within twelve (12) months from the canvassing of such votes and the declaration of the results thereof, close said stores, cease to operate the same, dispose of all alcoholic beverages, fixtures and all other property on hand and under its control, convert said property into cash, and deposit the proceeds in the general fund of the city after making a true and faithful account to the council. Thereafter, all public, local and private laws applicable to the sale of intoxicating beverages within the city in force and effect prior to the authorization to operate alcoholic beverage control stores shall be in full force and effect as if an election permitting the legal sale of beer and wine for off-premises consumption and the establishment and the operation of alcoholic beverage control stores in the city had not been held and until and unless another election is held under the provisions of Chapter 18 of the General Statutes of North Carolina as amended in which a majority of the votes shall be cast 'For Alcoholic Beverage Control Stores'.

"SUBCHAPTER C. OCCUPATIONAL AND BUSINESS LICENSING AND REGULATION

"Section 4.41. Power to regulate occupations and businesses. The council is authorized to regulate or to license any occupations, businesses, trades or forms of amusement or entertainment in the interest of public health, welfare, order or safety and to prohibit such as may be inimical to the public health, welfare, order or safety.

"SUBCHAPTER D. PLANNING, ZONING, BUILDING REGULATIONS AND RELATED MEASURES

"ARTICLE 1. IN GENERAL

"Section 4.61. Authority. For the purpose of promoting the orderly growth, expansion and development of the city and the surrounding area hereinafter defined, and for the purpose of promoting the health, safety, morals and welfare of the citizens of such area, the council is hereby authorized to exercise any planning, zoning, subdivision and building regulation powers (including plumbing, heating, cooling or electrical regulation powers) now or hereafter conferred upon the city and vested in the council by its Charter, the General Statutes, or any other law applicable to the city, not only within the corporate limits of the city but also within the territory beyond the corporate limits, as now or hereafter fixed, for a distance of one mile in all directions. Any ordinance intended to be applicable beyond the corporate limits of the city shall so provide. Such powers shall include the power to adopt such ordinances and regulations as may be considered necessary and expedient by the council to regulate, require, control and restrict:

- (a) The height, number of stories, and size of buildings and other structures;
- (b) The percentage of a lot that may be occupied;
- (c) The size of yards, courts and other open spaces;
- (d) The density of population;

- (e) Layout of lots and blocks;
- (f) Width and alignment of streets and alleys;
- (g) Location and use of buildings, structures, and land for trade, industry, residences, or other purposes;
- (h) Construction of buildings, including plumbing, heating, cooling and electrical installations;
- (i) Approval of plats and the requirements for installation of certain improvements prior thereto;
- (j) Dedication of easements for public utilities;
- (k) Names of streets with authority to provide street name signs in the area;
- (l) Height, location, construction, size and other regulatory measures with respect to commercial or other signs and outdoor advertising;
- (m) Minimum standards for buildings, residences and other structures through housing codes and other similar regulations.

In order to enforce properly the provisions of any planning, zoning or subdivision ordinance or building regulation the council shall require by ordinance that prior to the beginning of any construction, reconstruction or alteration of any building or structure or for plumbing, heating, cooling or electrical installations within said area a permit or permits be obtained therefor from the inspections superintendent of the city. All permits, plans, inspections and fees which are specified in the Code of Ordinances of the city will apply not only within the corporate limits of the city but also within the territory beyond the corporate limits as now or hereafter fixed for a distance of one mile in all directions.

The powers herein granted to the city are intended to be supplementary to any powers now or hereafter conferred upon it. The exercise of powers herein granted shall be within the discretion of the council.

"Section 4.62. Public hearings on zoning changes. Before adopting or amending any zoning regulations, restrictions or boundaries, the council after first referring the matter to the Gaston Regional Planning Commission for its recommendation shall hold a public hearing on the proposed change. A notice of the public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than fifteen (15) and no more than twenty-five (25) days before the date fixed for the hearing. At the public hearing all interested parties shall be afforded an opportunity to present their views prior to the final vote upon the ordinance providing for the change or addition.

"Section 4.63. Reference of other matters to Gaston Regional Planning Commission. The council may by ordinance or resolution provide for the reference of any other matter or class of matters pertaining to planning, zoning, subdivision and building regulation to the Gaston Regional Planning Commission before final action thereon by the council.

"Section 4.64. Board of Adjustment. (a) The council may provide for the appointment and compensation of a board of adjustment consisting of five (5) members each to be appointed for three (3) years and in such event shall designate annually one of the members as chairman. In appointing the original members of such board or in

filling vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council, in its discretion, may appoint and provide compensation for alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term at the same time in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

(b) The council may by ordinance provide that the board of adjustment shall herein decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any planning, zoning or subdivision ordinance or building regulation adopted pursuant to this Charter; and such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the city. Appeals shall be taken within the time and in the manner prescribed by the board of adjustment by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds therefor. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, shall give due notice thereof to the parties and shall render a decision within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment can permit special exceptions or variances to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. Before granting any special exceptions or variances in the zoning regulations the board shall hold a public hearing on the matter. Notice of the public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than fifteen (15) days and no more than twenty-five (25) days before the date fixed for the hearing. At the public hearing all interested parties shall be afforded an opportunity to present their views prior to the final vote upon the matter providing for the special exception or variation. The board shall have power, in passing upon such

applications, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the zoning ordinance, to adapt the application of the zoning ordinance to the necessities of the case to the end that the spirit of the zoning ordinance shall be observed, public safety and welfare secured and substantial justice done.

(d) The zoning ordinance may also authorize the board to interpret zoning maps and to pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance.

(e) The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(f) The concurring vote of four-fifths (4/5) of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Article, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the General Court of Justice through proceedings in the nature of certiorari.

(g) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

"Section 4.65. Remedies. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Article or of any ordinance or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

"Section 4.66. Conflict with other laws. When regulations made under authority of this Article require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or ordinance, regulations made pursuant to the authority contained herein shall govern. When the provisions of any other statute or ordinance require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made pursuant to the authority contained herein, the provisions of that statute or ordinance shall govern.

"Section 4.67. Authority to require installation of improvements prior to plat approval. (a) In connection with subdivision or platting controls, the council may require the improvement and grading of streets and the construction and installation of street pavement, curbs, gutters, sidewalks, and water, sewer, surface water drainage, and other utility mains, according to approved engineering plans and street profiles, as a condition precedent to the approval of the plat. The requirement may provide for

tentative approval of the plat prior to such improvement and installation; but any such tentative approval shall not be entered on the plat. The requirements may provide that in lieu of completion of the work and installations prior to final approval of a plat, the council may accept a bond, in an amount and with surety and condition satisfactory to it, providing for and securing to the city the actual construction and installation of the improvements and utilities within a period specified by the council and expressed in the bond. The city is empowered to enforce the bond by all appropriate legal and equitable remedies. Requirements adopted under this subsection may be applied throughout the area over which the city is authorized by law to exercise platting or subdivision controls.

(b) No subdivision plat shall be filed or recorded until it shall have been submitted to and approved by the city acting by or through such board or agency thereof as is designated by ordinance adopted by the council and such approval entered in writing on the plat by the official or officials designated by such ordinance.

"ARTICLE 2. BUILDING REGULATIONS

"Section 4.68. Fire limits. The council may establish fire limits in the city with such boundaries as it may determine. The council may also prohibit construction of wooden buildings and may prescribe by general rules or specific permits the kinds of buildings which may be erected therein. It may also provide for the inspection of all structures now or hereafter erected and condemn any of them which are unsafe or dangerous to life or limb by reason of their defective construction or dilapidation. In addition the council may require the owner or owners to remove or to repair within thirty (30) days any structure which has been so condemned. If the owner or owners shall neglect or refuse to remove or to repair the same for a period of thirty (30) days after notice, the council shall then have the power to remove such structure at the expense of the owner or owners. Any cost which the city may sustain shall be a lien on the premises.

"Section 4.69. Power to destroy property to stop fires. The mayor, the city manager, a member of the council, or the chief of the fire department may order the blowing up, tearing down or other destruction of any building when it is deemed necessary to stop the progress of a fire. No person shall be held liable, civilly or criminally, for acting in obedience to orders thus given, nor shall the city, the mayor, the manager, the council or the fire chief be held liable, civilly or criminally, for the giving of such orders or for damages to property ordered destroyed.

"Section 4.70. Regulation of buildings in flood plains. The city may regulate and prohibit the construction upon property subject to periodic surface flooding of any buildings or structures designed, intended or capable of being used for human habitation.

"SUBCHAPTER E. UTILITY REGULATIONS

"Section 4.91. Public utility franchises. (a) The council may grant franchises for any public utility in the manner provided by law, and, in its discretion and in accordance with Chapter VII, may hold a referendum at the expense of the applicant on the question of granting a franchise.

(b) Franchises granted hereunder:

- (1) Shall extend for such periods as the council may determine, not to exceed sixty years, and may be renewable;
- (2) Shall be revocable at the will of the council for violation of their terms or conditions;
- (3) Shall—if they pertain to streets, sidewalks, public grounds or places in the city—be separately taxable, such taxes to be in addition to all other taxes; except when such imposition by the city is prohibited by any statute now or hereafter in effect;
- (4) May not be transferred without the approval of the council;
- (5) May contain such provisions—consistent with the General Statutes relating to the jurisdiction of the State Utilities Commission—as the council deems proper concerning service, facilities, maintenance, operation, rates, accounting, reports and other matters; and
- (6) May reserve to the city the right to purchase the utility properties covered by the franchise upon such terms (including price) as may be provided for by the franchise, but in no event shall the value of the franchise be considered in determining the purchase price.

"SUBCHAPTER F. VEHICLES AND TRAFFIC

"Section 4.111. Council to adopt regulations. (a) Subject to the provisions of subsection (b) of this section, the council may adopt ordinances regulating the speeds of vehicles upon any city streets and may establish truck routes (or other required routes for limited classes of vehicles or traffic) applicable to any city street. As used in this section, the term 'city streets' includes all public highways, roads and streets within the city limits, including numbered State highways, and highways, roads and streets maintained, repaired, constructed, reconstructed or widened in whole or in part with State funds.

(b) An ordinance concerning vehicle speeds, truck routes or other required routes that applies to numbered State highways shall become effective only as provided in this subsection. The council shall transmit to the North Carolina State Highway Commission by registered mail a copy of the ordinance upon its adoption, and the ordinance shall become effective, if not disapproved by the commission, within thirty (30) days following the next regular meeting of the commission after the commission has received a copy of the ordinance.

(c) The authority herein granted to the council shall be in addition to any authority conferred by general law upon the city to regulate vehicles, traffic or the use of city streets.

(d) The council shall have authority to provide for the towing and impounding of vehicles unlawfully parked on city streets and on other public places.

"Section 4.112. Power to regulate obstruction of alleys. If, in the opinion of the council, a fire hazard is created by the obstruction of private alleys, the council may adopt regulations governing the obstruction of private alleys, either by reason of the parking of motor vehicles or otherwise, but such regulations shall not be construed so as to restrict or limit the legal right of the owners of interests in a private alley to close the alley or to exercise other property rights therein.

"Section 4.113. Off-street parking facilities. The city shall have authority to own, lease, acquire, establish, regulate, operate and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. The city shall also have authority to provide for the towing and impounding of vehicles unlawfully parked thereupon and to provide for the punishment of any person convicted of a parking violation by fine or imprisonment or both.

"Section 4.114. Regulation of taxis. (a) The city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city. The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

- (1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
- (2) Violation of any federal or State law relating to the use, possession, or sale of intoxicating liquors or narcotic or barbiturate drugs;
- (3) Addiction to or habitual use of intoxicating liquors or narcotic or barbiturate drugs;
- (4) Violation of any federal or State law relating to prostitution;
- (5) Noncitizenship in the United States;
- (6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, may require the use of taximeters and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchise operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise.

(c) The city may, by ordinance, establish standards for the use and operation of all taxis.

"CHAPTER V. CITY SERVICES AND FACILITIES
"SUBCHAPTER A. ESTABLISHMENT AND MAINTENANCE OF SERVICES
AND FACILITIES

"ARTICLE 1. CEMETERIES

"Section 5.01. Authority to establish and operate cemeteries. The city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon the city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this section 'cemetery' includes columbariums and facilities for cremation.

"Section 5.02. Authority to transfer cemeteries. The city may transfer and convey and city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or to any corporation, association, partnership or individual licensed to establish a public cemetery for private gain or profit by the State Burial Association Commissioner upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery.

"Section 5.03. Authority to abandon cemeteries. The city shall have authority to abandon any cemetery that has not been used for interment purposes within ten years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose.

"Section 5.04. Authority to assume control of abandoned cemeteries. (a) Whenever property not under the control or in the possession of any church or religious organization in the city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city is authorized to take possession of the land and any adjoining land not held by known claimants of title, to have the property surveyed and lines established, and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell any of the unused plots so laid off to any person for burial purposes, and may use the proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the cemetery from and after the date that the city assumes control of it.

"Section 5.05. Authority to condemn cemeteries. The city shall have authority to acquire title in fee simple by purchase or by exercise of the power of eminent domain to any cemetery, graveyard, or burial place within the city and to operate and maintain the property so acquired as a city cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner, nor to property owned or controlled by any church or religious organization, unless the owner of the property consents to the acquisition.

"Section 5.06. Authority to condemn easements for perpetual care. The city shall have authority to acquire an easement for perpetual care by gift, grant, purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial place within the city. When a perpetual care easement is acquired under this section, all city ordinances concerning the care and upkeep of city cemeteries shall be applicable to the cemetery, and the income from city perpetual care trust funds may be used to care for and maintain the cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner or to property owned or controlled by any church or religious organization unless the owner of the property consents to the acquisition.

"Section 5.07. Perpetual care trust funds. (a) The city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, bequests, and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of plots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from such funds shall be used to carry out contracts with plot owners for the perpetual care of the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds, and shall in no case be appropriated by, lent to, or in any manner used by the city for any purpose other than the perpetual care of city cemeteries.

"Section 5.08. Regulation of city cemeteries. The city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for plots and fees for the opening of graves in the cemetery, but it may not require the owners of plots to purchase monuments, vaults, or other items from the city.

"ARTICLE 2. GARBAGE AND REFUSE DISPOSAL

"Section 5.09. Liens for garbage and refuse disposal charges. The council may establish charges to be made for garbage and refuse disposal. In case any charge for the removal and disposal of garbage and refuse is not paid within ten (10) days after it becomes due, the charge shall become a lien against the property served or in

connection with which the service or facility is used and may be collected thereafter in the manner provided for collection of utility charges.

"ARTICLE 3. RECREATION FACILITIES

"Section 5.10. Powers. The city shall have authority to:

- (1) Establish and conduct a system of supervised recreation;
- (2) Set apart lands and buildings for parks, playgrounds, recreational centers and other recreational programs and facilities;
- (3) Acquire real property, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method;
- (4) Provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
- (5) Appropriate funds to carry out the provisions of this Article;
- (6) Accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs;
- (7) Adopt rules and regulations governing the use and operation of city owned or city operated recreation facilities; and
- (8) Fix charges for the use of any city owned or city operated recreation equipment or facility.

"ARTICLE 4. ROADS AND STREETS

"Section 5.11. Power to classify streets and establish building setback lines. The council not only within the corporate limits of the city but also within the territory beyond the corporate limits as now or hereafter fixed for a distance of one mile in all directions may:

- (a) Classify all or a portion of any existing or proposed street according to its size, present and anticipated traffic load and other characteristics relevant to the achievement of the purposes of this Article; and
- (b) Establish by ordinance minimum distances that buildings constructed along each class or type of street shall be set back from the right of way line or the center line of the street. The council may classify portions of any street in a manner different from other portions of the same street where the characteristics of the portions differ.

"Section 5.12. Purposes. Any setback line shall be designated:

- (a) To promote the public safety by providing adequate sight distances for motorists using the street, lessening congestion in the street, facilitating the safe movement of traffic on the street and providing adequate fire lanes between buildings; and
- (b) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise and fumes created by traffic on the street and by insuring an adequate supply of light and air.

"Section 5.13. Modification by Board of Adjustment. Any setback line ordinance shall empower the Board of Adjustment, upon an appeal filed with it by the property owner, to vary or modify setback requirements as they apply to a particular piece of property upon a showing that:

(a) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement;

(b) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted; and

(c) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity. In granting relief, the Board may impose reasonable and appropriate conditions and safeguards to protect the public interest and neighboring properties.

"Section 5.14. Enforcement. Any setback line ordinance may provide for enforcement through the issuance of building permits and may be coordinated with the enforcement of the building code, the zoning ordinance and the subdivision ordinance. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of an ordinance, the city, in addition to other remedies or penalties, may bring an appropriate proceeding (a) to prevent, restrain, correct or abate the violation, or (b) to prevent or abate the occupancy of the building or structure.

"ARTICLE 5. UTILITIES

"Section 5.15. Operation of water, sewer and electrical systems and other utilities.

(a) The city council may:

- (1) Provide for the construction or acquisition and operation of utilities and utility systems;
- (2) Acquire any real or personal property necessary or incidental thereto, including equipment, machinery, and all manner of rights or interests in or relating to land and water, and appurtenances thereto;
- (3) Establish rates of charge for utility services and for the use of utility facilities;
- (4) Adopt rules and regulations concerning the management of utilities and utility systems, with regard to such matters as maintenance, operation and improvement thereof or require the pretreatment of waste; and
- (5) Adopt rules and regulations concerning charges for utility services.

(b) As used in this Charter, unless the context otherwise requires, the term 'utility' includes water supply, water distribution, sewerage, waste disposal, electric power, natural or manufactured gas and public transportation.

"Section 5.16. Connection by abutting owners. The council may require that within thirty (30) days after a water main, sewer line or electric line is completed and made ready for use, the owner of every abutting lot whereon such utility is supplied for any human use shall cause the lot to be connected thereto.

"Section 5.17. Liens for utility charges. In case any charge for utility service or for the use of utility facilities is not paid within ten (10) days after it becomes due, the same shall become a lien upon the real property served or in connection with which the service or facility is used. The charge may at any time thereafter be collected, either by suit in the name of the city or by the city tax collector, through the sale of the property upon which the lien attaches at the Gaston County courthouse door, after advertising the

sale once a week for four successive weeks in some newspaper published in the city which is qualified to carry legal notices. The sale shall be made under the same rules and regulations, and subject to the same costs and penalties and to the same rights of redemption as are provided by law for the foreclosure of the lien on real estate for taxes.

"Section 5.18. Deposits. In addition to other remedies now provided for the collection of any charge for utility service or the use of utility facilities and as a part of the cost of such utility service, a deposit by an owner or tenant of the premises to be served shall be required. The deposits may vary according to the type of service. The utility service charge, if not paid within the time designated, may be deducted from the deposit and utility service may be cut off and not be turned on again until the balance of the deposit is increased to the original amount thereof. In order that the utility of the city may be protected and that the costs of services shall be paid by the person receiving such services, an owner or tenant may give notice that the premises have been or will be vacated and in the event that all charges due are paid he shall be entitled to the return of his deposit. In the event the owner or tenant shall vacate the premises without notifying the city and having the utility cut off, he shall forfeit to the city any balance of such deposit remaining after the utility service charge due has been deducted. Such forfeited money may be used by the city for the payment of principal or interest on the bonded indebtedness of the city incurred for the utility involved or the money may be used for the maintenance or extension of the utility service involved.

"Section 5.19. Penalty for using utility service after discontinuance. If pursuant to any rule or regulation utility service to any property is discontinued, the council may provide that it shall be unlawful for any person, firm or corporation without the approval of the city manager to renew a utility service or to use it without having first paid any outstanding charges and may further provide that any violation of this Article shall constitute a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than thirty (30) days or both.

"Section 5.20. Dedication of water and sewer lines. Before any person, firm or corporation may connect any privately owned water or sewer line with any water or sewer line of the city, the person, firm or corporation in consideration of making the connection and the benefits to be derived therefrom shall, by proper written instrument, convey the water or sewer line to the city. No connection may be made with the city's water or sewer lines without the express approval of the city, nor may any connection be effected except in accordance with its applicable regulations. If any person, firm or corporation connects any privately owned water or sewer line without first dedicating and conveying it to the city, the act of connecting shall be considered a conveyance of the line to the city and the city may accept it or may order that it be disconnected. The city may contract with any person, firm or corporation to lay water or sewer lines within or without the city and connect them to the city's system, notwithstanding any provisions of this section.

"SUBCHAPTER B. LOCAL IMPROVEMENTS AND EMINENT DOMAIN

"ARTICLE 1. LOCAL IMPROVEMENTS

"Section 5.41. Authority. The city has all the power and authority granted to counties and municipalities by the general laws of the State with respect to local

improvements, such as, but not limited to, grading, regrading, widening, paving and repaving of public streets and alleys; constructing, reconstructing, and altering of sidewalks, curbs, gutters and storm drains in the public streets and alleys; and laying or relaying sanitary sewer and water lines. The authority granted by this Article is in addition to that granted by any other law and with respect to any particular local improvement, the city may exercise any one or more of the alternative powers available to it.

"Section 5.42. Alternative procedures and power. In making special assessments the city may employ the following procedures:

(a) Upon receipt of a petition from one or more owners of abutting property where fifty per cent or more of the total street frontage is in one ownership, the council may order the making of any local improvement. The council may assess the cost thereof against the abutting property in the same manner and following the same procedures set out in the general laws of the State for making special assessments against property benefited by local improvements.

(b) The council may order the making of any local improvement and assess the cost thereof, except the city's portion, if any, against only a limited number of abutting properties if the owners of those properties submit a petition asking that the improvement be made and that the total amount to be assessed for the improvement be assessed only against their properties.

(c) If, in the council's judgment, which shall be conclusive, the abutting property to be assessed will be benefited in an amount at least equal to the assessment, no petition for local improvements shall be necessary and the council may order the making of any such local improvement and assess the cost thereof against abutting properties in the following cases:

- (1) When any street or part of a street is unsafe; or the improvement of a street or part of a street not more than three blocks in length is necessary to connect streets already paved; or the improvement of a street or part of a street is necessary to connect a paved street, or portion thereof, with a paved highway; or the improvement of a street or part of a street is necessary to provide a paved approach to a railroad, street grade separation or a bridge; or the widening of any street or part of a street is necessary to accommodate present and anticipated volumes of traffic.
- (2) When any street or part of a street, or any property, is without storm sewer or other surface drainage improvement, and storm sewer or other surface drainage should be provided in the public interest.
- (3) When any street or part of a street is without sidewalks and sidewalks should be provided in the public interest.

(d) If the council determines that the public interest requires repair of a sidewalk or portion of a driveway within the public right of way, the council may order the making of the repair and assess the total cost against the property abutting the sidewalk or driveway repaired. Before an assessment may be made for the repair, at least thirty (30) days' written notice shall be given to the abutting property owner personally or by

registered or certified mail to his last known address or his address as shown on the tax records. The notice shall state that he is required to make the repair at his own expense in conformity with the sidewalk standards adopted by the city, and that if he shall fail to make the repair within thirty (30) days after notice is served the city thereupon may make the repair and assess the cost. If the council finds that any sidewalk or driveway is in need of immediate repair, the council may adopt a resolution setting out its finding and directing that the repair be made immediately and that the cost be assessed against the abutting property without prior notice to the property owner affected.

(e) The council may provide for special assessment exemptions for corner lots. Exemptions for corner lots may apply to only one side of each lot and the amount of the exemption may not exceed seventy-five per cent of the frontage of that side. If the corner formed by two intersecting streets is rounded into a curve or is foreshortened for the purpose of providing sight distance or for any other purpose of construction, the frontage for assessment purposes shall be calculated to the midpoint of the curve or foreshortened corner.

(f) Any property owner has the option of paying assessments for local improvements in cash or in installments. In the resolution ordering the improvements, the council shall determine the number of equal annual installments, which shall be not less than two nor more than ten. The council may direct that (1) installments shall become due and payable on the same date when property taxes are due and payable, or (2) the first installment with interest shall become due and payable sixty days after the date of the confirmation of the assessment roll, and one subsequent installment with interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full.

"Section 5.43. Planting strip and driveway maintenance. It is the responsibility of the abutting property owner to maintain any property or driveway between the property line and the curb of a paved street.

"Section 5.44. Exchange of property. In connection with street widening, the city may purchase property immediately adjacent to property located on a street corner and convey the inside property to the owner of the corner property in exchange for property needed for street widening.

"ARTICLE 2. EMINENT DOMAIN

"Section 5.45. Institution of action and deposit. In case condemnation shall become necessary the city shall institute a civil action by filing in the General Court of Justice a complaint declaring that such land, easement or interest therein is thereby taken for the use of the city. Said complaint shall contain or have attached thereto the following:

(1) A statement of the authority under which the public use for which said land is taken.

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.

(3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.

(4) The names and addresses of those persons who, the city is informed and believes, may have or claim to have an interest in said lands, so far as the same can be

reasonable diligence be ascertained; and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.

(5) A statement as to such liens or other encumbrances as the city is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.

(6) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

The filing of said complaint shall be accompanied by a deposit of the sum of money estimated by said city to be just compensation for said taking and upon the filing of said complaint and deposit of said sum, summons shall be issued and together with a copy of said complaint and notice of deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The city may amend the complaint, may increase the amount of its deposit with the court at any time while the proceeding is pending and the owner shall have the same rights of withdrawal of this additional amount as set forth in Section 5.47 of this Article.

"Section 5.46. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action. Upon the filing of a complaint and deposit in court, to the use of the person entitled thereto, of the amount of the estimated compensation stated in the notice of deposit, title to said land or such other interest therein specified in the complaint, together with the right to immediate possession thereof, shall vest in the city and the judge shall enter such orders in the cause as may be required to place the city in possession. Said land shall be deemed to be condemned and taken for the use of the city and the right to just compensation therefor shall vest in the person owning said property or any compensable interest therein at the time of the filing of the complaint and deposit of the money in court; and compensation shall be determined and awarded in said action and established by judgment therein.

At the time of the filing of the complaint and deposit of estimated compensation, city shall record a memorandum of action with the Register of Deeds and said memorandum shall be recorded among the land records of Gaston County. Upon the amending of any complaint affecting the property taken, the city shall record a supplemental memorandum of action. The memorandum of action shall contain:

(1) The names of those persons who the city is informed and believes may have or claim to have an interest in said lands and who are parties to said action;

(2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;

(3) A statement of the estate or interest in said land taken for public use; and

(4) The date of institution of said action and such other reference thereto as may be necessary for the identification of said action.

"Section 5.47. Disbursement of deposit. A person named in the complaint may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall, unless there is a dispute as to title, order that the money deposited be paid

forthwith to the person entitled thereto in accordance with the application. The judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

No notice to the city of the hearing upon the application for disbursement of deposit shall be necessary, but a copy of the order disbursing the deposit shall be served upon the city manager.

"Section 5.48. Answer, reply and plat. Any person whose property has been taken by the city by the filing of a complaint and deposit of estimated compensation may within the time hereinafter set forth file an answer to the complaint praying for a determination of just compensation. Said answer shall, in addition, contain the following:

(1) Such admissions or denials of the allegations of the complaint as are appropriate.

(2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken.

(3) Such affirmative defenses or matters as are pertinent to the action.

A copy of the answer shall be served on the city manager, or such other process agent as may be designated by the council, provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer shall be deemed denied. The city may, however, file a reply within thirty (30) days from receipt of a copy of the answer.

The city, within ninety (90) days from the receipt of the answer shall file in the cause a plat of the land taken and such additional area as may be necessary to properly determine the damages, and a copy thereof shall be mailed to the parties or their attorney.

"Section 5.49. Time for filing answer. Any person named in and served with a complaint shall have four (4) months from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. For good cause shown and upon notice to city the judge may within the initial four months' period extend the time for filing answer for a period not to exceed an additional two (2) months.

"Section 5.50. Determination of issues other than damages. After the filing of the plat, the judge, upon motion and ten (10) days' notice by either the city or the owner, shall, either in or out of term, hear and determine any and all issues raised by the pleadings other than the issue of damages, including, but not limited to, if controverted, questions of necessary and proper parties, title to the land, interest taken, correctness of the map, and area taken.

"Section 5.51. Appointment of commissioners. Upon request of the owner in the answer, or upon motion filed by either the city or the owner within sixty (60) days after the filing of answer, the Clerk of Superior Court shall appoint, after the determination of other issues as provided by Section 5.50 of this Article, three competent, disinterested freeholders residing in the county to go upon the property and under oath appraise the

damage to the land sustained by reason of the taking and report same to the court within a time certain. If no request or motion is made for the appointment of commissioners within the time permitted, the cause shall be transferred to the civil issue docket for trial at term as to the issue of just compensation.

Such commissioners, if appointed, shall have the power to make such inspection of the property, hold such hearings, swear such witnesses, and take such evidence as they may, in their discretion, deem necessary, and shall file with the court a report of their determination of the damages sustained.

A copy of the report shall at the time of filing be mailed to each of the parties. Within thirty (30) days after filing the report, either the city or the owner may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the civil issue docket of the appropriate division of the General Court of Justice for trial de novo by a jury at term as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the General Court of Justice, nor shall evidence of the deposit by the city into the court be competent upon the trial of the issue of damages. If no exception to the report of commissioners is filed within the time prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with Section 5.55 of this Article, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury.

"Section 5.52. Parties; order; continuances. The judge may appoint some competent attorney to appear for and to protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceedings by an attorney or agent. The judge shall appoint guardians ad litem for such persons as are minors, incompetents, or other parties who may be under a disability and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding and enter such other orders either in laws or equity as may be necessary to carry out the provisions of this Article.

Upon the coming on of the cause for hearing pursuant to Section 5.50 or upon the coming on of the cause for trial, the judge, in order that the material ends of justice may be served, upon his own motion, or upon motion of any of the parties thereto and upon proper showing that the effect of condemnation upon the subject property cannot presently be determined, may, in his discretion, continue the cause until the project under which the appropriation occurred is completed or until such earlier time as, in the opinion of the judge, the effect of condemnation upon said property may be determined.

"Section 5.53. Remedy where no complaint filed; recording memorandum of action. Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the city and no complaint has been filed by the city may, within twenty-four (24) months from the date of said taking, file a complaint in the

General Court of Justice setting forth the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate and if such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint, summons shall issue and together with a copy of said complaint be served on the city manager. The allegations of said complaint shall be deemed denied; however, the city within sixty (60) days of service of summons and complaint may file answer thereto, and if said taking is admitted by the city, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of Section 5.47 of this Article. If a taking is admitted, the city shall, within ninety (90) days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the Register of Deeds and it shall be recorded among the land records of Gaston County. The memorandum of action shall contain:

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, and such other reference thereto as may be necessary for the identification of said action.

"Section 5.54. Measure of damages. The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

- (1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for public purposes.
- (2) When the entire tract is taken, the measure of damages of said taking shall be the fair market value of the property at the time of taking.

"Section 5.55. Interest as a part of just compensation. To said amount awarded as damages by the commissioners or a judge or jury, the judge shall, as a part of just compensation, add interest at the rate of six per cent (6%) per annum on said amount

from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article.

"Section 5.56. Additional rules. In all cases of procedure under this Article where the mode or manner of conducting the action is not expressly provided for in this Article or by the Rules of Civil Procedure in effect in North Carolina or where said Rules of Civil Procedure are in applicable, the judge before whom such proceeding may be pending shall have the power to make all the necessary orders and rules of procedure necessary to carry into effect the object and intent of this Article and the practice in such cases shall conform as nearly as possible to the practice in other civil actions in said courts.

"Section 5.57. Definitions. (1) 'Property' means any right, title, or interest in land, including leases and options to buy or sell. 'Property' also includes rights of access, rights-of-way, easements, water rights, air rights, and any other privilege or appurtenance in or to the possession, use and enjoyment of land.

(2) 'Owner' includes the plural when appropriate and means any person holding a vested estate of inheritance in the property, a tenant for life or for years, tenants by the entirety, the holder of the equity of redemption under a mortgage, and the grantor and third party beneficiary under a deed of trust. Unless otherwise provided, 'owner' does not include persons holding liens, judgments, options, or any other encumbrances of record on the title to the property, or persons holding unvested future interests in the property.

(3) 'Person' includes the plural when appropriate and means a natural person, association, partnership, corporation, the State of North Carolina, the United States of America, a body politic and corporate, and any other legal entity capable of owning or having any interest in property under the laws of North Carolina.

(4) 'Eminent domain' means the power to divest title from the owner of property and vest it in the possessor of the power against the will of the owner upon the payment of just compensation for the right, title, and interest divested.

(5) 'Condemnation' means the procedure prescribed by law for exercising the power of eminent domain.

(6) 'Judge' shall mean the judge of the appropriate division of the General Court of Justice before whom the cause is pending.

"Section 5.58. Final judgments. Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the property affected, together with a description of the property and estate or interest acquired by the city and a copy of said judgment shall be certified to the Register of Deeds and be recorded among the land records of Gaston County.

"Section 5.59. Payment of compensation. If there are adverse and conflicting claimants to the deposit made into the court by the city or the additional amount determined as just compensation, on which final judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the city, may retain said cause for determination of who is entitled to said moneys, may by further

order in the cause direct to whom the same shall be paid and may in his discretion order a reference to ascertain the facts on which such determination and order are to be made.

"Section 5.60. Agreements for entry. The provisions of this Article shall not prevent the city and the owner from entering into a written agreement whereby the owner agrees and consents that the city may enter upon his property without filing a complaint and depositing estimated compensation as herein provided, and the city shall have the same rights under such agreement with the owner in carrying on work on such project as it would have by having filed a complaint and having deposited estimated compensation as provided in this Article.

"Section 5.61. Costs and appeal. The city shall pay all court costs taxed by the court. Either party shall have a right of appeal for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions, and it shall not be necessary that an appeal bond be posted.

"Section 5.62. Entry for surveys. The city without having filed a complaint as provided in this Article is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings or examinations as may be necessary in carrying out and performing its duties under this Article, and such entry shall not be deemed a trespass, or taking within the meaning of this Article; provided, however, that the city shall make reimbursement for any damage resulting to such land as a result of such activities and the owner, if necessary, shall be entitled to proceed under the provisions of Section 5.53 of this Article to recover for such damage.

"Section 5.63. Refund of deposit. In the event the amount of the final judgment is less than the amount deposited by the city pursuant to the provisions of this Article the city shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto; provided, however, in the event there are not sufficient funds on deposit to cover said excess the city shall be entitled to a judgment for said sum against the person or person having received said deposit.

"Section 5.64. Power of eminent domain conferred. In addition to powers conferred by any other general law, local act or this Charter the city shall possess the power of eminent domain and may acquire by purchase or condemnation any property necessary or useful for the following purposes:

- (1) Opening, widening, extending, or improving streets, alleys, and sidewalks.
- (2) Establishing, extending, enlarging, or improving the following public enterprises:
 - (a) Electric power generation and transmission distribution systems;
 - (b) Water supply and distribution systems;
 - (c) Sewage collection and disposal systems;
 - (d) Gas distribution systems;
 - (e) Bus lines and mass transit systems;
 - (f) Solid waste collection and disposal systems and facilities;
 - (g) Cable television systems;
 - (h) Off-street parking facilities;
 - (i) Airports;
 - (j) Museums;

- (k) Armories;
- (l) Parks, playgrounds and other recreational facilities;
- (m) Storm sewer and drainage systems and works; and
- (n) City halls, fire stations, office buildings and other buildings for use by city.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

"Section 5.65. Acquisition of whole parcel or building. When the proposed taking requires condemnation of only a portion of a parcel of land leaving a remainder of such shape, size or condition that it is of little value, the city may acquire the entire parcel by purchase of condemnation. The resolution adopted by the city council for condemnation shall include:

- (1) A determination by the council that a partial taking of the land would substantially destroy the economic value or utility of the remainder, or
- (2) A determination by the council that an economy in the expenditure of public funds will be promoted by taking the entire parcel, or
- (3) A determination by the council that the interest of the public will be best served by acquiring the entire parcel.

Residues acquired under this section may be sold or disposed of in the manner provided for the disposition of city property, or may be exchanged for other property needed by the city.

When the proposed taking requires condemnation of a portion of a building or other structure, the city may acquire the entire building or structure by purchase or condemnation, together with the right to enter upon the surrounding land for the purpose of removing the building or structure. If the entire building is to be included in the property to be condemned, a resolution of condemnation adopted by the council shall include either:

- (1) That an economy in the expenditure of public funds will be promoted by acquiring the entire building or structure; or
- (2) That it is not feasible to cut off a portion of the building or structure without destroying the whole; or
- (3) That the convenience, safety, or improvement of the street or highway will be promoted by acquiring the entire building or structure.

Nothing in this section shall be deemed to compel the city to condemn the underlying fee of the portion of any building or structure that lies outside the right of way of any existing or proposed improvement.

"Section 5.66. Fee simple title acquired. Unless otherwise expressly provided in the condemnation resolution, condemnation shall vest in the city an estate in fee simple absolute to the property acquired.

"Section 5.67. Removal of structures on condemned land; lien. The city may allow the owner of property acquired by condemnation to remove any building, permanent improvement, or fixture wholly or partially located on or affixed to the property, and

may specify a time after adoption of the final condemnation resolution within which it may be removed. If the report of commissioners deducted the value of any such property to be removed from the award of compensation and allowed the cost of removal as an element of damages and the owner fails to remove it within the time allowed, the city may remove it and the cost of the removal and storage of the property shall be chargeable against the owner and a lien upon any remainder of the property not acquired by the city, to be recovered or foreclosed in the manner provided by law for recovery of debt or foreclosure of mortgages.

"Section 5.68. Sale or other disposition of land condemned. When any land condemned in fee by the city is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property.

"CHAPTER VI

"ELECTIONS

"SUBCHAPTER A. IN GENERAL

"Section 6.01. Time of city elections. On the day provided by law in 1973, and biennially thereafter, there shall be elected by the qualified voters of the entire city at large a mayor and six (6) councilmen, one councilman from each of the six wards of the city. Each councilman shall be a resident of the ward he represents.

"Section 6.02. Wards. For the purpose of election of councilmen, the city shall be divided into six (6) geographical subdivisions to be known as wards. The council may adopt the present wards as now established and defined or by resolution it may establish and define new ones, but the six wards as now fixed and defined in the city shall remain as they are until altered. The council shall have the power from time to time by resolution to alter the boundaries of any of the wards as it may deem expedient. After adoption of a resolution altering a ward, notice thereof shall be published twice in a newspaper having a general circulation in the city, the first publication of which shall be published at least sixty (60) days prior to the last date on which a candidate may file for office. Provided, that in the event the present corporate limits of the city are extended after the wards have been so established and notice of the same has been published as above provided, any of said new area shall comprise and be a part of such ward or wards that such ward or wards' boundary lines, if extended, would generally embrace by following streets, roads, highways, railroads, creeks or branches, or other established, fixed or natural boundaries.

"Section 6.03. Precinct and ward map. The city engineer shall prepare a map showing the location of each precinct, voting place and ward to be entitled 'City of Gastonia Election Map' and shall also prepare a written description of the boundaries as shown on said map to be designated 'Description of Gastonia Election Precincts, Voting Places and wards'. Said map and description shall be retained permanently in the office of the city clerk as the official election map and description of the election precincts, voting places and wards. The city engineer shall indicate any alterations by making appropriate changes in or additions to said

"CHAPTER VII

"MISCELLANEOUS

"SUBCHAPTER A. CLAIMS AGAINST THE CITY

Section 7.01. Presentation of claims to council. No action shall be instituted or maintained against the city upon any claim or demand whatsoever of any kind or character unless the claimant shall have first presented in writing his or her claim or demand to the council or to the city manager and said council or city manager shall have declined to pay or settle the same as presented. Nothing contained in this subchapter shall be construed to prevent any statute of limitations from commencing to run at the time when a claim accrued or demand arose, or in any manner to interfere with its running.

"Section 7.02. Time of presentation of claims. (a) Except as otherwise provided in this section, no action for damages of any character whatever, to either person or property, shall be instituted against the city unless, within ninety (90) days after the happening or infliction of the injury complained of, the complainant, his executor, administrator, guardian or attorney in fact shall have given notice in writing to the council or city manager of the injury, stating in the notice the date and place of the injury, the manner of infliction, the character of the injury and the amount of damage claimed.

(b) No action shall be instituted against the city on account of damages to or compensation for real property used or taken by the city for any public purpose of any kind unless, within two years after such alleged use, the owner, his executor, administrator, guardian or attorney in fact shall have given notice in writing to the council of the claim, the notice to set forth 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) 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 (6) months after the termination of the physical or mental 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 (3) 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 (6) months after termination of the physical or mental incapacity, or within three (3) years after the happening or infliction of the injury complained of, whichever is the longer period. The city at any time may request the appointment of a guardian to represent any person having a potential claim against the city and known to be suffering from physical or mental incapacity.

"SUBCHAPTER B. CLAIMS BY THE CITY

"Section 7.21. Settlement of claims by the city manager. The city manager is hereby authorized to execute releases of persons, firms and corporations because of damages to personal property belonging to the city when the full amount of damages to such property is ascertained and a statement thereof has been furnished to the city manager by the city attorney and the amount of such release does not exceed One Thousand

Dollars (\$1,000.00). In the event that a draft or check is presented to the city which constitutes a release, instead of a regular release form, the city manager is hereby authorized to direct that such draft or check be handled as other payments to the city and, when approved by said city manager, shall constitute a release to the extent stated on the draft or check.

"SUBCHAPTER C. WAIVER OF GOVERNMENTAL IMMUNITY

"Section 7.41. Authority to purchase liability insurance. The city may contract to insure itself and any of its officers, agents and employees against liability for wrongful death or negligent or intentional damage to person or property, and against absolute liability for damage to person or property, caused by an act or omission of the city or any of its officers, agents or employees when acting within the scope of their authority or the course of their employment. The council shall determine what liabilities and what officers, agents and employees shall be covered by any insurance purchased pursuant to this section.

Purchase of insurance pursuant to this section waives the city's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function of local government during the term of the insurance. By entering into an insurance contract with the city, an insurer waives any defense based upon the governmental immunity of the city.

"Section 7.42. Damage suits against the government involving governmental functions. Any person, or in case of his death his personal representative, sustaining damages as a result of an act or omission of the city or any of its officers, agents or employees, occurring in the exercise of a governmental function of local government, may sue the city for recovery of damages. To the extent of the coverage of insurance purchased pursuant to Section 7.41, governmental immunity shall not be a defense to the action. Otherwise, the city shall have all defenses available to private litigants and to counties and municipalities in any action for wrongful death or intentional or negligent damage to person or property or absolute liability for damage to person or property, without restriction, limitation or other effect, whether the defense arises from common law or by virtue of any statute.

Despite the purchase of insurance as authorized by Section 7.41 of this Charter, the liability of the city for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them.

"SUBCHAPTER D. SUPPLEMENTARY

"Section 7.61. Powers granted supplementary. The powers granted by this Charter are supplementary to any powers heretofore or hereafter granted by any other general law, local act or amendment to this Charter for the same or similar purposes."

Sec. 2. Chapter 96 of the Private Laws of 1913, Chapter 45 of the 1953 Session Laws, Chapter 187 of the 1965 Session Laws and all other laws and clauses of laws amending the Charter of the City of Gastonia are hereby repealed.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 19th day of July, 1971.