

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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HOUSE DRH11064-LMx-20 (02/02)

Short Title: Incorporate Leicester.

(Local)

Sponsors: Representative Fisher.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF LEICESTER, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Leicester is enacted to read:

"CHARTER OF THE TOWN OF LEICESTER.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Leicester are a body corporate politic under the name 'Town of Leicester.' Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Leicester are as follows:

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Leicester is the Town Council, which shall have four members, and a Mayor.

"Section 3.2. **Manner of Electing Town Council; Terms; Vacancies.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2011, the two candidates receiving the highest numbers of votes shall be elected to four-year terms and the two candidates receiving the next highest numbers of votes shall be elected to two-year terms. In 2013, and quadrennially thereafter, two members shall be elected to four-year terms. In 2015, and quadrennially thereafter, two members shall be elected to four-year terms. Vacancies on the Town Council shall be filled as provided in G.S. 160A-63, however, notwithstanding the provisions of G.S. 160A-63, a person appointed to fill a vacancy on the Town Council shall serve the remainder of the unexpired term.

"Section 3.3. **Manner of Electing Mayor; Term of Office; Duties; Vacancies.** The qualified voters of the entire Town shall elect the Mayor. In 2011, and biennially thereafter, the Mayor shall be elected for a term of two years. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Leicester, and shall have the right to vote as a member of the Town Council on all matters before the Town Council, but shall have no right to break a tie vote in which the Mayor has participated. Vacancies in the office of Mayor shall be filled as provided in G.S. 160A-63, however, notwithstanding the provisions of G.S. 160A-63, the person



1 appointed to fill a vacancy in the Office of Mayor shall serve the remainder of the unexpired
2 term.

3 "Section 3.4. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
4 Mayor Pro Tempore shall be elected from among the members of the Town Council at the
5 organizational meeting after the initial election in 2011, and shall serve for a term of two years.
6 The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and
7 Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of the
8 Town Council present may elect a temporary chair to preside in the absence. The Mayor Pro
9 Tempore shall have the right to vote on all matters before the Town Council and shall be
10 considered a member of the Town Council for all purposes.

11 "Section 3.5. **Oath of Office.** Every officer of the Town shall, before entering the duties of
12 his office, take and subscribe to the following oath to be filed and kept in the office of the
13 Town Clerk:

14 "I, _____, do solemnly swear (or affirm) that I will support and maintain the
15 Constitution and laws of the United States, and the Constitution and laws of North Carolina not
16 inconsistent therewith, and that I will faithfully discharge the duties of my office as
17 _____, so help me God."

18 "Section 3.6. **Residency Requirement.** Members of the governing body of the Town of
19 Leicester, whether elected or appointed, must be qualified voters who reside within the
20 corporate limits of the Town in order to qualify to take, hold, and continue in office.

21 "ARTICLE IV. ELECTIONS.

22 "Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan
23 basis and the results determined by a plurality as provided in G.S. 163-292.

24 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
25 163 of the General Statutes, with the first regular municipal election to be held on November 8,
26 2011.

27 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
28 held only as provided by the general law of North Carolina, local acts of the General Assembly,
29 or as provided for in this Charter.

30 "ARTICLE V. ADMINISTRATION.

31 "Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town shall operate
32 under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter
33 160A of the General Statutes.

34 "Section 5.2. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
35 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
36 Town, advise Town officials, and perform other duties as required by law or as directed by the
37 Town Council.

38 "Section 5.3. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall
39 perform duties as required by law or as directed by the Town Council. The Town Clerk shall
40 serve at the pleasure of the Town Council.

41 "Section 5.4. **Other Officers and Employees.** The Town Council may appoint other
42 officers and positions as deemed appropriate, subject to the requirements of general law.

43 "Section 5.5. **Boards and Commissions.** The Town Council may create and establish, by
44 ordinance or resolution, any authorities, boards, or commissions it deems necessary or
45 appropriate to the administration, regulation, and operation of services, activities, and functions
46 which the Town is authorized by law to perform, regulate, and carry on.

47 "Section 5.6. **Consolidation of Functions.** Where positions are not incompatible, the
48 Town Council may combine in one person the powers and duties of two or more officers
49 created or authorized by this Charter.

50 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

1 "Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and
2 fees authorized by general law.

3 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2011, the citizens
4 and property in the Town of Leicester shall be subject to municipal taxes levied for the year
5 beginning July 1, 2011, and for that purpose the Town shall obtain from Buncombe County a
6 record of property in the area herein incorporated which was listed for property taxes as of
7 January 1, 2011.

8 "Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2011-2012
9 without following the timetable in the Local Government Budget and Fiscal Control Act but
10 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
11 2011-2012, ad valorem taxes may be paid at par or face amount within 90 days of the adoption
12 of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360.

13 "ARTICLE VII. ORDINANCES.

14 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of
15 Leicester is authorized to adopt such ordinances as the Town Council deems necessary for the
16 governance of the Town.

17 "Section 7.2. **Covenants.** This Charter does not affect any restrictive covenants,
18 restrictions, and regulations regarding structures or uses within subdivisions in existence before
19 incorporation, and the Town may not make lawful under any Town zoning or other ordinance
20 any structure or use forbidden under the covenants, restrictions, and regulations.

21 "ARTICLE VIII. FINANCE.

22 "Section 8.1. **Financing Village Operations.** Annually, the Mayor and Council shall
23 prepare a budget, setting forth anticipated revenues and expenses as provided by Chapter 159
24 of the General Statutes. Copies of the budget shall be made available to the public.

25 "Section 8.2. **Expenditures.** The Mayor and Council shall monitor Charter expenditures so
26 as to insure that they do not exceed total revenues.

27 "ARTICLE IX. SPECIAL PROVISIONS.

28 "Section 9.1. **Fire Protection.** The Town of Leicester may contract with the Leicester,
29 French Broad, and West Buncombe County Fire Departments to provide fire protection and
30 emergency services to the Town. The contract terms and amount paid by the Town of Leicester
31 to a fire department providing fire protection or emergency services to the Town shall be
32 mutually agreed upon and annually renewed by the Board of Directors of each of the fire
33 departments and the Town Council.

34 "Section 9.2. **Safety Protection.** The Town of Leicester may contract with the Buncombe
35 County Sheriff's Department to provide safety protection for the Town. The contract terms and
36 amount paid by the Town of Leicester to the Buncombe County Sheriff's Department shall be
37 mutually agreed upon and annually renewed by the Buncombe County Commissioners and the
38 Town Council.

39 "ARTICLE X. MISCELLANEOUS.

40 "Section 10.1. **Provision of Services and Administration of Functions.** The Town
41 Council may enter into agreements with other governmental bodies, including the Board of
42 Commissioners of Buncombe County, and private enterprises for the provision of services,
43 including street lighting and planning and zoning, and administration of corporate functions in
44 order to provide the services and administer the functions in the most efficient and
45 cost-effective manner. The contract terms and amount paid by the Town of Leicester to a
46 governmental body or private enterprise under this section shall be mutually agreed upon.

47 "Section 10.2. **Conflicts of Interest.** Any officer, employee, council member, or Mayor
48 who has a financial interest, direct or indirect, in any proposed contract with the Town or in a
49 proposed sale of any land, material, supplies, or services to the Town or to a contractor
50 supplying the Town shall make known that interest and shall refrain from voting upon or
51 otherwise participating in the making of such a contract or sale. If the Town Council

1 determines that any officer, employee, council member, or Mayor has willfully violated the
2 requirements of this section, that person shall be removed by the Town Council from his office
3 or position. Violation of this section with knowledge, expressed or implied, by the person or
4 corporation contracting with or making a sale to the Town shall render the contract void.

5 "Section 10.3. **State Distributions.** If the Town of Leicester is incorporated after June 30,
6 2011, the Town is nevertheless eligible to receive distributions of funds payable by the State of
7 North Carolina for fiscal year 2011-2012, as if the Town of Leicester had been incorporated
8 with an effective date of June 30, 2011.

9 "Section 10.4. **Expenses.** The persons or entities sponsoring incorporation shall be entitled
10 to recover from the Town expenses of sponsoring incorporation that are in the amount of five
11 hundred dollars (\$500.00) or greater, provided that the entities seeking recovery shall submit
12 written requests for reimbursement prior to the end of the second fiscal year following
13 incorporation of the Town. However, the Town shall not reimburse a person or entity under this
14 section until after the end of the first fiscal year following incorporation of the Town. A person
15 or entity seeking reimbursement under this section may be subject to audit by the Town, or a
16 person authorized by the Town to conduct the audit, if the Town deems an audit advisable or
17 necessary.

18 "Section 10.5. **Savings Clause.** If any part of this Charter is declared invalid by a court of
19 competent jurisdiction, such judgment shall not invalidate the remainder of this Charter. All
20 laws and ordinances not consistent with this Charter, insofar as they affect the Town of
21 Leicester, are superseded by this Charter."

22 **SECTION 2.** The Buncombe County Board of Elections shall conduct an election
23 on November 8, 2011, for the purpose of submission to the qualified voters for the area
24 described in Section 2.1 of the Charter of the Town of Leicester the question of whether or not
25 the area shall be incorporated as the Town of Leicester. Registration for the election shall be
26 conducted in accordance with G.S. 163-288.2.

27 **SECTION 3.** In the election, the question on the ballot shall be:

28 "[] FOR [] AGAINST

29 Incorporation of the Town of Leicester."

30 **SECTION 4.** In the election, if a majority of the votes are cast "FOR Incorporation
31 of the Town of Leicester," Section 1 of this act shall become effective on the date that the
32 Buncombe County Board of Elections certifies the results of the election. Otherwise, Section 1
33 of this act shall have no force and effect.

34 **SECTION 5.** At the same time as the election held under Section 2 of this act, the
35 Buncombe County Board of Elections shall hold an election for the initial Town Council as
36 provided in Articles III and IV of the proposed Charter of the Town of Leicester. If the majority
37 of votes is not cast "FOR Incorporation of the Town of Leicester," the election of officers is
38 null and void. The filing period for candidacies is the same as provided by G.S. 163-294.

39 **SECTION 6.** This act is effective when it becomes law.