

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**HOUSE BILL 488
RATIFIED BILL**

AN ACT TO UPDATE THE CHARTER OF THE TOWN OF CARY.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the Town of Cary is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF CARY

"ARTICLE I. INCORPORATION AND GENERAL POWERS

"Section 1.1. Incorporation and general powers. The Town of Cary shall continue to be a body politic and corporate under the name and style of the 'Town of Cary', and shall continue to be vested with all property and rights which now belong to the Town; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract, may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold, or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Section 1.2. Enumerated powers not exclusive. The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Cary shall have and may exercise all powers which are granted to municipal corporations by the general laws of North Carolina and all powers which, under the Constitution of North Carolina, it would be competent for this Charter specifically to enumerate.

"Section 1.3. Exercise of powers. All powers, functions, rights, privileges, and immunities of the Town, 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 Town Council and as provided by general law pertaining to municipal corporations.

"Section 1.4. Form of government. The form of government of the Town of Cary shall be known as the 'Council-Manager Form of Government', as set forth in Part 2 of Article 7 of Chapter 160A of the General Statutes subject to the modifications of this Charter. Nothing contained in this Charter shall be construed to prevent the form of government of the Town of Cary from being changed as by law provided.

"ARTICLE II. CORPORATE BOUNDARIES

"Section 2.1. Existing corporate boundaries. The corporate limits of the Town shall be those existing at the time of the ratification of this Charter and as the same may be altered from time to time in accordance with law. The Town Planning Director shall prepare a map to be designated 'Map of the Town of Cary Corporate Limits' showing the corporate limits as the same may exist as of the effective date of this Charter. The Town Planning Director may also prepare a written description of the corporate limits as shown on said map to be designated 'Description of Cary Corporate Limits'. Said map and description shall be retained permanently in the Office of the Town Clerk as the official map and a description of the corporate limits of the Town. Immediately upon alteration of the corporate limits made pursuant to law from time to time, the Town

Planning Director shall indicate such alteration by making appropriate changes and/or additions to said official map and description. Photographic or other types of copies of said official map or description certified as by law provided for the certification of ordinances shall be admitted in evidence in all courts and shall have the same force and effect as would the official map or description.

"Section 2.2. Extension of corporate boundaries. All extensions of the corporate boundaries shall be governed by general law.

"ARTICLE III. MAYOR AND TOWN COUNCIL

"Section 3.1. Form of government. The government of the Town and the general management and control of all its affairs shall be vested in a Town Council, which shall be elected and shall exercise its powers in the manner hereinafter provided, except that the Town Manager shall have the authority hereinafter specified.

"Section 3.2. Number and qualification of council members and mayor generally.

(a) The Town Council shall consist of six members, two of whom shall be elected at large by all the qualified voters of the Town, and four of whom shall be elected by the qualified voters of each of four single-member electoral districts, respectively, as established by the Town Council pursuant to the law. Terms of council members shall be overlapping four-year terms. In the 2001 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district A, one council member from electoral district C, and one council member from the Town at large. In the 2003 election and quadrennially thereafter, there shall be elected, for four-year terms, one council member from electoral district B, one council member from electoral district D, and one council member from the Town at large.

(b) The Mayor shall be elected by all the qualified voters of the Town, for a term of four years, in the 2003 election and quadrennially thereafter. The Mayor shall have the right to vote on all matters before the Town Council.

(c) The method of election of the Mayor and Town Council shall be the nonpartisan election and runoff method to be conducted as provided in G.S.163-293.

"Section 3.3. Legislative powers. All the legislative powers of the Town shall be vested in the Mayor and Town Council. The Mayor and Town Council shall meet at the time prescribed by law following each election, and those elected shall take the oath of office as prescribed by law to perform faithfully the duties of their respective offices. The Mayor shall have all rights, duties, and responsibilities of a councilman. A Mayor Pro Tempore shall be elected by the Town Council from among its own members and shall hold office as Mayor Pro Tempore during the pleasure of the Council. The organization of the Council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present. Any member entitled to make the aforesaid oath, who was not present at the time fixed therefore, may make oath at any time thereafter.

"Section 3.5. General procedure. A majority of the members of the Town Council shall constitute a quorum. Its meetings shall be public, and the Mayor, who shall be the official head of the Town, shall, if present, preside and shall have the same power as the other members of the Council to vote upon all measures coming before it, but shall have no power of veto. In the absence of the Mayor, the Mayor Pro Tempore of the Council shall preside, and in the absence of both, a Chairman Pro Tempore shall be chosen. The Town Clerk shall be ex officio Clerk of the Town Council, and shall keep records of its proceedings; but in case of the Clerk's temporary absence, or in case of a vacancy in the office, the Town Council may elect by ballot a temporary Clerk, who shall be sworn to the faithful discharge of his duties and may act as Clerk of the Town Council until a Town Clerk is chosen and qualified. On request of one member, the vote shall be yeas, and nays, and shall be entered upon the records.

"Section 3.6. Vacancies. Vacancies in the Town Council shall be filled by the Council for the remainder of the unexpired terms. In case of a vacancy in the office of

Mayor, the remaining members of the Council shall choose from their own number his successor for the unexpired term.

"Section 3.7. Compensation. The Council may fix its own compensation and the compensation of the Mayor and any other elected officers of the Town, in such sums as may be just and reasonable. Adjustments in the compensation of the Mayor and any other elected officers may be made effective at such time as the Council may direct, but the salary of elected officers shall not be reduced during the then current term of office unless he shall agree thereto. 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 Town officers and employees.

"Section 3.8. Appointments by council. The Town Council shall appoint a Town Manager, a Town Attorney, a Town Clerk, and a Town Treasurer, and may authorize the appointment of such associates or assistants to such officers as the Council may deem necessary, all who shall hold office at the pleasure of the Council and receive such compensation as the Council may provide.

"Section 3.9. Powers of Town Manager.

(a) The Town Council shall appoint a Town Manager, who shall be the administrative head of the Town government, and shall be responsible for the administration of all departments. The manager shall be appointed with regard to executive and administrative abilities only and need not be a resident of the Town when appointed. The manager shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

(b) The Town Manager shall:

- (1) Be the administrative head of the Town government;
- (2) See that within the Town the laws of the State and the ordinances, resolutions, and regulations of the Council are faithfully executed;
- (3) Attend all meetings of the Council, and recommend for adoption such measures as he shall deem expedient;
- (4) Make reports to the Council from time to time upon the affairs of the Town and keep the Council fully advised of the Town's financial condition and its future financial needs.
- (5) Appoint and remove all heads of departments, except those employees enumerated in Section 3.8 of this Charter, who shall be appointed by and serve at the pleasure of the Town Council.

"Section 3.10. Town Attorney. The Town Attorney shall be the legal advisor to the Town and perform such duties as may be specified by the Council or specified by law. The attorney shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The attorney shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.11. Town Clerk. The Town Clerk shall be the clerk to the Town Council, keep all records concerning Council actions and shall exercise those powers and duties conferred by the law and shall perform such duties as may be specified by the Council. The clerk shall be appointed with regard to merit only, and need not be a resident of the Town when appointed. The clerk shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance.

"Section 3.12. Town Treasurer. The Town Treasurer shall be appointed with regard to merit only and need not be a resident of the Town when appointed. The treasurer shall hold office at the pleasure of the Town Council and shall receive such compensation as it shall fix by ordinance. The Town Treasurer shall be custodian of all funds of the Town.

The treasurer shall execute a bond payable to the Town, and at its expense, in such sum and with such sureties as shall be prescribed and approved by the Council conditioned upon the faithful performance of the duties of the office and proper accounting of all funds that may come into this person's possession by virtue of the office. Duties of the treasurer include:

- (1) Manage the cash flows of the Town.
- (2) Be responsible for the investment of excess cash under the direction of the Finance Director.
- (3) Keep appropriate records for cash flow and investments.
- (4) Make reports as requested by the Town Manager, the Finance Director, and the Council.

"Section 3.15. Combination of offices. The Town Council may combine the office of Town Treasurer with the office of Town Clerk in its sole discretion.

"Section 3.16. Terms of commissions, committees, and boards. The Town Council may fix the terms of members of all commissions, committees, and boards of the Town regardless of the terms established by law for particular commissions, committees or boards; to appoint the chairman or other presiding officer of each commission, committee, or board of the Town, regardless of the provisions of any law; and to limit the number of terms which any person may serve on any commission, committee, or board of the Town.

"ARTICLE VI. STREET AND SIDEWALK IMPROVEMENTS

"Section 6.1. Street improvements; assessment of cost. In addition to any authority which is now or may hereafter be granted by general law to the Town for making street improvements, the Town Council may make street improvements and assess the cost thereof against abutting property owners in accordance with the provisions of this Article.

"Section 6.2. When petition unnecessary. The Town Council may order street improvements and assess the cost thereof, exclusive of the cost incurred at street intersections, against the abutting property owners at an equal rate per front foot, without the necessity of a petition, upon the finding by the Council as a fact:

- (1) That such street or part thereof is unsafe for vehicular traffic, and it is in the public interest to make such improvement, or
- (2) That it is in the public interest to connect two streets, or portions of a street already improved, or
- (3) That it is in the public interest to widen a street, or part thereof, which is already improved; provided, that assessments for widening any street or portions of street without petition shall be limited to the cost of widening and otherwise improving such street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

"Section 6.3. Street improvement defined. For the purpose of this Article the term 'Street Improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities.

"Section 6.4. Sidewalks; assessment of cost. In addition to any authority which is now or may hereafter be granted by the General Statutes to the Town for making sidewalk improvements, the Town Council may order to be made or to make sidewalk improvements or repairs without petition according to standards and specifications of the Town, and to assess the total cost thereof against abutting property owners.

If a sidewalk is constructed on only one side of a street, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk, on the other side of the street, the total cost of which has been assessed against the abutting property.

"Section 6.5. Assessment procedure. In ordering street and sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Town Council shall comply with the procedure provided in the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 6.6. Effect of assessment. The effect of the act of levying assessments under the authority of this Article shall for all purposes be the same as if assessed where levied under authority of general law.

"ARTICLE VII. FINANCE AND TAXATION

"Section 7.1. Custody of Town money. All monies received by the Town for and in connection with the business of the Town government shall be paid promptly into the Town depository or depositories. Such institution shall be designated by the Town Council in accordance with such regulations and subject to such requirements as to surety for deposits and interest thereon as shall be established by general law. All interest on monies belonging to the Town shall accrue to the benefit of the Town. All monies belonging to the Town shall be disbursed only in accordance with the provisions of the Local Government Budget and Fiscal Control Act.

"Section 7.2. Independent audit. As soon as practicable after the close of each fiscal year, an independent audit shall be made of all books and accounts of the Town government by a certified public accountant or a qualified public accountant registered pursuant to general law, who shall have no personal interest directly or indirectly in the affairs of the Town or any of its officers. The Town Council shall select the public accountant and the results of such audit shall be made available for inspection by any interested citizen of the Town, and may be published if so ordered by the Town Council.

"Section 7.4. (a) The Town of Cary shall have the right, power, and authority to impose and collect a regulatory or development fee defined as a road project fee on all new construction within the Town limits and extraterritorial jurisdiction.

(b) It is the purpose and intent of this section to provide the Town with the legal mechanism granting it the right, power, and authority to impose and collect fees to finance additional improvements within the Town limits and extraterritorial jurisdiction. These additional road improvements being caused by rapid and continued growth within the Cary area. This section provides approval to the Town to actually develop and implement such a fee system, but does not in any way, describe or detail the actual fee structure and rate classification. An extensive study will subsequently be performed to establish the basis and framework for the fee system should the system be deemed necessary in order to maintain the high level of service delivery presently available to Cary residents.

"ARTICLE VIII. WATER AND SEWER IMPROVEMENTS

"Section 8.1. Laterals included in cost. In ordering water or sewer line extensions, or both, the assessment of the cost thereof under the authority given by the General Statutes, the Town Council may include in such extensions water and sewer line laterals, and include the cost of such laterals in the total cost to be assessed upon abutting properties.

"Section 8.2. Classification and exemption. Where water or sewer lines are constructed across or through lots or tracts of land or when water or sewer lines, or both, are installed along both sides of corner lots and were or are financed in whole or in part by assessment, the Council may by uniform rule classify such lines for assessment as in its judgment will represent the benefits derived. The schedules of exemptions may be classified as to land uses (residential, business, commercial, industrial, office and institutional, agricultural, or other classifications) and shall be uniform for each such classification used; provided, however, that no schedule of exemptions may provide for exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"Section 8.3. Alternative method of assessing. In addition to, and as alternatives to, the method provided in the General Statutes for assessing the cost of water and sewer lines and laterals, the Town Council, if in its opinion it would be more equitable to do so, may in its discretion levy any such assessments according to either of the following methods: (i) equally against each of the lots capable of being served by such line or

lines, or (ii) on the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

In lieu of assessing the total cost of a particular project as herein provided, the Town Council may annually, between the first days of January and July of each year, determine the average cost of installing water and sewer mains or lines, and on the basis of such determination may make assessments on such average cost during the following fiscal year beginning July 1. The average cost of such installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and materials cost based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of such lines shall not be made until after the particular assessment project has been completed. The purpose of this section is to distribute more equitably the cost of the installation of water and sewer lines throughout the Town; to permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his property will be; and to permit the most expeditious assessment of cost against the property after completion of installation of such lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation cost at the time of the completion of the project, such costs may be assessed separately when they are determined.

"Section 8.4. Payment of assessments. Any special assessment of the Town for any purpose amounting to less than one hundred dollars (\$100.00) shall be paid in cash not later than the next due date of Town taxes rather than in annual installments and shall bear interest as taxes.

"Section 8.5. Water and sewer development fees. In addition to water and sewer service charges and connection charges, the Town Council may establish and collect water and sewer development fees for the privilege of connecting to the Town water and sewerage systems, both within and outside the corporate limits, to aid in the financing of new water and sewer mains and laterals and sewer outfalls and the replacement or enlargement of existing mains, laterals, and outfalls. Such charges shall apply uniformly to all properties to which water or sewer service is extended subsequent to the establishment of such charges; provided, however, that the Council may establish higher water and sewer development fees for property developed or to be developed for business, commercial, industrial, or office and institutional uses than those established for residential and other uses and may base water and sewer development fees for residential property upon the number of dwelling units per acre of land.

"ARTICLE IX. REGULATORY POWERS

"Section 9.1. Zoning and subdivision regulations. Any subdivision control ordinance enacted by the Town Council pursuant to general law may also provide for the orderly development of subdivisions by requiring the construction of community service facilities, including water lines; sewer lines; street paving, curbing, and guttering; and street and storm drainage facilities in accordance with Town standards and specifications, and to assure compliance with such requirements, the ordinance may require the posting of bond or such other method as will offer guarantee of compliance.

In addition to the authority conferred upon it by general or local law, the Town of Cary may create, through the legislative process, general use zoning districts, in which a variety of uses are permitted; conditional use zoning districts, in which limited uses are permitted only upon approval by the Town; overlay zoning districts, which are applied coincidental with the general or conditional use district; and transitional zoning regulations.

The overlay zoning districts may impose additional regulations on some property within the underlying general or conditional use district and not on all properties within those districts.

A person petitioning for rezoning of a tract of land where conditional use districts or overlay districts are authorized by ordinance, may elect to request a general use district,

a conditional use district, or an overlay district for the tract. If the petitioner elects to petition for the general use or overlay district zoning, and if the petition is approved, the rezoned property may be used for any of the uses permitted in the applicable general use or overlay district. If the petitioner elects to petition for conditional use district zoning, the petition must specify the actual use or uses, and all other development regulations authorized by State law, which are intended for the property specified in the petition. The intended use or uses and development regulations must be permitted in the corresponding general use district. If the petition is for conditional use district zoning, the Town Council is to approve or disapprove the petition on the basis of the specific use or uses and development regulations requested. If the petition is approved, the Town Council shall issue a conditional use permit authorizing the requested use with such reasonable conditions as the Town Council determines to be desirable in promoting public health, safety, and general welfare.

The conditions contained in a conditional use permit issued by the Town Council may include: location of the proposed use on the property; the number of dwelling units; the location and extent of support facilities such as parking lots, driveways, and access streets; location and extent of buffer areas and other special purpose areas; the timing of development; and such other matters as the Town Council may find appropriate or the petitioner may propose, including architectural review or controls.

It is the further intent of this section to permit the creation of districts for specific uses and the imposition of reasonable conditions in order to secure the public health, safety and welfare, and ensure that substantial justice be done.

"Section 9.2. Regulatory codes. The Town Council may make effective and enforce within the territory under its extraterritorial zoning jurisdiction and lying outside the corporate limits and within one mile thereof, all ordinances and codes of the Town regulating the construction and repair of buildings, including building codes, plumbing codes, electrical codes, heating and air conditioning codes, fire prevention codes, minimum housing codes adopted pursuant to the General Statutes, and ordinances relating to unsafe buildings adopted pursuant to the provisions of the General Statutes. In addition, the Town Council may enforce in such area the North Carolina State Building Codes, including Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy, Existing Buildings, and Residential, all as published by the North Carolina Building Code Council. Such enforcement power shall include the power to require that prior to the beginning of any construction, reconstruction, or alteration of any building or structure or any part or system thereof within such area, the appropriate permit or permits be obtained from the Town; provided, the Town Council may by ordinance require that the contractor or other person charged with such construction, reconstruction, or alteration secure such permit or permits, rather than requiring the owner of the property to do so.

"Section 9.3. Underground utilities. In addition to the powers now or hereafter granted to municipalities by law, the Town Council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the Town be installed underground, whether or not the same are installed in public rights-of-way.

"Section 9.4. Electric golf carts. Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, the Town may, by ordinance, regulate the operation of electric golf carts on any public street or road within the Town. By ordinance, the Town may require the registration of golf carts, specify the persons authorized to operate golf carts, and specify required equipment, load limits, and the hours and methods of operation of the golf carts.

"ARTICLE X. CLAIMS AGAINST THE TOWN

"Section 10.1. Settlement of claims by Town Manager. The Town Manager may, without the approval of the Town Council, settle claims against the Town for personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars (\$2,500) and does not exceed the actual loss

sustained, including loss of time, medical expenses, and any other expense actually incurred. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the accident or occasion complained of."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Cary and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

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

- Chapter 868 of the 1971 Session Laws
- Chapter 173 of the 1973 Session Laws
- Chapter 357 of the 1973 Session Laws
- Chapter 816 of the 1977 Session Laws
- Chapter 51 of the 1985 Session Laws
- Chapter 801 of the 1987 Session Laws
- Chapter 511 of the 1989 Session Laws
- Chapter 874 of the 1989 Session Laws
- Section 3 of S.L. 2001-485.

SECTION 4. The following acts are not affected by this act:

- Chapter 1275, Session Laws of 1979 (removal of areas from the corporate limits)
- Chapter 279, Session Laws of 1989 (closing streets in ETJ)
- Chapter 27, Session Laws of 1993 (removal of areas from the corporate limits and addition of areas to the corporate limits)
- Chapter 137, Session Laws of 1993 (acquisition of street right-of-way outside the corporate limits)
- Chapter 325, Session Laws of 1993 (motor vehicle tax)
- S.L. 1998-192 (Swift Creek Management Plan)
- S.L. 2000-108 (removal, replacement, and preservation of trees and shrubs)
- S.L. 2001-191 (clear-cutting of trees in buffer zones, protection of specimen trees)
- S.L. 2001-245 (expending funds on roads outside the corporate limits)
- S.L. 2003-74 (acquisition of property for utilities)
- S.L. 2001-286 (red-light cameras)
- S.L. 2005-41 (reimbursement agreements).

SECTION 5. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

- (1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act.
- (2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

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

- (1) The repeal herein of any act repealing such law, or
- (2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 7. All existing ordinances and resolutions of the Town of Cary and all existing rules or regulations of departments or agencies of the Town of Cary not inconsistent with the provisions of this act shall continue in full force and effect until repealed, modified, or amended.

SECTION 8. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Cary or any of its departments or agencies shall be abated or otherwise affected by the adoption of this act.

SECTION 9. If any part of this act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 10. Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, repealed, or superseded, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute that most nearly corresponds to the statutory provision amended, repealed, or superseded.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives