

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 553
PROPOSED COMMITTEE SUBSTITUTE S553-PCS85265-LMx-16

Short Title: Incorporate Swannanoa.

(Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"CHARTER OF THE TOWN OF SWANNANOA.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Swannanoa are a body corporate and politic under the name 'Town of Swannanoa.' The Town of Swannanoa has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general laws of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

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

BEGINNING at a point on the northern margin of US Highway 70, the southwest corner of parcel #1, said point being approximately 2030 LF east of the intersection of US Highway 70 and Porter's Cove Road (SR#2838) thence from this point of BEGINNING heading north along the west line of said parcel #1 to its common corner with parcel #2 thence following the southern & west line of parcel #2 to its next common corner with parcel #1 thence following the west & north line of parcel #1 to its common corner with parcel #3, thence following the northern line of parcel #3 to its common corner with parcel #4 thence turning north along the west & north lines of parcel #4 to its common corner with parcel #5, continuing with the northern line of parcels #5, #6,#7, and #8 to its common corner with parcel #9 (Warren Wilson College). Thence following the southern & eastern lines of parcel #9 to its common corner with parcel #10, thence following the southern & eastern lines of parcel #10 to the southern edge of the Swannanoa River. Thence proceeding north crossing the river to the southern line of parcel #11 and following said southern line along the northern edge of the Swannanoa River to its common corner with parcel #12 and continuing north to its common corner with parcel #13. Thence following the east line of parcel #13 to its common corner with parcel #14, thence heading east along the southern line of parcels #14 & #15 to the southern margin of Warren Wilson Road (SR #2416). Thence in a westerly direction along the southern margin of Warren Wilson Road (SR #2416) to the northwest corner of parcel #13, thence a distance of approximately 250 feet to the corner of parcel #16 which is on the northern margin of Warren Wilson Road (SR #2416), thence with the east line of parcels #16, #17 and #18, & the east and



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1 northern lines of parcel #17 to its common corner with parcel #18. Thence following the east
2 line of parcel #18 to its common corner with parcels #19 & #20. Proceeding north with the west
3 line of parcel #19 to its common corner with parcel #21 (Chemtronics), thence following the
4 west and north lines of parcel #21 to its common corner with parcel #22, thence following the
5 west & south line of parcels #22, 23, 24, 25, 26, 27, 28, 29, 30, thence following the west line
6 of parcels #30, 31, and 32 to the common corner of parcels #32, 33 & 34 (City of Asheville).
7 Thence following the west line of parcel #34 in a southerly & easterly direction to its common
8 corner with parcels #35 & #36, continuing along the southern line of parcel #36 to its common
9 corner with parcel #37, thence along the west line of parcel #37 to its common corner with
10 parcel #38, thence along the north, east and southern lines of parcel #38 to its common corner
11 with parcel #39. Thence along the east & southern lines of parcel #39 to its common corner
12 with parcel #40 (State of North Carolina), continuing south along the east line of parcel #40 to
13 its common corner with parcel #41 (State of North Carolina), thence following the east line of
14 parcel #41 to the east margin of a 20 foot wide alley, thence in a southerly direction with the
15 east margin of said alley to the northern margin of Old US Highway 70 (SR #2435) being the
16 southeast corner of parcel #42. Crossing Old US Highway 70 (SR #2435) in a southerly
17 direction to the north east corner of parcel #43 and following the east line of parcel #43 to the
18 common & northwest corner of parcel #44, thence following the west and southern lines of
19 parcel #44 to the common corner with parcel #45, thence in an easterly direction along the
20 southern line of parcels #45, 46, 47 and 48 to the northern margin of US Highway 70,
21 continuing across US Highway 70 to the northwest corner of parcel #49 thence following the
22 west line of parcel #49 to the northern margin of Interstate Highway 40. Crossing Interstate
23 Highway 40 in a southerly direction to the southern margin of Interstate Highway 40, thence
24 proceeding in an easterly direction along the southern margin of Interstate Highway 40 to the
25 northwest corner of parcel #50, thence along the west line of parcel #50 to its common corner
26 with parcel #51, thence along the southern line of parcel #51 to its common corner with parcel
27 #52 (Black Mountain Center for Research), thence along the west line of parcel #52 to its
28 common corner with parcel #53, continuing south along the west line of parcel #53 to its
29 common corner with parcel #54, thence along the west line of parcel #54 in a southerly
30 direction to its common corner with parcel #55 (Blue Ridge Assembly), thence following the
31 west line of parcel #55 to its common corner with parcel #56, thence along the west line of
32 parcel #56 in a southerly direction to the common corner with parcel #57 thence along the
33 northern line to its common corner with parcel #58, thence with the east line of parcel #58 to its
34 common corner with parcel #59. Thence along the southern line of parcels #59, 60 & 61 to the
35 intersection of Mountain Azalea Drive, continuing along the north margin of Mountain Azalea
36 Drive to its intersection with Wildflower Cove Drive, crossing over the road right of way to the
37 west margin of Wildflower Cove Drive, thence following the west margin of Wildflower Cove
38 Drive to the common (northeast) corner of parcels 62 & 63, continuing along the southern line
39 of parcels 63 & 64 to the common corner of parcels 64 & 65. Thence following the northern
40 line of parcels 65 & 66 to its common corner with parcel #67, thence following this north line
41 of parcel #67 to its common corner with parcel #68. Continuing along the southern line of
42 parcel #68, 69, and 70 to the common corner with parcel #71, thence with the southeast line of
43 parcel #71 to its common corner with parcel #72, continuing along the east line of parcels #72,
44 73, and 74 to the common corner with parcels #75 and #76. Thence along the north line of
45 parcel #76 to the common corner with parcel #77, continuing along the east line of parcel #77
46 to its common corner with parcel #78, following the north line of parcel #78 and 77 to its
47 common corner with parcel #79, thence north along the east and south lines of parcels #79, 80,
48 and 81 to its common corner with parcel #82, thence following the east and north line of parcel
49 #82 to the common corner with parcel #83, and then following the north line of parcel #83, 84,
50 and 85 to its common corner with parcel #86. Continuing along the east, south and west lines of
51 parcel #86 to its common corner with parcel #87, thence along the south line of parcel #87 to

1 its southeast corner, the common corner with parcel #88, thence along the south and west line
2 of parcel #88 to the southern margin of Saunooke Road (SR #2842), thence in a northeast
3 direction along the south margin of the road to the northwest corner of parcel #89, turning north
4 across Saunooke Road (SR #2842) and Interstate Highway 40 to the point of Beginning.

5 "ARTICLE III. GOVERNING BODY.

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

8 "Section 3.2. **Temporary Officers.** Until the organizational meeting after the initial
9 election in May 2010 provided for by Section 4.2 of this Charter, David Alexander, Jane
10 Hansel, Ron Hillabrand, Mike Tolley, Robert Shepard, and Dr. Eloise Styles are appointed
11 council members of the Town of Swannanoa, and they shall possess and exercise the powers
12 granted to the governing body until their successors are elected or appointed and qualified
13 pursuant to this Charter. The temporary officers shall elect persons to serve as Interim Mayor
14 and Interim Mayor Pro Tempore. If any person named in this section is unable to serve, the
15 remaining temporary officers shall, by majority vote, appoint a person to serve until the initial
16 election is held in May 2010.

17 "Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of
18 the entire Town shall elect the members of the Town Council, and except as provided in this
19 section, they shall serve four-year terms. In 2010, the three candidates receiving the highest
20 numbers of votes shall be elected to four-year terms, and the two candidates receiving the next
21 highest numbers of votes shall be elected to two-year terms. In 2012, and quadrennially
22 thereafter, two members shall be elected to four-year terms. In 2014, and quadrennially
23 thereafter, three members shall be elected to four-year terms. Vacancies on the Town Council
24 shall be filled in accordance with G.S. 160A-63.

25 "Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of
26 the entire Town shall elect the Mayor. In May 2010 and biennially thereafter, the Mayor shall
27 be elected for a term of two years. The Mayor shall be the official head of Town government
28 and shall preside at all meetings of the Town Council. The Mayor shall exercise the powers and
29 duties conferred upon him by the general laws of the State of North Carolina, the provisions of
30 this Charter, or the Town Council. The Mayor shall have the right to vote only when there are
31 equal numbers of votes in the affirmative and in the negative.

32 "Section 3.5. **Manner of Electing Mayor Pro Tempore; Term of Office; Duties.** The
33 Mayor Pro Tempore shall be elected from among the members of the Town Council at the
34 organizational meeting after the initial election in May 2010 and shall serve for a term of two
35 years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor
36 and Mayor Pro Tempore are both absent from a meeting of the Town Council, the members of
37 the Town Council present may elect a temporary chair to preside in the absence. The Mayor
38 Pro Tempore shall have the right to vote on all matters before the Town Council and shall be
39 considered a member of the Town Council for all purposes.

40 "ARTICLE IV. ELECTIONS.

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

43 "Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter
44 163 of the General Statutes, with the first regular municipal election to be held May 4, 2010.
45 The filing period for candidacies for the first regular municipal election to be held May 4, 2010,
46 is the same as provided by G.S. 163-106.

47 "Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be
48 held only as provided by general law or applicable local acts of the General Assembly.

49 "ARTICLE V. ORGANIZATION AND ADMINISTRATION.

50 "Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager
51 form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

1 "Section 5.2. **Town Manager.** The Town Council shall appoint a Town Manager who shall
2 be responsible for the administration of all departments of the Town government, except as
3 otherwise directed by the Town Council. The Town Manager shall have all the powers and
4 duties conferred by general law, except as expressly limited by the provisions of this Charter,
5 and the additional powers and duties conferred by the Town Council, so far as authorized by
6 general law. As chief administrator of the Town, the Town Manager shall have the power to
7 appoint, suspend, and remove all Town officers, department heads, and employees, except the
8 Town Attorney, Town Clerk, and any other official whose appointment or removal is vested in
9 the Town Council by this Charter or by general law. Neither the Town Council nor any of its
10 members shall take part in the appointment or removal of officers or employees in the
11 administrative service of the Town of Swannanoa, except as provided by this Charter.

12 "Section 5.3. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed
13 to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the
14 Town, advise Town officials, and perform other duties as required by law or as directed by the
15 Town Council. The Town Attorney shall serve at the pleasure of the Town Council.

16 "Section 5.4. **Town Clerk.** The Town Council shall appoint a Town Clerk who shall
17 perform duties as required by law or as directed by the Town Council. The Town Clerk shall
18 serve at the pleasure of the Town Council.

19 "Section 5.5. **Other Administrative Officers and Employees.** The Town Council may
20 authorize other offices and positions and appoint persons to fill the offices and positions, or the
21 Council may authorize the offices and positions to be filled by appointment by the Town
22 Manager. The Town Council may organize the Town government as deemed appropriate,
23 subject to the requirements of general law.

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

27 "ARTICLE VI. TAXES AND BUDGET ORDINANCE.

28 "Section 6.1. **Powers of the Town Council.** The Town Council may levy those taxes and
29 fees authorized by general law. An affirmative vote equal to a majority of all the members of
30 the Town Council shall be required to change the ad valorem tax rate from the rate established
31 during the prior fiscal year.

32 "Section 6.2. **Commencement of Tax Collection.** From and after July 1, 2009, the citizens
33 and property in the Town of Swannanoa shall be subject to municipal taxes levied for the year
34 beginning July 1, 2009, and for that purpose the Town shall obtain from Buncombe County a
35 record of property in the area herein incorporated which was listed for property taxes as of
36 January 1, 2009.

37 "Section 6.3. **Budget.** The Town may adopt a budget ordinance for fiscal year 2009-2010
38 without following the timetable in the Local Government Budget and Fiscal Control Act but
39 shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year
40 2009-2010, ad valorem taxes may be paid at par or face amount within 90 days of adoption of
41 the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360 as if the
42 taxes had been due and payable on September 1, 2009.

43 "ARTICLE VII. ORDINANCES.

44 "Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town of
45 Swannanoa is authorized to adopt such ordinances as the Town Council deems necessary for
46 the governance of the Town.

47 "ARTICLE VIII. MISCELLANEOUS PROVISIONS.

48 "Section 8.1. **Annexation.** Notwithstanding any other provision of law, the Town of
49 Swannanoa shall not annex any area beyond the southern boundary of the corporate limits of
50 the Town that runs along a ridge line and borders the Fairview Township in Buncombe County.

1 "Section 8.2. **Expenses.** The entities sponsoring incorporation shall be entitled to recover
2 from the Town expenses of sponsoring incorporation in the amount of five hundred dollars
3 (\$500.00) or greater, provided that the entities seeking recovery shall submit written requests
4 for reimbursement and shall be subject to annual audit. The Town Council may reimburse
5 expenses after the first full fiscal year. To receive reimbursement, all requests must be
6 submitted prior to the end of the second fiscal year."

7 **SECTION 2.** The Buncombe County Board of Elections shall conduct an election
8 on November 3, 2009, for the purpose of submission to the qualified voters for the area
9 described in Section 2.1 of the Charter of the Town of Swannanoa the question of whether or
10 not the area shall be incorporated as the Town of Swannanoa. Registration for the election
11 shall be conducted in accordance with G.S. 163-288.2.

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

13 FOR AGAINST

14 Incorporation of the Town of Swannanoa."

15 **SECTION 4.** In the election, if a majority of the votes are cast "For the
16 Incorporation of the Town of Swannanoa," Section 1 of this act shall become effective on the
17 date that the Buncombe County Board of Elections certifies the results of the election.
18 Otherwise, Section 1 of this act shall have no force and effect.

19 **SECTION 5.** This act is effective when it becomes law.