

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 433
Finance Committee Substitute Adopted 8/28/01
House Committee Substitute Favorable 9/25/01

Short Title: Fairview Incorporated and Monroe Meals Tax.

(Local)

Sponsors:

Referred to:

March 13, 2001

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF FAIRVIEW, SUBJECT TO A REFERENDUM, AND TO AUTHORIZE THE CITY OF MONROE TO LEVY A PREPARED FOOD TAX.

The General Assembly of North Carolina enacts:

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

"Charter of the Town of Fairview.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Fairview are a body corporate and politic under the name 'Town of Fairview'. The Town of Fairview has 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 Fairview are as follows:

Beginning at the county line on Highway 601 North at Cabarrus County and Union County and following the county line east to Rocky River, then following the south side of Rocky River to Sikes Mill Road. Follow the centerline of Sikes Mill Road, crossing Highway 218 East, until it intersects with Old Fish Road, then taking the centerline of Old Fish Road west until it intersects with Unionville-Brief Road. Taking the centerline of Unionville-Brief Road south until Unionville-Brief Road intersects with Clontz-Long Road. Following the centerline of Clontz-Long Road west until it intersects with Highway 601 and following the centerline of Highway 601 South until it intersects with Lawyers Road. Taking the centerline of Lawyers Road west until it intersects with Howey Bottoms Road. Taking the centerline of Howey Bottoms Road until it intersects with Mill Grove Road and following the centerline of Mill Grove Road west crossing Highway 218 West, until it reaches the Mecklenburg County line. Following the

1 Mecklenburg County line until it reaches the Cabarrus County line and following the
2 Cabarrus County line east to Highway 601 North.

3 "ARTICLE III. GOVERNING BODY.

4 "Section 3.1. **Structure of Governing Body; Number of Members.** The governing
5 body of the Town of Fairview shall be the Town Council, which shall have four
6 members, and the Mayor.

7 "Section 3.2. **Manner of Electing Council.** The qualified voters of the entire Town
8 shall elect the members of the Town Council and, except as provided in this section,
9 they shall serve four-year terms. In 2003, the two candidates receiving the highest
10 numbers of votes shall be elected to four-year terms and the two candidates receiving
11 the next highest numbers of votes shall be elected to two-year terms. In 2005, and
12 biennially thereafter, two members shall be elected to four-year terms.

13 "Section 3.3. **Temporary Officers.** Until the initial elections of 2003 provided for
14 by Section 4.1 of this Charter, Richard Williams is hereby appointed Mayor, and Brad
15 Purser, Kathy Casey, Jerry Clontz, and Libby Long are appointed members of the Town
16 Council. They shall possess and exercise the powers granted to the governing body until
17 their successors are elected or appointed and qualified pursuant to this Charter.

18 "Section 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of
19 the entire Town shall elect the Mayor. In 2003, and quadrennially thereafter, the Mayor
20 shall be elected for a term of four years.

21 "ARTICLE IV. ELECTIONS.

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

24 "ARTICLE V. ADMINISTRATION.

25 "Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of
26 Fairview will operate under the Mayor-Council form of government as provided in Part
27 3 of Article 7 of Chapter 160A of the General Statutes."

28 **SECTION 2.** From and after the effective date of this act, the citizens and
29 property in the Town of Fairview shall be subject to municipal taxes levied for the fiscal
30 year beginning July 1, 2001, and for that purpose, the Town shall obtain from Union
31 County a record of property in the area herein incorporated which was listed for taxes as
32 of January 1, 2001. The Town may adopt a budget ordinance for fiscal year 2001-2002
33 without following the timetable in the Local Government Budget and Fiscal Control Act
34 but shall follow the sequence of actions in the spirit of the act insofar as is practical.
35 For fiscal year 2001-2002, ad valorem taxes may be paid at par or face amount within
36 90 days of adoption of the budget ordinance and thereafter in accordance with the
37 schedule in G.S. 105-360 as if the taxes had been due and payable on September 1,
38 2001.

39 **SECTION 3.** The Union County Board of Elections shall conduct an
40 election on a date set by it, not less than 70 nor more than 150 days after the date this
41 act becomes effective, for the purpose of submission to the qualified voters for the area
42 described in Section 2.1 of the Charter of the Town of Fairview, the question of whether

1 or not the area shall be incorporated as the Town of Fairview. Registration for the
2 election shall be conducted in accordance with G.S. 163-288.2.

3 **SECTION 4.** In the election, the question on the ballot shall be:

4 "[] FOR [] AGAINST

5 Incorporation of the Town of Fairview".

6 **SECTION 5.** In the election, if a majority of the votes are cast "For the
7 Incorporation of the Town of Fairview", Sections 1 and 2 of this act shall become
8 effective on the date that the Union County Board of Elections certifies the results of the
9 election. Otherwise, Sections 1 and 2 of this act shall have no force and effect.

10 **SECTION 6.(a)** Authorization. – If the question of whether to levy a
11 prepared food tax has not been defeated within five years in a referendum held under
12 subsection (b) of this section, the Monroe City Council may, by ordinance after not less
13 than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared
14 food tax of up to one percent (1%) of the sales price of prepared food sold within the
15 City of Monroe at retail for consumption on or off the premises by a retailer subject to
16 sales tax under G.S. 105-164.4(a)(1). This tax is in addition to State and local sales tax.

17 **SECTION 6.(b)** Referendum. – The Monroe City Council may direct the
18 county board of elections to submit to the qualified voters of the city the question of
19 whether to levy a local prepared food tax of one percent (1%) as provided in this
20 section.

21 The election must be held on a date jointly agreed upon by the board of
22 elections and the city council, and must be conducted under the laws then governing
23 elections in the State. Ballots, voting systems, or both may be used in accordance with
24 Chapter 163 of the General Statutes. The question to be used in the voting systems and
25 ballots shall be:

26 "[] FOR [] AGAINST

27 one percent (1%) local prepared food and beverage tax, in addition to the current local
28 sales and use taxes".

29 **SECTION 6.(c)** Definitions; Sales and Use Tax Statutes. – The definitions
30 in G.S. 105-164.3 apply to this section to the extent they are not inconsistent with the
31 provisions of this section. The provisions of Article 5 and Article 9 of Chapter 105 of
32 the General Statutes apply to this section to the extent they are not inconsistent with the
33 provisions of this section.

34 **SECTION 6.(d)** Exemptions. – The prepared food tax does not apply to the
35 following sales of prepared food:

- 36 (1) Prepared food served to residents in boarding houses and sold together
37 on a periodic basis with rental of a sleeping room or lodging.
38 (2) Retail sales exempt from taxation under G.S. 105-164.13.
39 (3) Retail sales through or by means of vending machines.
40 (4) Prepared food served by a retailer subject to the local occupancy tax if
41 the charge for the meals or prepared food or drink is included in a

1 single, nonitemized sales price together with the charge for rental of a
2 room, lodging, or accommodation furnished by the retailer.

3 (5) Prepared food furnished without charge by an employer to an
4 employee.

5 (6) Retail sales by grocers or by grocery sections of supermarkets or other
6 diversified retail establishments, other than sales of prepared food in
7 the delicatessen or similar department of the grocer or grocery section.

8 (7) Prepared food served on a federal military reservation.

9 **SECTION 6.(e)** Collection. – Every retailer subject to the tax levied under
10 this section shall, on and after the effective date of the levy of the tax, collect the tax.
11 This tax shall be collected as part of the charge for furnishing prepared food. The tax
12 shall be stated separately on the sale document and shall be paid by the purchaser to the
13 retailer as trustee for and on account of the city. The tax shall be added to the sales
14 price and shall be passed on to the purchaser instead of being borne by the retailer. The
15 city shall design, print, and furnish to all appropriate businesses and persons in the city
16 the necessary forms for filing returns and instructions to ensure the full collection of the
17 tax.

18 **SECTION 6.(f)** Administration. – The city shall administer a tax levied
19 under this section. A tax levied under this section is due and payable to the city's
20 director of finance and administration in monthly installments on or before the 25th day
21 of the month following the month in which the tax accrues. Every retailer liable for the
22 tax shall, on or before the 25th day of each month, prepare and render a return on a form
23 prescribed by the city. The return shall show the total gross receipts derived in the
24 preceding month from sales to which the tax applies.

25 A return filed with the city's director of finance and administration under this
26 section is not a public record and may not be disclosed except in accordance with G.S.
27 160A-208.1.

28 **SECTION 6.(g)** Refunds. – The city shall refund to a nonprofit or
29 governmental entity the prepared food tax paid by the entity on eligible purchases of
30 prepared food. A nonprofit or governmental entity's purchase of prepared food is
31 eligible for a refund under this subsection if the entity is entitled to a refund under G.S.
32 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time
33 limitations, application requirements, penalties, and restrictions provided in G.S.
34 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations,
35 application requirements, penalties, and restrictions provided in G.S. 105-164.14(c), (d),
36 and (e) apply to refunds to governmental entities. When an entity applies for a refund
37 of the prepared food tax paid by it on purchases, it must attach to its application a copy
38 of the application submitted to the Department of Revenue under G.S. 105-164.14 for a
39 refund of the sales and use tax on the same purchases. An applicant for a refund under
40 this subsection must provide any information required by the city to substantiate the
41 claim.

1 **SECTION 6.(h)** Penalties. – The uniform meals tax penalty provisions of
2 G.S. 160A-214.1 apply to a tax levied under this act.

3 **SECTION 6.(i)** Use of Proceeds. – The City of Monroe must use the
4 proceeds of a tax levied under this section for the construction, operation, and
5 maintenance of a civic center, for Downtown Monroe development, and for economic
6 development.

7 **SECTION 6.(j)** Effective Date of Levy. – A tax levied under this section
8 shall become effective on the date specified in the ordinance levying the tax. The date
9 must be the first day of a calendar month and may not be before the first day of the
10 fourth month after the date the ordinance is adopted.

11 **SECTION 6.(k)** Repeal. – A tax levied under this section may be repealed
12 by an ordinance adopted by the Monroe City Council. Any repeal shall become
13 effective on the first day of a month and may not become effective until the end of the
14 fiscal year in which the repeal ordinance is adopted. Repeal of a tax levied under this
15 section does not affect a liability for a tax that attached before the effective date of the
16 repeal, nor does it affect a right to a refund of a tax that accrued before the effective date
17 of the repeal.

18 **SECTION 7.** This act is effective when it becomes law.