

DRAFT

Charter

of the

Merged City-County of Durham

July 28, 2000

Chapter 1. General Provisions

Article 1. Establishment

Sec. 1-1. Merged city-county of Durham established. There is created a merged city-county, as defined in G.S. 160D-2, known as Durham (in this charter called “the city-county”). The separate governments of the city of Durham (herein called the “city”) and the county of Durham (herein called the “county”) are merged into the single government for the merged city-county of Durham. Although the city of Durham and the county of Durham remain in existence as municipal corporations and political subdivisions, the city-county enjoys and exercises the powers, duties, privileges, functions, and immunities of the city and of the county on behalf of the city and the county, and the separate governing boards and governments of the city and the county are abolished.

[Charter commission decision]

Sec. 1-2. Boundaries. The city-county has jurisdiction and extends territorially throughout Durham county and throughout all parts of the city of Durham located outside Durham county. The city-county shall maintain a current map or written description of the corporate boundaries of the city-county pursuant to G.S. 160A-22.

[Charter commission decision]

Sec. 1-3. City expanded. The boundaries of the city of Durham are extended to include all areas within Durham county except (1) areas already included within the territorial limits of some other city or town, (2) areas within the Butner reservation, (3) areas prohibited from annexation by section 2, Chapter 435 of the 1985 Session Laws, as amended, and (3) areas that may not be annexed by the city of Durham pursuant to an annexation agreement with another city or town, entered into pursuant to Part 6, Article 4A, of General Statutes Chapter 160A.

[Charter commission decision]

Sections 1-4 through 1-10. Reserved.

Article 2. Powers

Sec. 1-11. Corporate powers. The inhabitants of the area defined in Section 1-2 of this charter are a body politic and corporate under the name of “The Merged City-County of Durham”. Under that name they are vested with all the property and rights in property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property and rights in property, real and personal, that may be devised, bequeathed, sold or in any manner conveyed, dedicated to, or otherwise acquired by the corporation, and from time to time may hold, invest, sell, or dispose of the property and rights in property; may have a common seal and alter and renew it at will; and have and may exercise in conformity with the charter and the laws of this State all city-county, county, and city powers, rights, duties, privileges, functions, and immunities of every name and nature.

[G.S. 153A-11; G.S. 160A-11]

Sec. 1-12. Grant and exercise of county and city powers. (a) Grant of powers. Except as otherwise provided in this charter, the city-county and its officers and employees enjoy and may exercise (1) all the powers, duties, rights, privileges, and immunities that counties at or after the effective date of this charter may exercise and enjoy under the Constitution and general laws of the State of North Carolina; (2) all the powers, duties, rights, privileges, and immunities that cities at or after the effective date of this charter may exercise and enjoy under the Constitution and general laws of the State of North Carolina; and (3) all the powers, duties, rights, privileges, and immunities granted by local act of the General Assembly to the city of Durham or the county of Durham.

(b) Territorial exercise of powers. If a power, duty, right, privilege, or immunity is granted by this charter or by some other local act of the General Assembly to the city of Durham, the city-county enjoys and may exercise that power, duty, right, privilege, or immunity only within the city of Durham or such lesser area as provided in the charter. If a power, duty, right, privilege, or immunity is granted by this charter or by some other local act of the General Assembly to the county of Durham, the city-county enjoys and may exercise that power, duty, right, privilege, or immunity only within Durham county. If a power, duty, right, privilege, or immunity is granted by general law to cities, and the same power, duty, right, privilege, or immunity is not granted by general law to counties or by local act of the General Assembly to the county of Durham, the city-county enjoys and may exercise that power, duty, right, privilege, or immunity only within the city of Durham. If a power, duty, right, privilege, or immunity is granted by general law to counties, and the same power, duty, right, privilege, or immunity is not granted by general law to cities or by local act of the General Assembly to the city of Durham, the city-county enjoys and may exercise that power, duty, right, privilege, or immunity only within Durham county. Otherwise, the city-county enjoys and may exercise any power, duty, right, privilege, or immunity throughout the city-county.

(c) Exercise of powers on behalf of county and city. If this charter grants or imposes a power, duty, right, privilege, or immunity on the city-county, the city-county also enjoys and may exercise that power, duty, right, privilege, or immunity on behalf of the county of Durham and the city of Durham.

(d) Exercise of powers within other cities. The city-county may exercise within the portion of any city, other than the city of Durham, located within the city-county only those powers, duties, rights, privileges, or immunities that the county of Durham could exercise countywide immediately before the effective date of this charter, or that North Carolina counties are, subsequent to the effective date of this charter, authorized by general law to exercise countywide.

(e) Procedures for exercise of powers. When a procedure that purports to prescribe all acts necessary for the performance or execution of any power, duty, right, privilege, or immunity is provided by both this charter and a general law, the two procedures may be used as alternatives, and the city-county may elect to follow either one. When a procedure for the performance or execution of any power, duty, right, privilege, or immunity is provided by both this charter and a general law, but the charter procedure does not purport to contain all acts necessary to carry the power, duty, right,

privilege, or immunity into execution, the city-county shall supplement the charter procedure with the general law procedure; in case of conflict or inconsistency between the two procedures, however, the charter procedure shall prevail.

(f) Adaptation of city-county to general law procedures. The procedure set out in any statute, when employed by the city-county, is deemed amended to conform to the structure and administrative organization of the city-county. If a statute refers to the governing body of a county or city, the reference, except as otherwise provided in this charter, means the Durham commission, established by section 2-1 of this charter; and a reference to a specific official means the official of the city-county who most nearly performs the same duties performed by the specific official. If there is doubt as to the appropriate official, the Durham commission may by resolution designate an appropriate official to act as fully as if that person's office were specified in the statute, and the commission's designation is conclusive.

[Drafter's provision]

Sec. 1-13. Agreements between city and county and city-county. If the city-county, the city, the county, or any two of them enter into a contract or other agreement with one another, that contract may take the form of a resolution adopted by the Durham commission, and no other written evidence of the contract is necessary.

[Charter commission decision]

Sections 1-14 through 1-20. Reserved.

Article 3. Service Districts

Sec. 1-21. Central and special service districts. The Durham commission may define and revise a central service district and one or more special service districts pursuant to Chapter 160D of the General Statutes. It is the intent of this charter that the commission will define a central service district comprised of the total area within the boundaries of the city of Durham immediately before the effective date of this charter.

[Charter commission decision]

Sec. 1-22. County and municipal service districts. The Durham commission may define and revise county service districts and county research and production service districts within Durham county pursuant to Article 16 of Chapter 153A of the General Statutes and municipal service districts within the city of Durham pursuant to Article 23 of Chapter 160A of the General Statutes.

[Charter commission decision]

Sec. 1-23. Service district map or boundary description. The current boundaries of each service district established pursuant to this Part shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This delineation shall be retained permanently in the office of the city-county clerk. Alterations in these established boundaries shall be indicated by appropriate entries upon or additions to the map or description made by or under the direction of the officer charged with that duty by the Durham commission. Copies of the map or

description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city-county clerk, shall be admissible in evidence in all courts and shall have the same force and effect as would the original map or description. The commission may provide for revisions in any map or other description of the district boundaries. A revised map or description shall supersede for all purposes the earlier map or description that it is designated to replace.

[Drafter's provision, based on GS 160A-22]

Chapter 2. The Durham Commission

Article 1. Durham Commission

Sec. 2-1. Durham commission established. The governing board of the city-county is the Durham commission (herein sometimes called the “commission”). It consists of the city-county mayor (herein sometimes called the “mayor”) and eight commissioners, each serving a four-year term of office. The mayor is elected as provided in section 2-11 of this charter, and the commissioners are elected as provided in sections 2-2 and 2-3 of this charter.

[Charter commission decision]

Sec. 2-2. At large commissioners. The qualified voters of the entire city-county nominate and elect four commissioners. These four commissioners are nominated and elected on a nonpartisan basis. The election of these four commissioners is conducted pursuant to G.S. 163-294, except that:

- (1) The city-county election is held in 2004, for two year terms, and in 2006 and every four years thereafter; and
- (2) The filing period for candidates, the filing fees, and the date of the primary shall be governed by the provisions of general law applicable to the election of county commissioners.

[Charter commission decision]

Sec. 2-3. District commissioners. (a) Nature of districts. The city-county is divided into four electoral districts and each district is represented on the Durham commission by one commissioner. The qualified voters of each district nominate persons for one seat on the commission, and the qualified voters of the entire city-county elect these commissioners. To be eligible for nomination and election to the commission from a district and for service on the commission for a district, a person must reside in the district.

(b) Partisan elections. The four commissioners representing districts are nominated and elected on a partisan basis in the same manner as provided by general law for election of county commissioners. The elections are held in 2004 and every four years thereafter.

[Charter commission decision]

Sec. 2-4. Vacancies. If a vacancy occurs on the Durham commission, including in the office of mayor, the remaining members of the commission shall appoint a qualified person to fill the vacancy. If the number of vacancies on the commission is such that a quorum of the commission cannot be obtained, the city-county mayor shall appoint enough members to make up a quorum, and the commission shall then proceed to fill the remaining vacancies. If the number of vacancies on the commission is such that a quorum of the commission cannot be obtained and the office of city-county mayor is vacant, the clerk of superior court of Durham county shall fill the vacancies upon the request of any remaining member of the commission or upon the petition of any five registered voters of the city-county. If for any other reason the remaining members of the

commission do not fill a vacancy within 60 days after the day the vacancy occurs, the city-county clerk shall immediately report the vacancy to the clerk of superior court of Durham county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him or her, fill the vacancy.

If the term of the vacated office expires immediately following the next regular election of the city-county, or if the next regular election of the city-county will be held within 90 days after the vacancy occurs, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regular election of the city-county that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy serves only until the elected successor takes office. The elected successor then serves the remainder of the unexpired term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if that member was elected as the representative of a district. The Durham commission or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the commission nor the clerk of superior court is bound by the committee's recommendation.

[Charter commission decision]

Section 2-5. Durham commission compensation. The Durham commission may fix the compensation and allowances of its members, including the city-county mayor, by inclusion of the compensation and allowances in and adoption of the annual budget ordinance; once set in this manner, the commission's compensation and allowances may not be increased until the commission adopts the budget ordinance for the succeeding year. The commission may not decrease the compensation and allowances of the city-county mayor during that person's then-current term of office unless the city-county mayor agrees to the reduction.

[Charter commission decision]

Sections 2-6 through 2-10. Reserved

Article 2. City-County Mayor

Sec. 2-11. Election of mayor; term of office. The qualified voters of the entire city-county elect the city-county mayor, who serves a four-year term of office. The mayor is nominated and elected on a nonpartisan basis. The election of the mayor is conducted pursuant to G.S. 163-294, except that:

- (1) The city-county election is held in 2004 for a two year term, and in 2006 and every four years thereafter; and
- (2) The filing period for candidates, the filing fees, and the date of the primary shall be governed by the provisions of general law applicable to the election of county commissioners.

[Charter commission decision]

Sec. 2-12. Vacancy in office of mayor. If the office of mayor becomes vacant, the Durham commission fills the vacancy pursuant to section 2-4 of this charter.

[Charter commission decision]

Sec. 2-13. Mayor Pro-Tempore. At the Durham commission's first regular meeting in each December, the city-county mayor shall appoint a commissioner to serve as city-county mayor pro tempore for the ensuing year. The mayor pro tempore may act as mayor during the absence or disability of the mayor.

[Charter commission decision]

Sec. 2-14. Powers and duties of mayor. (a) Presiding at commission meetings and voting. The city-county mayor presides at all meetings of the Durham commission. The mayor votes on all matters to come before the commission, pursuant to section 2-26 of this charter. The mayor has no power to break a tie vote in which he or she participated.

(b) Commission committees. The city-county mayor appoints all standing committees and special committees of the Durham commission, unless the commission votes to elect any or all such standing or special committees.

(c) General powers and duties. Consistent with the provisions of this charter, the city-county mayor has all the powers, duties, rights, privileges, functions, and immunities granted to and imposed on chairmen of boards of county commissioners and mayors of cities by the General Statutes of North Carolina.

[Charter commission decision; City charter, § 9]

Sections 2-15 through 2-20. Reserved.

Article 3. Durham Commission Organization and Procedures

Sec. 2-21. Organizational meeting. The organizational meeting of the Durham commission is held at the date and time of the commission's first regular meeting in December after each city-county election.

At the organizational meeting, the newly elected members of the commission shall qualify by taking the oath of office prescribed in Article VI, section 7 of the Constitution. The organization of the commission 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.

[Charter commission decision]

Sec. 2-22. Regular and special meetings. (a) Regular meetings. The Durham commission shall fix the time and place for its regular meetings.

(b) Special meetings. Special meetings, including emergency meetings, of the commission may be called pursuant to this subsection.

(1) During any regular meeting or any duly called special meeting the commission may call or schedule a special meeting. The motion or resolution calling or scheduling the special meeting shall specify the time, place, and

purpose or purposes of the special meeting and shall be adopted during an open session.

- (2) The city-county mayor, or any five commissioners, or the city-county manager may at any time call a special meeting of the commission. Unless the special meeting is called to consider an emergency, the person or persons calling the meeting shall cause notice of the meeting to be given to the other members of the commission at least 48 hours before the meeting. An “emergency” is a matter that involves generally unexpected circumstances that require immediate consideration by the commission; there is no minimum period of notice of a meeting to consider an emergency, although notice must still be given of the meeting. The notice of a special meeting shall include the time, place, and purpose or purposes of the special meeting and shall be given in one of the following four ways:
- (a) By written notice that is either delivered to the commission member personally or left at that person’s usual dwelling place.
 - (b) By direct telephone communication with the member.
 - (c) By direct personal conversation with the member.
 - (d) By written notice that is delivered to the member through electronic means, such as facsimile transmission or electronic mail.

If notice is not personally given to a commission member under one of methods (a), (b), or (c), the person giving notice must attempt notice through at least two of the four methods set out above. A member who has not received notice pursuant to this paragraph to a meeting called to consider an emergency may waive notice by signing a waiver to that effect.

- (3) At any special meeting, only those items of business specified in the motion or resolution calling or scheduling the meeting or specified in the notice given of the meeting may be transacted.

(c) Recessed meetings. The commission may recess any regular or duly called special meeting to a time and place certain, as long as the motion doing so is adopted in an open session.

(d) Open meetings law notice. The city-county clerk may give notice of a special or emergency meeting of the commission, or any other public body of the city-county, to any person, newspaper, wire service, radio station, or television station entitled to such notice pursuant to G.S. 143-318.12(b), by means of facsimile transmission or electronic mail, when such form of notification has been requested in writing and filed with the city-county clerk by any such person, newspaper, wire service, radio station, or television station. The term "public body" as used in this subsection has the meaning prescribed by G.S. 143-318.10(b).

[Charter commission decision]

Sec. 2-23. Location of meetings. As long as all notices required by law have been given, the Durham commission may meet within or without the boundaries of the city-county, but the commission may take action only at a meeting held within the boundaries of the city-county.

[Charter commission decision]

Sec. 2-24. Quorum. (a) A majority of the members of the Durham commission constitutes a quorum. The number necessary for a quorum is not affected by vacancies on the commission. Those members of the commission who are present for a regular or properly called special meeting of the commission may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

(b) If a member of the commission is present at a meeting and withdraws from the meeting without being excused by majority vote of the remaining members, (i) the member shall be counted as present for the purpose of determining whether a quorum is present and (ii) the member shall be recorded in the affirmative on all votes taken at the meeting after the member has so withdrawn.

[Charter commission decision]

Sec. 2-25. Vote required to consider or adopt ordinances and take other actions. (a) In order to consider at a meeting a matter that is, during that meeting, proposed for addition to or added to the commission's agenda, at least two thirds of the members of the Durham commission must vote in favor of considering the matter. The number necessary to enable consideration is not affected by vacancies on the commission.

(b) In order to adopt an ordinance at the meeting at which the ordinance or the subject matter of the ordinance first appears on the commission's agenda, at least two-thirds of the members of the commission must vote in favor of adopting the ordinance. The number necessary to adopt the ordinance is not affected by vacancies on the commission.

(c) In order to (i) adopt an ordinance at any meeting subsequent to the meeting at which the ordinance first appears on the commission's agenda, (ii) authorize or commit the expenditure of public funds, (iii) make, ratify, or authorize a contract on behalf of the city-county, or (iv) fill any vacancy on the commission, at least a majority of the members of the commission must vote in favor of the measure. The number necessary to take any of the listed actions is not affected by vacancies on the commission. If, however, one or more members of the commission is excused from voting on the measure pursuant to section 2-27 of this charter, the number necessary to take the action is a majority of those members of the commission not excused from voting on the measure.

[Charter commission decision]

Sec. 2-26. Voting by members of the commission. (a) A member of the Durham commission must vote on each matter before the commission unless excused from voting pursuant to this section. A member is excused from participating and voting on a matter when:

- (1) A statute or other act of the General Assembly prohibits the member from voting.
- (2) The commission votes to excuse the member because it would violate the due process rights of a party before the commission if the member participated or voted.
- (3) The commission votes to excuse the member because the matter under consideration involves the member's official conduct.

(4) The commission, upon the request of the member, excuses the member because the matter under consideration involves a material personal financial interest of the member or a person within the member's household; of the member's employer or a firm or partnership with which the member is associated; or any of the member's parents, siblings, children, or grandchildren.

(b) If a member is physically present in the commission chamber and fails to vote on a measure without having been excused from voting pursuant to this section, the member shall be recorded as voting in the affirmative on that measure.

[Charter commission decision]

Sec. 2-27. Commission action. The Durham commission may, at a single meeting, act on behalf of the city-county, the county, and the city, or any one or two of them.

[Charter commission decision]

Sec. 2-28. Code of ordinances. The city-county shall adopt and issue a code of ordinances, pursuant to G.S. 160A-77.

[Charter commission decision]

Sec. 2-29. Power of investigation; subpoena power. (a) Authorization. The Durham commission may investigate the affairs of the city-county, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.

(b) Enforcement. If a person fails or refuses to obey a subpoena issued pursuant to this section, the commission may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the commission pursuant to a subpoena issued pursuant to this section may be used against the witness on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by the commission, willfully swears falsely, he or she is guilty of a Class 1 misdemeanor.

[Charter commission decision]

Sections 2-30 through 2-35. Reserved.

Article 4. Recall and Removal of Commission Members

Part 1. Recall

Sec. 2-36. Recall authorized. Any member of the Durham commission, including the city-county mayor, may be recalled from office as provided in this part.

[Charter commission decision; city charter, § 15(3)]

Sec. 2-37. Petition. Any elector of the city-county may make and file with the director of elections of the board of elections of Durham county an affidavit containing the name of the commission member whose removal is sought and a statement of the

grounds alleged for his or her removal. The said director of elections shall thereupon deliver to the elector making such affidavit copies of petition blanks for demanding such a removal, printed forms of which the director of elections shall keep on hand. Such blanks shall be issued by the director of elections with his or her signature thereto attached and shall be dated and addressed to the board of elections of Durham county, indicate the person to whom issued, and state the name of the person whose removal is sought. A copy of the petition shall be promptly delivered to the city-county clerk who shall enter the copy of the petition in a record book kept for that purpose in the office of the clerk. A recall petition to be effective must be returned and filed with the director of elections within thirty (30) days after the filing of the affidavit, and to be sufficient must bear the signatures of registered voters of the city-county equal in number to twenty-five (25) per cent of the registered voters of the city-county as shown by the registration records of the last preceding regular city-county election.

[City charter, § 15(3)(a)]

Sec. 2-38. Investigation of sufficiency of petition. It shall be the duty of the board of elections of Durham county to investigate the sufficiency of any such petition and to certify the results of such investigation to the Durham commission. The board of elections may employ such persons as it deems necessary to undertake such investigation and the reasonable cost of such investigation shall be reimbursed to the board of elections by the city-county. The board of elections may adopt such rules and regulations as it deems necessary or advisable concerning the validation of signatures appearing on the recall petition, and such rules and regulations shall be available for public inspection consistent with Chapter 132 of the General Statutes.

[City charter, § 15(3)(a1)]

Sec. 2-39. Calling recall election. If a recall petition shall be certified by the board of elections to be sufficient, the board shall at once submit it to the Durham commission with its certificate to that effect and shall notify the person whose removal is sought of such action. If the person whose removal is sought does not resign within five (5) days after such notice the commission shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than fifty (50) nor more than seventy (70) days after the petition has been certified to the commission, and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the commission shall call a special recall election to be held within the time aforesaid, provided however, if the provisions of general law prohibit the holding of special elections during the time aforesaid, and no general or special election is otherwise scheduled during said period of time, then the commission shall call said special recall election for some date within ten (10) days after the last day of said period of time during which special elections are prohibited by general law.

[City charter, § 15(3)(b)]

Sec. 2-40. Separate ballots. The question of recalling any number of members of the commission may be submitted at the same election but, as to each such officer, a separate petition shall be filed and there shall be an entirely separate ballot measure.

[City charter, § 15(3)(c)]

Sec. 2-41. Ballot language. Except that the spaces left for the name and date shall be filled by the correct names and date, the ballots used in a recall election shall be in form substantially as follows:

“*RECALL ELECTION*

City-County of Durham

____ (month and day of month) ____ 20_____.

For the recall of ____

Against the recall of _____”

[City charter, § 15(3)(d)]

Sec. 2-42. Results of election. If a majority of the votes cast on the question of recalling a commission member be against his or her recall the member shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the commission member designated on the ballot he or she shall, regardless of any defects in the recall petition, be deemed removed from office.

[City charter, § 15(3)(e)]

Sec. 2-43. Filling the vacancy. If a commission member in regard to whom a sufficient recall petition is submitted to the board of elections shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this charter for filling vacancies in such office, except as provided in section 2-45. But a commission member removed by the voters as the result of a recall election, or resigning after a sufficient petition for his or her recall has been submitted to the board of elections shall not be appointed to fill the vacancy caused by his or her own removal or resignation.

[City charter, § 15(3)(f)]

Sec. 2-44. When petitions may not be filed. No recall petition shall be filed against a commission member within three (3) months after he or she takes office, nor, in case of a commission member subjected to a recall election and not removed thereby, until at least six (6) months after that election.

[City charter, § 15(3)(g)]

Sec. 2-45. When special election necessary because of recall. If the recall of a majority of the members of the commission, including the mayor, shall be effected at a single recall election, the successors of the persons recalled shall be elected by the registered, qualified voters of the city-county at a special election, and said successors shall serve for the unexpired part of the terms of the persons recalled. The members of the commission who have not been recalled are empowered to call said special election

and to make all necessary provisions regarding the same in conformity to the constitution and general laws of North Carolina. If the recall of all of the members of the commission, including the mayor, shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

[City charter, § 15(3)(h)]

Sections 2-46 through 2-50. Reserved.

Part 2. Removal for Cause

Sec. 2-51. Removal for cause. The Durham commission by a vote of six (6) of its members, in meeting assembled, shall have power to remove from office the city-county mayor or any commissioner for misfeasance, malfeasance, corruption, neglect of duty or other misconduct in office, but the person to be proceeded against shall have at least ten (10) days' notice in writing of the motion to remove him or her, accompanied by a copy of the charges alleged as the grounds for his or her proposed removal. He or she shall have the right to be heard in person or by counsel in his or her defense. If a person is removed pursuant to this section, the remaining members of the commission shall fill the vacancy pursuant to this section 2-4 of this charter.

[Charter commission decision; City charter, § 15(2)]

Chapter 3. Administration

Article 1. In General

Sec. 3-1. Commission to establish single government. The Durham Commission shall establish a single administrative structure for the city-county, merging into one structure the separate governments of the city of Durham and the county of Durham.

[Charter commission decision]

Sec. 3-2. Commission authority to organize and reorganize. The Durham commission may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city-county, may impose ex officio the duties of more than one office on a single officer, may change the composition and manner of selection of boards, commissions, and agencies, and may generally organize and reorganize the city-county in order to promote orderly and efficient administration of government affairs, subject to the following limitations:

- (1) The commission may not abolish an office, position, department, board, commission, or agency established or required by law.
- (2) The commission may not combine offices or confer certain duties on the same officer when this action is specifically forbidden by law.
- (3) The commission may not discontinue to assign elsewhere a function or duty assigned by law to a particular office, position, department, board, commission, or agency.
- (4) The commission may not change the composition or manner of selection of a board when that board's composition or manner of selection is established by law.

[Drafter's provision; G.S. 153A-76; 160A-146]

Sections 3-3 through 3-10. Reserved.

Article 2. City-County Manager

Sec. 3-11. Appointment of manager. The Durham commission shall appoint a city-county manager (herein sometimes called the "manager") to serve at its pleasure. The manager shall be appointed solely on the basis of his or her executive and administrative qualifications and need not be a resident of the city-county at the time of appointment.

Although the city-county manager serves at the pleasure of the Durham commission, the commission may not remove the manager within six (6) months from the date of the manager's initial appointment except for incompetence, malfeasance, misfeasance, or neglect of duty. If the commission proposes to remove the manager during this period, the manager may demand written charges and a public hearing on the charges before the commission before final removal may take effect; but the decision and action of the commission after the hearing is final, and pending the hearing the commission may suspend the manager from duty.

[City charter, § 16; G.S. 160A-147]

Sec. 3-12. General powers and duties of manager. The city-county manager is the chief administrator of the city-county. He or she is responsible to the Durham commission for the administration of all departments of the city-county under the commission's general control and has the following powers and duties:

- (1) The manager shall appoint and suspend or remove all officers and employees of the city-county not elected by the people, and whose appointment or removal is not otherwise provided for by law, in accordance with such general personnel rules, regulations, policies, or ordinances as the commission may adopt.
- (2) The manager shall direct and supervise the administration of all city-county offices, departments, boards, commissions, and agencies under the general control of the commission, subject to the general direction and control of the commission.
- (3) The manager shall attend all meetings of the commission and recommend any measures that he or she considers expedient. The manager is entitled to notice, along with members of the commission, of any special meeting of the commission.
- (4) The manager shall see that the orders, ordinances, resolutions, and regulations of the commission are faithfully executed within the city-county.
- (5) The manager shall prepare and submit the annual budget and capital program to the commission.
- (6) The manager shall annually submit to the commission and make available to the public a complete report on the finances and administrative activities of the city-county as of the end of the fiscal year.
- (7) The manager shall make any other reports that the commission may require concerning the operations of city-county offices, departments, boards, commissions, and agencies.
- (8) The manager shall make and execute all contracts on behalf of the city-county, county, or city if authorized to do so by resolution or ordinance of the Durham commission, and may, if authorized to do so by the Durham commission and subject to whatever terms and conditions may be imposed by the commission, delegate to one or more assistant or deputy city-county managers the authority to make and execute such contracts.
- (9) The manager shall perform any other duties that may be required or authorized by the commission.

[Charter commission decision; GS 153A-82; GS 160A-148; City charter, § 17(a) and (b)]

Sec. 3-13. Relations between commission and manager. Except for the purpose of inquiry, the Durham commission and its members shall deal with the administrative service of the city-county solely through the city-county manager, unless otherwise provided in this charter. No member of the commission may give orders to any of the subordinates of the city-county manager either publicly or privately. When this charter gives to the city-county manager the power to appoint or to employ persons in the

administrative service of the city-county, neither the commission nor any of its members shall dictate the appointment or employment of any such person or persons, but the city-county manager shall be left free to exercise his or her own judgment in appointing or employing such person or persons.

[City charter, § 18]

Sec. 3-14. Special powers of the manager. (a) Purchase of real property. The Durham commission may delegate authority to the city-county manager to purchase real property or any interest in real property, as long as:

- (1) The money for the purchase of such real property or interest in real property is available in the then current budget; and
- (2) The manager, within forty-five (45) days following the purchase, shall submit to the commission a written report setting forth the names of the persons from whom such property or property interest is purchased, a general description of the property or interest in property acquired, the purchase price paid therefor, and the intended use of the property or interest in property.

(b) Purchase contracts. The commission may authorize the city-county manager to make, approve, award, and execute any contract for the purchase of apparatus, supplies, materials, or equipment and any contract for construction or repair work as long as:

- (1) The amount of the contract shall not exceed one hundred thousand dollars (\$100,000);
- (2) The manager shall, within (45) days of the award of such contract, report such award to the commission, provided however, contracts in an amount less than an amount prescribed by the commission need not be reported;
- (3) The manager shall comply with all applicable provisions of Article 8 of Chapter 143 of the General Statutes. The manager may take any action that the commission is required or authorized to take under Article 8 of Chapter 143 of the General Statutes in making, approving, awarding, or executing such contracts.

[City charter, § 17(d)(e)]

Sec. 3-15. Investigations by the city-county manager. The city-county manager shall have power to make investigations as to city-county affairs and for that purpose to subpoena witnesses, administer oaths and compel the production of books and papers.

Any person refusing or failing to attend, or to testify, or to produce such books and papers, may by summons issued by the city-county manager be summoned before the general court of justice and, upon failure to give satisfactory explanation of such failure or refusal, shall be guilty of a misdemeanor and may be fined a sum not exceeding one hundred dollars (\$100.00), or imprisoned for a period not exceeding thirty (30) days. Any person who shall give false testimony under oath at any such investigation shall be liable to prosecution for perjury.

[City charter, § 19]

Sections 3-16 through 3-20. Reserved.

Article 3. Durham Commission Appointments

Sec. 3-21. City-County clerk. The Durham commission shall appoint a city-county clerk, to serve at its pleasure. The clerk shall give notice of meetings of the commission, keep the minutes of the commission, and perform such other duties as may be assigned by the commission.

The city-county clerk appoints and suspends or removes all subordinate employees of the clerk's office.

[City charter, § 20; G.S. 153A- 111; G.S. 160A-171]

Sec. 3-22. City-County attorney. The Durham commission shall appoint a city-county attorney, to serve at its pleasure and be its legal adviser. The city-county attorney appoints and suspends or removes all subordinate employees of the attorney's office.

[City charter, § 21; G.S. 153A-114; G.S. 160A-173]

Sec. 3-23. Other appointments. Whenever the General Statutes provide that the board of county commissioners or the city council is to appoint and suspend or remove a particular officer or employee, the Durham commission enjoys those powers within the city-county.

[Drafter's provision]

Sections 3-24 through 3-30. Reserved.

Article 4. Personnel Administration

Sec. 3-31. Commission members may not be employees. No member of the Durham commission, including the mayor, may be an employee of the city-county.

[Charter commission decision]

Sec. 3-32. Personnel records. (a) Notwithstanding any provision of G.S. 160A-168 or G.S. 153A-98, the city-county manager may, with the approval of the Durham commission, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee, or former employee employed by or assigned to the city-county or whose personnel file is maintained by the city-county and the reasons therefor and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when the city-county manager shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of the city-county or to maintaining the level or quality of services provided by the city-county; provided that prior to releasing such information or making such file or portion thereof available as provided herein, the city-county manager shall prepare a memorandum setting forth the circumstances which he or she deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of the city-county and shall be a public record.

(b) Notwithstanding G.S. 160A-168 and G.S. 153A-98, the city-county manager or the manager's designee may, to facilitate citizen review of the police disciplinary process, release the disposition of disciplinary charges against a police officer and the facts relied upon in determining the disposition to (i) members of the citizen review board and (ii) the person alleged to have been aggrieved by the police officer's action or the person's survivor. The disposition of disciplinary charges includes a determination that the charges were sustained, not sustained, unfounded, exonerated, or the result of a policy failure. If the citizen review board hears an appeal of a police disciplinary case, the disposition of disciplinary charges as well as the facts and circumstances of the case may be released by the city-county manager or the manager's designee to the citizen review board or to the staff to the board. Citizen review board members and other persons shall keep confidential all information released to them under this subsection that is not a matter of public record under G.S. 160A-168 or G.S. 153A-98 or subsection (a) of this section, and any person who violates the confidentiality shall be prosecuted as prescribed in G.S. 160A-168(e) and (f).

[City charter, § 120]

Chapter 4. Regulatory and Planning Functions

Article 1. General Regulatory Powers

Sec. 4-1. Territorial scope of ordinances. Except as otherwise provided in this charter or the general law and except for city-county ordinances regulating traffic or streets and sidewalks, if the city-county's authority to adopt a city-county regulatory ordinance derives from the powers of cities in general or the city of Durham in particular, and neither counties in general nor the county of Durham enjoys a comparable authority, the Durham commission shall make such an ordinance applicable only within the central service district. City-county ordinances regulating traffic and streets or sidewalks are applicable throughout the city. Otherwise the commission may make any city-county regulatory ordinance applicable to any part of the city-county, except areas within a city or town other than the city of Durham. In addition, the governing board of a city or town other than the city of Durham may by resolution permit a city-county ordinance to be applicable within that city or town; such a resolution may be withdrawn by the city or town upon 30 days' written notice to the city-county.

[Charter commission decision]

Sec. 4-2. Shade-tree protection. The Durham commission is authorized to adopt such measures as may be necessary to protect the shade trees located in the central service district.

[City charter, § 57]

Sec. 4-3. Fireworks. The Durham commission may regulate or prevent the firing of fireworks and all explosives or combustible or dangerous material in the streets, public grounds or elsewhere, within or near the central service district. Fireworks may be exhibited, used or discharged at public exhibitions within or near the central service district, such as fairs, carnivals, shows of all descriptions and public celebrations, only after written permission has been obtained from the city-county. The commission may delegate authority to grant such permission within the central service district to the central service district fire department.

[City charter, § 60]

Sec. 4-4. Removal of trash, weeds, etc.; lien. (a) Authority. The city-county shall have power to require the owner or owners of all premises within the central service district, vacant or improved, to keep the same free from trash, obnoxious weeds, overgrowth, solid wastes and stagnant water and to provide that in the case of failure on the part of such owner or owners to comply with any such requirement, to go upon their premises and perform such work as may be necessary to comply with such requirement, and to charge the cost thereof against the premises upon which such work is performed.

(b) Lien. The costs to the city-county of any work performed under this section shall constitute a lien upon the premises upon which the work is performed and may be collected in the same manner as taxes upon real property. The term "costs" as used in this section shall include interest at the rate of eight (8) percent per annum until said lien is paid.

[City charter, § 63]

Sections 4-5 through 4-10. Reserved.

Article 2. Franchises

Sec. 4-11. Franchises. When in its judgment it is necessary for the safety, welfare, or convenience of the people of the city-county, the Durham commission shall have power to grant franchises for the use of the public property of the city of Durham or of the city-county within the city. No franchise shall be granted for a longer period than sixty (60) years.

[City charter, § 67]

Sec. 4-12. Right of city-county to purchase or take over property. Every grant of a franchise or privilege and every contract therefor, made or granted by the city or the city-county pursuant to this article, may provide that at the expiration of the term or period for which it is made or granted, the city-county, upon the payment of a fair valuation thereof to be made in the manner provided in the grant or contract, may purchase and take over to itself the plant as well as the property, if any, of the grantee in the streets, avenues and other public places in its entirety, but in no case shall the value of the franchise of the grantee be considered or taken into account in fixing such valuation; or such grant and contract may provide that such plant and property shall at the expiration of such term or period become the property of the city-county without any compensation to the grantee.

[City charter, § 68]

Sec. 4-13. Method of granting franchise. No franchise shall be granted, renewed, extended or amended except by ordinance. No franchise shall be granted, renewed, extended or amended pursuant to this article unless the Durham commission shall hold a public hearing on the proposed ordinance. 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 city-county. The notice shall be published the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. The notice shall fix the date, hour and place of the hearing, and shall contain a statement of the commission's intent to consider the granting, renewing, extending or amending the franchise. The ordinance may be adopted at the meeting at which the public hearing is held or at some subsequent meeting. The ordinance shall be effective upon passage or at such subsequent time as the commission may prescribe without the necessity of being adopted at two (2) regular meetings of the commission. No such ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within ninety (90) days after the date of passage of the ordinance.

[City charter, § 69]

Sec. 4-14. Transfer of franchise. No franchise granted pursuant to this article shall be transferable except with the approval of the Durham commission expressed by ordinance, and copies of all transfers and mortgages or other documents affecting the title or use of any franchisee shall be filed with the city-county manager within ten (10) days after the execution and delivery thereof.

[City charter, § 70]

Sec. 4-15. Rights reserved to the city-county. All grants, renewals, extensions or amendments of franchises granted pursuant to this article, whether so provided in the ordinance or not, shall be subject to the right of the city-county:

- (1) To repeal the same by ordinance at any time for misuse or nonuse, or for failure to begin construction within the time prescribed or otherwise to comply with the terms prescribed.
- (2) To require proper and adequate extension of plant and services and the maintenance of the plant and fixtures at the highest practicable standard of efficiency.
- (3) To establish standards of service and quality of products and prevent unjust discrimination in service or rates.
- (4) To prescribe the form of accounts and at any time to examine and audit the accounts and other records of any such franchisee; provided that, if forms of accounts shall have been prescribed by the state utilities commission of North Carolina for public utilities throughout the state the forms so prescribed shall be controlling so far as they go. But the Durham commission may prescribe more detailed forms for the franchisees within its jurisdiction.
- (5) To impose such other regulations as may be conducive to the health, safety, morals, welfare and convenience of the public.

[City charter, § 71]

Sec. 4-16. Extensions. All extensions of public utilities within the limits of the city shall become a part of the aggregate property of such public utility, shall be operated as such and shall be subject to all the obligations and reserved rights contained in this charter and in any original grant hereafter made. The right to use and maintain any such extension shall terminate with the original grant.

[City charter, § 72]

Sec. 4-17. Regulation of franchise services. Consistent with applicable state laws, the Durham commission shall have the authority to:

(1) Prescribe and regulate the charges for the carriage of persons, baggage and freight by bus, streetcar, automobiles, taxicabs, wagons or other vehicles used in the city for the transportation for hire of persons, or things, and also to prescribe rules and regulations for the operation of all such vehicles.

(2) Establish all necessary rules and regulations for the government and conduct of the business of such persons or corporations as are engaged in supplying electricity or gas for lighting, heating or other purposes, street railway service, telephone service and other public utility service in the city, in order that the health, safety and convenience of the citizens of the city-county shall be secured.

[City charter, § 73]

Sections 4-18 through 4-20. Reserved.

Article 3. Regulation of Streets and Traffic

Sec. 4-21. Street closings; notice. (a) Closing streets and alleys. The Durham commission may close streets and alleys throughout the limits of the city-county pursuant to the provisions of G.S. 160A-299. In addition, the commission may close any unopened road that is shown on a plat but that has not been accepted or maintained by the city-county.

(b) Notice. In the closing of streets and alleys in the city-county pursuant to the provisions of G.S. 160A-299, a copy of the resolution declaring the commission's intent to close any street or alley need be sent only to those owners of property adjoining the street or alley in the portion of the street or alley proposed to be closed. A notice may be sent to such owners in lieu of a copy of the resolution. A notice may be published in lieu of the publication of the resolution.

The notice shall be published once a week for two (2) successive calendar weeks in a newspaper having general circulation in the city-county. The notice shall be published the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included.

(c) Conveying city and city-county interests in streets or alleys. The provisions of G.S. 160A-299 shall not be construed to limit the authority of the city-county under this charter or under general law to sell, lease, rent, exchange or otherwise convey any property or interest in property which the city or the city-county may have in any street or alley.

[City charter, § 51; County local act: SL 1993, c. 76]

Sec. 4-22. Prior notice of withdrawal of street dedication. The Durham commission is authorized to enact by ordinance provisions that establish reasonable procedural requirements designed to give the city-county prior notice of any declaration of withdrawal and any related plats or maps proposed to be recorded in the county registry pursuant to G.S. 136-96. The authority granted herein shall extend to the withdrawal from dedication of any street or roadway within the city or its extraterritorial area. Such procedural enactments may include, but are not limited to, a requirement that the proposed declaration of withdrawal and any related maps or plats be filed with a designated office of the city-county for a specified number of days, not greater than thirty (30) calendar days, prior to the recordation of any such document in the county registry.

[City charter, § 51.2]

Sec. 4-23. Railroad crossings. The city-county is authorized to provide for the better protection of life, limb, person and property at crossings of the streets located within the city and the railroad tracks now located, or which may hereafter be located, in the city, and to require railroad companies operating on these tracks to erect gates or place flagmen to warn the public of the approach of trains or engines.

[City charter, § 52]

Sec. 4-24. Regulation of parking. (a) Ordinances authorized. The city-county is granted the power and authority to enact ordinances for the regulation of the use of vehicles within the central service district of:

- (1) Off-street parking areas and facilities owned or operated by the city-county;
- (2) Off-street publicly owned parks, outdoor recreation areas, yards and grounds occupied by public buildings; and
- (3) Privately owned areas permissively used by the general public for street purposes.

(b) Towing vehicles in violation. In the exercise of the power and authority granted by subsection (a) hereof, the Durham commission shall have full power and authority to make and provide criminal penalties for violations of such ordinances, not exceeding the penalties provided by general law for the violation of county and city ordinances; provided, however, the city-county is granted power and authority, in addition to the foregoing, to provide that such vehicles in violation of parking regulations at any of the places included within the authority designated herein may be towed away and the owner or person responsible therefor required to pay the resulting towing and storage charges.

(c) Towing. The commission is authorized to provide by ordinance that vehicles stalled, wrecked, abandoned, or illegally parked upon any of the public streets of the central service district may be removed therefrom by having the same towed away to such off-street or other on-street place as may be designated by the commission, and to require that the owner or person, firm, or corporation responsible for the vehicle be required to pay the towing and storage charges accruing from such removal; and in the carrying out of the provisions relating to the removal and storage of vehicles, the commission is fully authorized and empowered to provide such towing and storage facilities by and through its own forces, equipment, and property as well as by contract with independent towing and storage contractors and operators, and the commission may appropriate and use reasonable sums of public funds to defray the necessary expenses thereof.

[City charter, § 54]

Sec. 4-25. Removal of abandoned or junked motor vehicles from private property. (a) Lien for removal. In addition to the power and authority now possessed or hereafter granted by general or special laws, the Durham commission is hereby granted the power and authority to establish charges to be made for the cost of removing abandoned or junk motor vehicles from private property within the central service district. When the city-county causes the removal of any such vehicle from private property pursuant to an ordinance permitting such removal and the owner or other person having control of the property fails to pay the cost of such removal and disposal within thirty (30) days after it becomes due, the amount of the cost of removal and disposal of such vehicle shall on the thirtieth day after the due date thereof become a lien against the real property from which the vehicle was removed; and the amount of such costs shall be placed upon the tax books of the city-county against the property and may be collected

and the lien may be foreclosed in the same manner as taxes are collected and foreclosed, or by suit, as the city-county may determine.

(b) Definitions. The term "abandoned motor vehicle" and "junk or junked motor vehicle" have the same meaning as prescribed in G.S. 160A-303(b).

(c) Abandoned or junked motor vehicles on private property. The provisions of G.S. 160A-303 notwithstanding, the commission may, by ordinance, regulate, restrain or prohibit the keeping on private property within the central service district of any motor vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100.00).

Such an ordinance may provide for the removal of any such vehicle from private property consistent with G.S. 160A-303 except that the provisions of G.S. 160A-303(c) which require the written request of the owner, lessee, or occupant of the premises shall not apply and such vehicle need not be a junked motor vehicle, as that term is defined in G.S. 160A-303, so long as such vehicle meets the requirements of this subsection (c). Nothing in this subsection shall be construed to authorize the removal or disposal of a motor vehicle which is kept or stored: (i) at a bona fide 'automobile graveyard' or 'junkyard' as defined in G.S. 136-143, or (ii) at a bona fide automobile repair business for a period of time not to exceed the time specified in any such ordinance, which period of time shall not be less than fifteen (15) days.

(d) Public purpose. The provisions of this section and of any ordinance enacted pursuant hereto are hereby declared to be in furtherance and promotion of the public interest and welfare and to constitute a public purpose.

[City charter, § 55]

Sec. 4-26. Private parking lots. The provisions of G.S. 20-219.2, relating to the removal of unauthorized vehicles from private lots, shall also apply to parking spaces leased to persons, firms or corporations in parking lots or garages owned, leased or otherwise operated by the city-county.

[City charter, § 56]

Sections 4-27 through 4-30. Reserved.

Article 4. Regulation of Development and Housing

Part 1. Zoning

Sec. 4-31. Zoning authority and procedure. (a) Zoning authority. The city-county may zone property throughout the city-county, except in areas within other cities, pursuant to G.S. Chapter 153A, Article 18, Part 3, as modified by this charter.

(b) Zoning within city only. If a section in this part applies only to the city of Durham, the city-county may act pursuant to that section only within the boundaries of the central service district and within any extraterritorial jurisdiction assigned to the city pursuant to G.S. 160A-360.

[Charter commission decision]

Sec. 4-32. Board of adjustment. (a) Appointment. The Durham commission is authorized to provide for the appointment and compensation of a board of adjustment consisting of five (5) or more members each to be appointed for three (3) years.

(b) Vote necessary. The concurring vote of three-fifths (3/5) 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 the city-county's zoning ordinance, or to decide in favor of the applicant any matter upon which it is required to pass under the city-county's zoning ordinance, or to grant a variance from the provisions of such ordinance.

[City charter, § 93; County local act: SL 1997, c. 165]

Sec. 4-33. Protest petitions. (a) Protest petition rules apply. Changes in the city-county's zoning ordinance are subject to submission of a protest petition as provided in G.S. 160A-385 and 160A-386, as modified by this section.

(b) Time for receiving petitions. The provisions of G.S. 160A-386, as applied to the city-county, are modified to require that protest petitions be received by the city-county clerk in sufficient time to allow the city-county at least four normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed charge or amendment to determine the sufficiency and accuracy of the petition.

(c) Vote required. In case a protest petition is filed against any amendment, supplement, change, modification, or repeal of a zoning regulation, restriction, or zone boundary, and such protest is determined to be sufficient, under G.S. 160A-385, to require a three-fourths (3/4) vote of all members of the Durham commission for passage, the number of members of the commission shall be reduced (for purposes of calculating the number of affirmative votes required) by the number of commission members, if any, who have been excused from voting pursuant to section 2-26 of this charter because the member or members' financial interests are involved.

[Charter commission decision; City charter, §§ 94.5 and 94.3]

Sec. 4-34. Overlay zones; notice. In exercising the authority granted to it by this charter, the Durham commission may adopt ordinances establishing overlay districts, in which additional requirements are imposed on certain properties within one or more general or special use districts. The commission may give notice of the adoption of such ordinances by publication in a newspaper having general circulation within the city-county, as provided by G.S. 153A-323; and the provisions of G.S. 153A-343 which follow the first sentence of such section (concerning the giving of mailed notice) shall not apply to the ordinances which establish or amend: (i) overlay districts, or the boundaries of such districts; or (ii) the requirements applicable within such overlay districts.

[City charter, § 94.1; county local act: SL 1989, c. 516]

Sec. 4-35. Low and moderate income housing; density bonuses. (a) Density bonuses authorized. The Durham commission may provide for the granting of density bonuses in one or more zoning districts in which residential uses are permitted, or

provide other incentives of value to a developer of housing within the city-county, if the developer agrees to construct at least fifteen (15) per cent of the total housing units within the development for persons and families of low and moderate income. The size of the density bonus may vary with the percentage of housing units constructed within the development for persons or families of low and moderate income.

(b) Enforcement. The commission may provide for the enforcement of a developer's commitment to provide low and moderate income housing by ordinance or through the adoption of rules and regulations. Such ordinance or rules and regulations may require the developer to record restrictive covenants applicable to the property, to convey real estate interests in the property, to enter into binding contracts satisfactory to the city-county, or to take any other lawful action prescribed by the city-county. The city-county may prescribe the period of time during which the developer's commitment shall be binding.

(c) Definitions. When used in this section, the following words or terms have the meanings indicated:

- (1) *Density bonus* means an increase in the number of housing units allowed on the tract of land upon which the development is located, when compared to the maximum number of housing units which would be allowed on the tract of land in the absence of the density bonus.
- (2) *Low and moderate income* has the meaning prescribed by regulations of the United States Department of Housing and Urban Development applicable to the city-county's metropolitan area. In the absence of such regulations, the term "low and moderate income" shall have the meaning prescribed by the commission by ordinance or resolution. The term "low and moderate income" shall also be construed to mean low or moderate income.

[City charter, § 94.2; county local act: SL 1991, c. 503]

Sec. 4-36. Development plans and site plans. In exercising the zoning power granted to it by this charter, the Durham commission may require that a development plan showing the proposed development of property be submitted with any request for rezoning of such property. The commission may consider such development plan in its deliberations and may require that any site plan subsequently submitted be in conformity with any such approved development plan. The commission may also consider any limitations an applicant who submits a development plan may propose on the number, range, or type of uses to be made of the property and may limit its consideration of uses to those proposed uses. Such use proposals, where approved, shall be binding as part of the zoning of the property. In considering development plans and developer-proposed use limitations, the commission shall use the legislative public hearing procedures applicable to general use district rezonings. In addition, the commission is authorized to require that a site plan be submitted and approved prior to the issuance of any building permit. The commission may specify the information to be set forth in a site plan and may require that such site plan be prepared by a professional engineer, architect, or land surveyor licensed to practice in North Carolina. The commission may prescribe procedures for the review of such site plans to ensure that development of property shall conform to applicable zoning and building laws and regulations or any other relevant law or regulation. The commission may require that site plans be in conformity with previously approved

development plans for the same property. In approving development plans, site plans, and subdivision plats, the city-county may require that on-site and off-site street and utility rights-of-way be dedicated to the public, that necessary street and utility improvements be constructed, and that provision be made for recreational space and facilities where appropriate.

[City charter, § 92; county local act: SL 1989(90), c. 950]

Sec. 4-37. Planning commission rezoning authority. The Durham commission may, by ordinance, delegate to the Durham planning commission, a commission originally established by the county of Durham and city of Durham pursuant to Article 20 of Chapter 160A of the General Statutes, or to any successor commission, board, or agency created by the city-county, the power and authority to rezone property located within the central service district or any extraterritorial area assigned to the city. Such an ordinance shall provide for rights of appeal to the Durham commission or review by the Durham commission. Appeal may be taken by: (i) the person who petitioned for the rezoning; (ii) any resident of the central service district or the city's extraterritorial area; or (iii) any person who the zoning ordinance required to be provided notice of the rezoning. Any authority so granted to the Durham planning commission, or its successor, shall be exercised under such rules and regulations as may be established by the Durham commission.

[City charter, § 94.4]

Sec. 4-38. Amortization of nonconforming uses. In exercising zoning power within the central service district and any extraterritorial jurisdiction assigned to the city, the Durham commission shall have and is hereby granted power and authority to provide by ordinance for the amortization and phasing out of nonconforming buildings and uses upon such reasonable terms and provisions, including a period of time, as it deems just and proper.

[City charter, § 90]

Sec. 4-39. Service of process of zoning code violations. (a) Mailed notice. Notice of violation of an ordinance adopted under Parts 1, 2, or 3 of G.S. Chapter 153A, Article 18, or Part 3C of G.S. Chapter 160A, Article 19 and applicable to property within the central service district or the city's extraterritorial jurisdiction, if any, shall be served upon violators either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the notice of violation may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after mailing, provided that a notice of violation is posted in a conspicuous place on the premises affected.

(b) Publication notice. If the identities or the whereabouts of violators are unknown and cannot be ascertained after the exercise of reasonable diligence, or if the violators are known but refuse to accept service by registered or certified mail and an affidavit is made to that effect, then the serving of the notice of violation upon the violators may be made by publication at least once in a newspaper having general

circulation in the city-county. When service is made by publication, a notice of violation shall be posted in a conspicuous place on the premises affected.

[City charter, § 94.6]

Sections 4-40 through 4-50. Reserved.

Part 2. Subdivision Regulation

Sec. 4-51. Opening of new subdivisions. The Durham commission is authorized to provide that no person, corporation, association or partnership shall open or lay out new streets within the city, or sell lots abutting the same without first making a plat of the proposed street or streets and having the plat approved by the commission. The commission may designate a planning agency created pursuant to G.S. 160A-361 or a development review board created pursuant to section 4-53 of this charter to approve the plat. The commission may regulate and control the opening of streets and alleys within the city.

[City charter, § 95]

Sec. 4-52. Filing of a duplicate map or plat. Any person, firm or corporation filing or recording with the register of deeds of Durham county, any map or plat of a subdivision of land in the central service district shall, at the time of the filing or recording of same with the register of deeds of Durham county, furnish the register of deeds with a copy thereof for the use of the city-county. All such copies of maps or plats of subdivisions which shall be filed with the register of deeds of Durham county shall be certified by the register of deeds, stating the time when recorded and the plat book and page number where such maps or plats were recorded, and shall be delivered by the register of deeds to the city-county manager.

[City charter, § 96]

Sec. 4-53. Enactment of subdivision controls. (a) Subdivision regulations authorized. For the purpose of promoting the health, safety, morals, convenience, economy, and general welfare of the city-county; the well-ordered establishment and growth of a system of public streets, alleys, and thoroughfares; the more convenient transportation and access by means of streets, avenues, alleys, and public ways in the city-county and its environs; the quicker and more effective use of the street system in the fighting of fires and extension of police protection; the prevention of the overcrowding of lands with buildings with resulting increase of density of population within a small area; to require the reasonable separation of buildings from each other for such distances as may be required to lessen the danger of spreading conflagration; to facilitate the proper laying, maintaining, and operating of water mains and sewer mains and the installation and maintenance of other public utilities so as to serve the residents and commercial houses and manufacturing plants of the city-county in a more economical, practical, orderly, and efficient manner; and for other general welfare, health, and safety purposes, the Durham commission is hereby authorized and fully empowered to regulate the establishment, dedication, location, and dimensions of any proposed public street, alley, or other public way, and the subdivision, rearrangement, or platting of the boundaries of

lots or parcels of real property when any such real property is located in whole or in part upon any existing or proposed public street, alley, avenue, boulevard, or other public way within the city or within the extraterritorial jurisdiction of the city, upon or through or by means of which existing or proposed public streets, alley, avenue, boulevard, or other public way the city-county now provides, or may in the future provide either grading, paving, curbs, gutters, drainage, public sewer, or water facilities, street lighting, police and fire protection, or any other city-county service or facility.

(b) Content of ordinances. The city-county is authorized and empowered to adopt ordinances setting up and establishing standards and requirements with which all subdivisions and rearrangements of the boundaries of the land and maps and plats thereof thereafter made shall comply; and adopt ordinances setting up and establishing standards and requirements for the location, dedication, and dimensions of all proposed streets, alleys, and other public ways, and such other matters as affect or will affect the public convenience, safety, and general welfare; and adopt ordinances requiring that streets and public ways shall be graded, curbed, guttered, and paved; drainage, sidewalks, street lights and signs installed, and water, sewer, and other utility mains and connections installed, or such of the facilities and the extent and manner of such improvements as may be determined from time to time by the Durham commission to be in the public interest, and such ordinances may provide that, in lieu of the completion of such work and installations previous to the final approval of a plat or map, the commission may authorize the filing of a bond in an amount and with surety and conditions satisfactory to it providing for and securing to the city-county the actual construction and installation of such improvements and utilities within a period specified by the commission and expressed in such bond or other approved undertaking, which bond or other undertaking may be enforced by the city-county by all appropriate legal and equitable remedies and proceedings, all as a condition precedent to the approval of maps and plats of such subdivisions within the area referred to in subsection (a) of this section.

In adopting ordinances fixing standards and requirements the commission is hereby specifically authorized and empowered to include any or all of the following provisions, namely: Adopt a plan of major thoroughfares and collector streets and require that all new streets or enlarged streets shall conform to the same where such plan is applicable, both as to location and width; to provide for the minimum width of alleys, avenues, neighborhood streets, collector streets, and major thoroughfares; to require the dedication of alleys and determine minimum width thereof, which requirement may vary as between residential and business property, as between property fronting on major thoroughfares and that not fronting on such thoroughfares, and as between blocks in which the lots are small and blocks in which lots are larger, and in such other cases and circumstances as the commission may find to be in promotion of the public safety, convenience, and welfare; to require dedication of easements in the rear of lots, or in such other parts of such lots as may be more appropriately applicable in any given case, for the location of poles, wires, conduits, storm or sanitary sewers, gas, telephone, and water lines, or other public and quasi-public utilities, due consideration of all factors so as to work the least practical hardship or difficulty upon the lots or the owners thereof to be considered in locating the easements upon the lots; to provide for the minimum and maximum length and width of blocks of land between intersecting streets; to provide that the lot side lines shall be radial to the street line; to require that the lines and frontages of

buildings on corner lots shall be such as to prevent the rear of the building on a corner lot from protruding beyond the building setback line of the building fronting on a street which constitutes a side of such corner lot; to regulate and prescribe the arc and radius and layout of property lines at all intersecting streets, having regard for traffic hazards, congestion, and other pertinent factors involved; to regulate and prescribe conditions and safeguards under which dead-end streets and cul-de-sacs may be authorized; to prohibit street offsets at intersections or permit such street offsets under conditions which may be prescribed; to establish building setback lines and when established to require that they be properly shown and designated on the map or plats of such subdivisions of property; to regulate and prescribe conditions under which reserve strips in subdivisions or shown on plats thereof controlling access to public ways may be used or set apart; to provide for the naming of public streets and other public ways; to require that permanent monuments of stone or concrete of dimensions which may be prescribed be set at all block corners and at all corners in the exterior boundary of any subdivision and that the location thereof be clearly set forth and designated on the final approved plat, and to provide that all lot corners be staked by metal stakes or other approved stakes; to require that street lines deflecting from each other within a block be connected by a curve, the radius of which shall be determined after considering the factors of sight distance, the type and importance of street, anticipated traffic volume, and convenience of traffic movement; to require that the arrangement and location of streets and other ways in new subdivisions shall make provision for continuation of the principal existing streets and other ways in adjoining subdivisions, or their proper projection when adjoining property is not subdivided; to require that a preliminary plat shall be furnished the planning division or other department designated by the commission for preliminary checking to determine whether the preliminary plat is in compliance with the ordinances and requirements established by the commission; to provide that a final plat be prepared and submitted and contain compliance with all of the provisions of the ordinances and be so marked on its face before the same may be filed for record; to provide that no street shall be accepted or maintained by the city-county, nor shall any public utility such as water, sewer, or street lighting be extended to or connected with any subdivision of land, nor shall any permit be issued by any administrative official or department of the city-county for the construction of any building or improvement requiring a permit, upon any land concerning which a plat may be required by such ordinance until the requirements of such ordinances have been complied with; and to provide such other details as may be found, in the legislative discretion of the commission, to have a substantial relation to the public convenience, health, safety, or welfare; to require that such plat or map be finally approved as being in compliance with the ordinances adopted by the commission before such map or plat of such subdivision shall be entitled to be filed or recorded in the office of the register of deeds of the appropriate county and to require that all such approved plats and maps of subdivisions of real estate be recorded or filed in the office of the register of deeds of the county in which such lands are situate; to provide that the violation of the provisions of such ordinances shall subject the person violating the same, including the surveyor, to penalties, upon conviction, not exceeding a fine of fifty dollars (\$50.00). The enumeration of the above mentioned circumstances and things shall not be exclusive.

(c) Development review board. The Durham commission may provide for the appointment of a board to be known as a development review board consisting of four (4)

or more members who shall serve without pay as such members, each of whom shall be appointed by the commission for a term of years or for a term at the will of the commission, as may be determined by the commission; in the event the commission appoints such board for a term of years, the term of office of each member shall be three (3) years. The development review board shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this section. It shall also hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The affirmative vote of a majority of members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance or to effect any variation in any of the provisions of such ordinance. Every decision of such board shall, however, be subject to review by proceedings in the nature of certiorari. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city-county. Such appeal shall be taken within such time as shall be prescribed by the development review board by general rule, by filing with the officer from whom the appeal is taken and with the development review board a notice of appeal, specifying the grounds thereof. 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 from the administrative official to the development review board stays all proceedings in furtherance of the action appealed from until the decision of the development review board is rendered, at which time the stay of proceedings shall cease, unless the proceedings shall be further stayed by a restraining order granted by a court of record or by the development review board. The development review board shall fix a reasonable time for the hearing of the appeal from the administrative official and shall give due notice thereof to the parties, and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The development review board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, action, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end shall have all of the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinances, the development review board shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of such ordinances relating to subdivisions, plats, maps, and all other requirements of the ordinance, in harmony with the general purpose and intent of this section, so that the spirit of the ordinance may be observed, public safety, convenience, and welfare secured and substantial justice done.

(d) Remedies. In case any person, firm, or corporation shall violate any of the provisions of any ordinance which may be adopted by the commission under the authority of this section, or is about to violate such provision, the city-county, in addition to other remedies, may institute any appropriate action or proceedings in its name in the superior court to prevent and restrain such unlawful act or violation or the continuance thereof.

(e) Exercise of police power. This section is enacted in the exercise of the police power of the State of North Carolina, and the power and authority hereby delegated to the Durham commission to adopt ordinances and to require compliance with such ordinances, including the dedication of alleys and easements for utilities as authorized, shall be deemed to be an exercise by the commission of the police powers delegated to it, and shall not be deemed to be an exercise of the power of eminent domain which may be possessed by the city-county.

(f) Severability. It is the legislative intent that if any portion, clause or sentence of this section shall be deemed to be invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions of this section, which would have been passed notwithstanding the invalidity of such portions which may be declared invalid.

[City charter, § 97]

Sec. 4-54. General law reference. In addition to the powers set out in this part, the city-county may regulate subdivisions throughout its jurisdiction pursuant to G.S. Chapter 160A, Article 19, Part 2.

[See county local act: SL 1995(96), c. 757]

Sections 4-55 through 4-60. Reserved.

Part 3. Capital Facilities Fees

Sec. 4-61. Definitions. The following words in this part shall have the following meanings unless a different meaning clearly appears from the context:

- (1) *Capital costs* has the meaning set forth in G.S. 159-48(h). The term “purpose authorized”, as used in G.S. 159-48(h), shall, for the purposes of this part, be deemed to refer to the purposes authorized by section 4-63 hereof. “Capital costs” includes payment of the principal and interest on any debt or other financial obligation incurred by the city or city-county with respect to a purpose authorized by section 4-63 of this part.
- (2) *Developer* means any person, firm, corporation or other legal entity, including but not limited to political subdivisions of the State, who or which constructs or creates new construction.
- (3) *Facilities fee* means the fee authorized by this part.
- (4) *New construction* means any new development, construction, or installation that results in real property improvement or for which a building permit is required. This term shall include the installation of a mobile home and factory built and modular housing. This term shall not include fences, billboards, poles, pipelines, transmission lines, advertising signs, or similar structures and improvements, or renovations and repairs, which do not generate the need for additional or expanded projects of the kind described in section 4-63 upon completion of the new construction.

[City charter, §115.1]

Sec. 4-62. Fees authorized. (a) Authorization. The Durham commission is authorized to establish, impose, and collect facilities fees for the purposes authorized in

section 4-63(a)(1), on all new construction located within the city and/or within the boundaries of any extraterritorial jurisdiction established by the city pursuant to G.S. 160A-360 or any other law, and for the purposes authorized in the remaining paragraphs of section 4-63(a), on all new construction located within the central service district and/or within the boundaries of any extraterritorial jurisdiction established by the city pursuant to G.S. 160A-360 or any other law. Before establishing or amending any fee authorized by this part, the commission shall hold a public hearing and shall give notice of such public hearing in a manner consistent with G.S. 160A-364.

(b) Rules and regulations. The commission may adopt such rules and regulations as it deems necessary or convenient to effectuate the purposes of this part, and such rules and regulations shall apply both within the city and its extraterritorial jurisdiction area.

[City charter, §115.2]

Sec. 4-63. Purposes; limitation on use of facilities fees hereunder. (a)

Purposes. Facilities fees may be imposed for the following purposes:

- (1) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.
- (2) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, lighting, and bikepaths.
- (3) Providing drainage projects in accordance with Chapter 156 or 160A of the General Statutes of North Carolina or in accordance with this charter.
- (4) Providing or acquiring open space land in accordance with Article 19, Part 4, Chapter 160A of the General Statutes of North Carolina or of this charter.

(b) Accounting. Facilities fees collected for each purpose listed in subsection (a)(1) through (a)(4) of this section, shall be kept in separate funds in a manner consistent with the Local Government Budget and Fiscal Control Act and the revenues so collected shall be used only for the purpose of paying the capital costs of the facilities described in each said subsection.

[City charter, §115.3]

Sec. 4-64. Setting of fees. (a) Factors. In establishing facilities fees to be imposed pursuant to this article, the Durham commission shall consider the following:

- (1) The estimated cost of providing the facilities and land described in section 4-63(a)(1) for the area within the city and its extraterritorial jurisdiction, and the facilities and land described in section 4-63(a)(2) through (4) for the area within the central service district and the city's extraterritorial jurisdiction, during a reasonably foreseeable period of time (not exceeding twenty (20) years), and
- (2) The percentage of such costs (determined under (1) above) which is estimated to be attributable to the need for such facilities and land caused by the new construction upon which the facilities fees are to be imposed.

(b) Schedules and formulae. The amount of each facilities fee imposed and collected hereunder may be based upon schedules of fees, formulae for determining such fees, or any other similar method prescribed by the commission.

(c) Zones. In establishing the facilities fees to be imposed under this article, the commission may divide the central service district, the city, and the city's extraterritorial jurisdiction area into two (2) or more zones in order to determine the estimated costs of providing any or all of the facilities and/or land described in section 4-63 of this charter.

(d) Classifications. The commission may establish reasonable classifications of facilities fees and such fees shall be uniformly applied within each class, provided, however, said fees may vary between zones established under subsection (c) of this section. Facilities fees collected within any zone created pursuant to subsection (c) of this section, shall be spent for the capital costs of providing facilities or projects authorized under section 4-63 which serve such zone.

[City charter, §115.4]

Sec. 4-65. Credits for dedicated facilities. In establishing the facilities fees authorized by this part, the Durham commission may provide for credits against any applicable facilities fee when a developer constructs or otherwise provides any facility and/or land described in section 4-63(a) of this charter for public use. The commission may prescribe the circumstances under which a developer may provide such facilities and/or land and receive such credit.

[City charter, §115.5]

Sec. 4-66. Payment of facilities fees. (a) Who is to pay fee. The Durham commission may prescribe when and by whom a facilities fee authorized by this part shall be paid. By way of illustration and not limitation, the commission may require the payment of any applicable facilities fee by a developer as a condition precedent to the issuance of a building permit for the developer's new construction, or any part thereof.

(b) Manner of payment. The commission may permit the payment of a facilities fee in a lump sum or in equal monthly or annual installments over a period of time not to exceed ten (10) years. The commission may delegate authority to the city-county manager, or designee of the manager, to authorize the payment of a facilities fee in installments when requested by the person who is responsible for paying the fee. If paid in installments, such installments shall bear interest at a rate fixed by the commission of not more than nine (9) per cent per annum from the date when the city-county approves payment of the facilities fee in installments. The facilities fee, with accrued interest, may be paid in full at any time.

(c) Lien established. If a facilities fee is to be paid in installments pursuant to subsection (b) of this section, then from and after the date when the city-county approves payment of the facilities fee in installments, the fee shall be a lien on the property of the developer or other person against which the fee was imposed. The facilities fee lien shall be of the same nature and to the same extent as the lien for city and county property taxes. The lien shall be inferior to all prior and subsequent liens for state, local, and federal taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

(d) Enforcement of lien. If any installment on a facilities fee is not paid when due, then all of the installments remaining unpaid shall immediately become due and payable, and the sums due may be collected by the same process and in the same manner as property taxes due upon the property subject to the lien. By way of illustration and not limitation, the property may be sold by the city-county under the same rules as are prescribed by law for the foreclosure and sale of land for unpaid property taxes. Foreclosure may be begun at any time following thirty (30) days after the due date. The city-county shall not be entitled to a deficiency judgment in an action to foreclose a facilities fee lien.

(e) Limitations. The city-county may not maintain an action or proceeding to enforce any remedy for the foreclosure of a facilities fee lien unless the action or proceeding is begun within the period of time prescribed by law for the foreclosure of special assessment liens.

(f) Definition. For purposes of this section, a “facilities fee” includes both the fee as defined in section 4-61(3) of this charter and the capital facilities fees for water and sewer connections established by the city-county pursuant to authority conferred by Article 16 of Chapter 160A of the General Statutes.

[City charter, §115.6]

Sec. 4-67. Construction of facilities outside city limits. In addition to any other authority conferred upon the city of Durham by law, and not in derogation thereof, the Durham commission may provide for the construction of any facility described in section 4-63 outside of the central service district or outside the corporate limits of the city and may appropriate money for such purpose of purposes. The city-county or city may acquire any interest in real or personal property for any of the purposes described in said section 4-63. Such acquisition may be pursuant to this charter and/or the provisions of general law, including but not limited to the provisions of Chapter 40A of the General Statutes.

[City charter, §115.7]

Sec. 4-68. Administrative appeal procedures. The Durham commission may provide a procedure for hearing and deciding appeals concerning the amount of a facilities fee or the amount of any applicable credit. Such procedure, if established, may provide for a final decision to be made either by the commission or by the board of adjustment. Every such decision of the commission or the board of adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of commission or the board of adjustment is delivered to the appealing party. Such delivery may be by personal service or by registered mail or certified mail return receipt requested. No petition for review by the superior court of the amount of facilities fee shall lie to the court unless the appealing party shall first pay the amount of the facilities fee to the city-county with such amount clearly marked as paid under protest.

[City charter, §115.8]

Sec. 4-69. Limitations on actions. Any action contesting the validity of any ordinance or resolution adopted, or any action taken, pursuant to this part shall be commenced not later than nine (9) months after the effective date of such ordinance or resolution or date of such action. Provided, however, if a procedure for hearing and deciding appeals concerning the amount of a facilities fee or the amount of any applicable credit is established pursuant to section 4-68, then such procedure shall be exclusive and the time limitations prescribed by said section 4-68 shall apply.

[City charter, §115.9]

Sections 4-70 through 4-75. Reserved.

Part 4. Building and Housing Code Enforcement

Sec. 4-76. Action against unsafe buildings. The powers granted to cities by Part 5 of Article 19, Chapter 160A of the General Statutes shall extend to buildings within the central service district which are in such condition as to be a fire or safety hazard, or which are a public nuisance.

[City charter, § 100]

Sec. 4-77. Summary disposition of certain personal property. The Durham commission may provide for the removal, sale or other disposition of personal property which is found within buildings or dwellings within the central service district when the building inspector, housing inspector, or other public officer proceeds to cause such building or dwelling to be vacated and closed, or demolished pursuant to any ordinances adopted under authority of Part 5 or Part 6 of Article 19, Chapter 160A of the General Statutes or this charter. The commission shall cause reasonable notice of the intended removal, sale, or other disposition of the personal property to be given to the owner of the building or dwelling or to the owner of the personal property if such owner is known and is someone other than the owner of the building or dwelling, and shall afford such owner or owners a reasonable period of time to remove such personal property. Reasonable notice shall be deemed to have been given if posted in a conspicuous location on the building or dwelling at least seven (7) days prior to removal of said personal property by the city-county. The provisions of section 6-56 of this charter, which authorize the sale of property at private sale, may, but need not, be followed in the sale of such personal property. The proceeds of such sale shall be applied to the costs of the sale and to the costs of vacating and closing, or demolishing such building or dwelling. Any surplus shall be paid to the general fund of the city-county.

[City charter, § 100.1]

Sec. 4-78. Board of building appeals. The Durham commission shall have power to provide for the creation and organization of a board of building appeals to which appeals may be taken from the decision of the building inspector upon any provision of the building code within the central service district. Such board shall consist of five (5) members, each to be appointed for a term of three (3) years, except the first members appointed by authority hereof, one of whom shall be appointed for one year, two for two years and two for three years. Such board shall have power to elect its own

officers, to fix the time and places for its meetings, to adopt necessary rules of procedure, and to adopt all other rules and regulations not inconsistent herewith which may be necessary for the proper discharge of its duties; and it shall keep an accurate record of its proceedings. An appeal from any decision or order of the building inspector to such board shall be taken within such reasonable time as shall be prescribed by the board by general rule and shall be taken by filing with the building inspector and with the clerk or secretary of the board, or with such other person as may be designated by the board, a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any such notice of appeal, the building inspector shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When any such appeal is from a decision of the building inspector refusing to allow the person aggrieved thereby to do any act, such decision of the building inspector shall remain in force until modified or reversed by the board as hereinafter provided. When any such appeal is from a decision of the building inspector requiring the person aggrieved to do any act, such appeal shall have the effect of suspending the requirements of the building inspector until the hearing thereon by the board unless the building inspector certifies to the board, after the notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate (a copy of which certificate shall be furnished the appellant), a suspension of his requirement would, in his opinion, cause imminent peril to life or property, in which case such requirement shall not be suspended except by a restraining order, which may be granted for due cause shown and upon not less than one day's written notice to the building inspector, by the board or by any judge of the superior court authorized by law to grant restraining orders. The board shall fix a reasonable time for the hearing of all appeals and shall decide the same within a reasonable time. Upon the hearing of any appeal any party may appear in person or by agent or attorney. The board of building appeals may reverse or affirm, wholly or partly, or may modify the decision appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the building inspector; provided, that the concurring vote of four (4) members of the board shall be necessary to reverse or modify any decision of the building inspector. In passing upon appeals, the board shall have power not only to determine whether the decision of the building inspector is made upon a proper construction of the pertinent provisions of the building code, but it shall have power also to allow materials and methods of construction other than those required by the building code to be used when in its opinion such other materials and methods of construction are as good as those required by the code; and for this purpose the requirements of the building code as to such matters shall be considered simply as a standard to which construction shall conform. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the building code, to adopt the application of the code to the necessities of the case to the end that the spirit of the code shall be observed, public safety, and welfare secured and substantial justice done. Every decision of the board shall be subject to review by the superior court of Durham county.

[City charter, § 101]

Sec. 4-79. Housing appeals board. (a) Housing appeals board authorized. In exercising the authority within the central service district to provide for creation and organization of a housing appeals board, conferred upon cities by G.S. 160A-446, the Durham commission may, by ordinance, authorize such housing appeals board to adopt ordinances ordering the building inspector to proceed to effectuate the purposes of Article 19, Chapter 160A, as provided in G.S. 160A-433(5), with respect to any particular property or properties which the building inspector shall have found to be unfit for human habitation and which property or properties shall be described in such ordinance, without the necessity of further action by the Durham commission.

(b) Other matters for board. The Durham commission may, by ordinance, also authorize the housing appeals board to hear and decide, without the necessity of further action by the commission, other cases arising within the central service district under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes and this part of this charter which, in the absence of such ordinance, would reach the commission for action or decision. In hearing any such cases, the same procedures for the hearing of appeals under subsection (a) herein shall apply, and the decision of the board shall be reviewable in the same manner as decisions under subsection (a) herein.

[City charter, § 102]

Sec. 4-80. Additional building and housing code remedies. In addition to any other remedy provided by law, the Durham commission may impose fines and penalties and take any other action authorized by G.S. 160A-175 in adopting, amending or enforcing any ordinance applicable only within the central service district and authorized by Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes.

[City charter, § 102.1]

Sec. 4-81. Building and housing code errors; notice of lis pendens. Any ordinance of the city-county adopted pursuant to Part 5 or Part 6 of Article 19 of Chapter 160A of the General Statutes for the central service district may provide that any complaint and notice or order issued pursuant to that ordinance may be filed in the notice of lis pendens in the office of the clerk of superior court of the county where the property is located. From the date of recording of such complaint and notice or order, it shall be binding upon the successors and assigns of the owners of the building or dwelling. The ordinance may authorize a public officer to cancel the notice of lis pendens in specified circumstances.

[City charter, § 102.2]

Sec. 4-82. Emergency repairs in housing code cases. (a) Housing appeals board actions. The Durham commission may, by ordinance, authorize a housing appeals board created pursuant to G.S. 160A-446 to adopt ordinances applicable to property within the central service district ordering the housing inspector to repair a condition or conditions of a dwelling or dwelling unit that poses an immediate threat of danger or harm to the safety of the occupants in such dwelling or dwelling unit. Any ordinance adopted under this section shall provide that at least seventy-two (72) hours notice will be given to the owner of and parties in interest in such dwelling or dwelling unit prior to the making of any repairs or improvements by the housing inspector.

(b) Lien. The amount of the cost of such repairs, alterations, or improvements shall be a lien against the real property upon which such cost was incurred, which lien shall be filed, have the same priority and shall be collected as provided by Article 10 of Chapter 160A of the General Statutes.

[City charter, § 102.3]

Sec. 4-83. Service of complaints and orders. Complaints or orders issued by a public officer pursuant to Part 5 or 6 of Article 19 of Chapter 160A of the General Statutes as to property within the central service district shall be served upon persons either personally or by registered or certified mail and, in addition thereto, may be served by regular mail. When service is made by registered or certified mail and, in addition thereto, regular mail and the registered or certified mail is unclaimed but the regular mail is not returned by the post office within ten (10) days after mailing, service shall be deemed sufficient under Parts 5 and 6 of Article 19 of Chapter 160A of the General Statutes.

[City charter, § 102.4]

Sec. 4-84. Owner of real property shall authorize agent to accept service of process. The Durham commission may, by ordinance, require that each owner of rental property within the central service district authorize a person residing in Durham county or a county bordering Durham county to serve as his or her agent for the purpose of accepting service of process in an action involving a violation of an ordinance adopted under Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes. The owner shall provide, on a form supplied by the housing services department, the authorized agent's name, address, and phone number. The owner shall notify the housing services department of any changes in the information provided not less than ten (10) days after such changes have occurred. Nothing in this section shall require an owner to designate an agent to accept service of process where the owner of the rental property resides within the city-county.

[City charter, § 102.5]

Sec. 4-85. Emergency repairs to nonresidential buildings. (a) Housing appeals board. The Durham commission may, by ordinance, authorize the housing appeals board to adopt ordinances ordering the housing inspector to repair, alter, or improve any building within the central service district which appears to the inspector to be especially dangerous to public safety or welfare because of, but not limited to, its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes. Any ordinance adopted under this section shall provide that the city-county manager must approve such repairs, alterations, or improvements and that at least 72-hours notice will be given to the owner of and parties in interest in such building prior to the making of any such repairs, alterations, or improvements by the housing inspector.

(b) Lien. The amount of the cost of such repairs, alterations, or improvements shall be a lien against the real property upon which such cost was incurred, which lien shall be filed, have the same priority, and shall be collected as provided by Article 10 of Chapter 160A of the General Statutes.

[City charter, § 102.6]

Sections 4-86 through 4-90. Reserved.

Article 5. Fair Housing

Sec. 4-91. Equal housing. The Durham commission may adopt ordinances applicable within the central service district prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, familial status, or handicap in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing and which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a misdemeanor, and shall be punishable under G.S. 14-4; may subject the offender to civil penalties; and may provide that the city-county may enforce the ordinances by application to the General Court of Justice, Superior Court Division, for appropriate legal and equitable remedies, including but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and punitive damages, and the court shall have jurisdiction to grant such remedies.

[City charter, § 121]

Sec. 4-92. Exemptions. Any ordinance enacted pursuant to this article may provide for exemption from its coverage:

- (1)a. Any single-family house sold or rented by an owner; provided, however, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided further, however, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subdivision (1) shall apply only with respect to one such sale within any twenty-four month period; provided further, however, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; provided further, however, that the sale or rental of any such single-family house shall be exempted from the application of an ordinance adopted pursuant to this article only if such house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rentals services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting housing accommodations, or of any employee or agent of any such broker, agent, salesman, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of the provisions of the ordinance.

- b. Nothing in this subdivision (1) shall prohibit the use of attorneys, escrow agents, abstractors, title companies, or other such professional assistance as necessary to perfect or transfer the title.
- c. For the purposes of this subdivision (1), a person shall be deemed to be in the business of selling or renting accommodations if:
 - 1. He or she has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any housing accommodations or interest therein, or
 - 2. He or she has, within the preceding twelve (12) months, participated as agent other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any housing accommodation or interest therein, or
 - 3. He or she is the owner of any housing accommodation designed or intended for occupancy by, or occupied by, five (5) or more families.
- (2) Rooms or units in housing accommodations containing living quarters occupied or intended to be occupied by no more than three (3) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence;
- (3) With respect to discrimination based on sex, to the rental or leasing of housing accommodations in a single-sex dormitory property;
- (4) With respect to discrimination based upon religion, to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental or occupancy of such housing accommodations being limited or preference being given to persons of the same religion, unless membership in such religion is restricted because of race, color, national origin, sex, handicap, familial status, or age;
- (5) With respect to discrimination based on age, to any bona fide senior citizen or retirement community, provided, however, that this exemption shall be subject to the following limitations:
 - a. The covenants, conditions, and restrictions or other documents or written policy pertaining to such community shall not limit occupancy more proscriptively than to require that one person in each resident be a senior citizen and that each other resident, if any, except the spouse or cohabitant of, or a person who resides with and provides primary physical or economic support to, the senior citizen shall be at least forty-five (45) years of age.
 - b. The covenants, conditions, and restrictions or other documents or written policy pertaining to such community shall permit temporary residency by a person less than forty-five (45) years of

- age for specified periods of not more than sixty (60) days in any calendar year;
- c. Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any other person who was a qualified permanent resident pursuant to the provisions of this subdivision (5) shall be entitled to continue in residence;
 - d. The senior citizen or retirement community shall have been developed for, and initially put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens;
 - e. Any person who has the right to reside in, occupy, or use the housing subject to this section prior to the date of its enactment shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.
- (6) Any person subject to this article who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions if the plan is part of a conciliation agreement entered into by that person under the provisions of an ordinance adopted pursuant to this article.

[City charter, § 122]

Sec. 4-93. Enforcement. (a) Committee authorized. The Durham commission may create or designate a committee or committees to assume the duty and responsibility of enforcing ordinances adopted pursuant to this article. Such committee(s) may be granted the necessary authority by the commission for the proper enforcement of any fair housing ordinance, including, but not limited to, the power to:

- (1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance;
- (2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation;
- (3) Apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring such person to respond or comply;
- (4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the General Court of Justice, Superior Court Division, for appropriate civil relief on behalf of the aggrieved person or persons;
- (5) Sit as arbitrators in binding arbitration pursuant to the Uniform Arbitration Act, embodied in Article 45A of Chapter 1 of the North Carolina General Statutes; provided, that the time within which a party may apply to the General

Court of Justice to vacate, modify, or correct an award may be limited to sixty (60) days.

(b) Judicial review of committee orders. Judicial review of committee orders other than arbitration awards shall be in accordance with Article 4 of Chapter 150B of the General Statutes, provided, however, that the provisions of G.S. 150B-45 notwithstanding, petitions for judicial review shall be filed in the Superior Court of Durham county; provided, further, the provisions of G.S. 150B-51(b) notwithstanding, the trial court judge may grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determines is just and proper and the trial court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or remand the order for further proceedings and enforce the order to the extent that the order is affirmed or modified. The term "agency," whenever used in Article 4 of the Chapter 150B of the North Carolina General Statutes, shall mean the committee(s) as authorized or created by the Durham commission under the authority of this act.

(c) Enforcement of committee orders:

- (1) Decisions of a committee sitting as arbitrators shall be enforced as provided in Article 45A of Chapter 1 of the General Statutes. Otherwise, if, within sixty (60) days after entry of an order of the committee, a respondent has neither complied with nor sought review of such order, any aggrieved person or the committee may apply to the Superior Court of Durham county for an order of the court enforcing the order of the committee.
- (2) Within thirty (30) days after the court's receipt of the petition for enforcement of the agency's order, or within such additional time as the court may allow, the committee shall transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened and testimony submitted by tape recording, by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.
- (3) The hearing on the petition for enforcement of the committee's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the committee's hearing; except that in cases of alleged irregularities in proceedings before the committee not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the proceedings or the record is inadequate, the judge in his discretion, may hear all or part of the matter *de novo*; provided, that if the order imposed includes punitive damages, then as to that portion of the order, the respondent shall have a right to a trial *de novo* on that issue.
- (4) The court shall issue the order requiring compliance with the committee's order, unless it finds that enforcement of the committee's order would prejudice substantial rights of the party against whom the order is sought to be enforced, because the committee's findings, inferences, conclusions or decisions are:
 - a. In violation of constitutional provisions; or

- b. In excess of the statutory authority of jurisdiction of the committee; or
 - c. Made upon unlawful procedure; or
 - d. Affected by other error of law; or
 - e. Unsupported by substantial evidence in view of the entire record as submitted; or
 - f. Arbitrary or capricious.
- (5) If the court declines to enforce the committee's order for one of the reasons specified in paragraph (4) of this section, it shall either:
- a. Dismiss the petition; or
 - b. Modify the committee's order and enforce it as modified; or
 - c. Remand the case to the committee for further proceedings.
- (6) Any party to the hearing on the petition for enforcement of the committee's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.
- [City charter, § 123]

Sec. 4-94. Further recourse of complainant. (a) Civil action for unlawful housing practice. An ordinance adopted pursuant to this act may permit any complainant to bring a civil action in the Superior Court Division of the General Court of Justice of Durham county against the person allegedly engaging in the unlawful practice. Such civil action for a housing practice shall be brought no later than one (1) year after an alleged discriminatory housing practice has occurred or terminated.

(b) Injunctions; equitable relief. If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful housing practice, award special damages, actual damages, and punitive damages.

[City charter, § 124]

Sec. 4-95. Award of attorney's fees. An ordinance adopted pursuant to this article may provide for an award of attorney's fees to the prevailing party in any action or proceedings under such ordinance, other than the committee, in the discretion of the committee or court.

[City charter, § 125]

Sec. 4-96. Complaints and other records. The Durham commission may provide that neither complaints filed with any committee pursuant to the ordinance nor the discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

[City charter, § 126]

Sec. 4-97. Committee meetings. The provisions relating to meetings of governmental bodies, as set forth in Article 33C of Chapter 143 of the General Statutes, shall apply to the activities of any committee authorized to enforce the ordinance. Provided, however, that the Durham commission may provide that said statutory

provisions shall not apply to the activity of a committee to the extent that the committee is:

- (1) Receiving a complaint; or
 - (2) Conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance.
- [City charter, § 127]

Sections 4-98 through 4-100. Reserved.

Article 6. Miscellaneous

Sec. 4-101. Employment discrimination and public accommodations. The city-county may adopt employment discrimination and public accommodations ordinances pursuant to Chapter 227 of the 1993 Session Laws, as amended by Chapter 537 of the 1995 Session Laws.

[City and county local acts: SL 1995, c. 537; SL 1993, c. 227]

Chapter 5. City-County Services and Facilities

Article 1. Public Safety

Sec. 5-1. Use of volunteer fire departments. The city-county recognizes that volunteer fire departments have played and will continue to play an essential role in the provision of fire protection services in Durham, and that volunteer fire departments have service and response capabilities that are comparable to those of the central service district fire department. (The central service district fire department is the former city fire department.) Therefore, it is the intent of this charter that the city-county, acting pursuant to G.S. Chapter 153A, Article 16 and G.S. Chapter 160A, Article 23, provide fire protection through a system of county and municipal fire service districts, supporting both volunteer fire departments and the central service district fire department. Each fire service district served by a volunteer fire department should encompass sufficient territory to allow adequate financial support to the volunteer fire department, and should be defined so as to minimize response time and maximize fire protection service to the citizens of the city-county. To that end and if necessary, areas within the city of Durham immediately before the effective date of this charter should be placed within appropriate county fire service districts served by volunteer fire departments.

[Charter commission decision]

Sec. 5-2. Fire commission. (a) Creation. The Durham Fire Commission comprises the city-county fire marshal, the chief of the central service district fire department, and the chiefs of each volunteer or paid fire department that provides primary fire protection to territory within the boundaries of the city-county. The fire marshal is chair of the Fire Commission.

(b) Powers and duties. The Fire Commission shall coordinate the delivery of fire protection services within the boundaries of the city-county.

[Charter commission decision]

Sec. 5-3. Arrest authority of fire fighters. Persons employed by the city-county and exercising the duties of fire fighters shall have power, and are hereby authorized, to make arrests during fires for interference with or obstruction of their duties.

[City charter, § 25]

Sec. 5-4. Destruction of hazardous buildings. Whenever any building in the central service district shall be on fire, it shall be lawful for the chief of the central service district fire department to order and direct such building or any other building which he or she may deem hazardous and likely to communicate fire to other buildings, or any part of such buildings, to be pulled down or destroyed; and no action shall be maintained against the chief or any person under his or her authority, or against the city-county therefor, except as hereinafter provided. But any person interested in the property so destroyed may within one year thereafter apply in writing to the Durham commission to assess and pay the damages he or she has sustained. The Durham commission may thereupon pay to the claimant such sum as may be agreed upon between him or her and the Durham commission. No such claimant shall bring suit against the city-county for

such damage unless he or she shall have first presented his or her claim in the manner prescribed by this section, and the commission shall have declined to pay or settle the same, or for ten (10) days after such presentation shall have neglected to enter, or cause to be entered, upon its minutes its determination in regard thereto.

[City charter, § 26]

Sec. 5-5. Use of wheel locks. The Durham commission may provide, by ordinance, for the use of wheel locks within the central service district on illegally parked vehicles for which there are three or more outstanding, unpaid, and overdue parking tickets for a period of ninety days. The ordinance shall provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal hearing, an immobilization fee not to exceed fifty dollars (\$50), and charges for towing and storage. The city-county shall not be responsible for any damage to an immobilized illegally parked vehicle resulting from unauthorized attempts to free or move that vehicle.

[City local act: SL 1995, c. 381]

Sec. 5-6. Auxiliary police officers and fire fighters. The Durham commission is authorized to provide by ordinance for the organization, recruiting, training, equipping, and appointing of auxiliary police officers and auxiliary fire fighters for the city-county police department and central service district fire department, subject to the following conditions:

- (1) Auxiliary police officers and fire fighters duly appointed by the proper authorities of the city-county shall, while training and while performing duties on behalf of the city-county incidental to their appointment, be entitled to the benefits of Chapter 97 of the General Statutes of North Carolina, designated “Workers’ Compensation Act” to the same extent that regular employees of the city-county are entitled to the benefits of the act. For the purposes of determining the basis for workers’ compensation payments to auxiliary police officers such payments shall be based upon the entrance salary of a regular police patrolman of the city-county at the time of injury to an auxiliary police officer. For the purpose of determining the basis for workers’ compensation payments to auxiliary fire fighters such payments shall be based upon the entrance salary of a regular fire fighter of the city-county at the time of injury to an auxiliary fire fighter.
- (2) Auxiliary police officers and fire fighters, appointed pursuant to this authority, shall not be entitled to pay for their services unless called into active duty by the Durham commission because of emergency, in which event they may receive such compensation for their services as shall be fixed by ordinance adopted by the commission. Auxiliary police officers and fire fighters shall not be entitled to any of the benefits provided for regular employees of the city-county, except workers’ compensation as set out in this section; provided, that this subsection shall not in any manner affect the rights of any person to benefits provided by the State of North Carolina or by act of Congress for civilian defense workers or auxiliary police officers or fire fighters.
- (3) The city-county shall be entitled to the same immunities with respect to the action of auxiliary police officers and auxiliary fire fighters in the performance

of their duties, while training or otherwise, that it is entitled to with respect to the action of the regular police officers and fire fighters of the city-county in the performance of their duties.

[City charter, § 27]

Sec. 5-7. Payment of rewards. (a) Authority. The Durham commission is hereby fully authorized and empowered, in its sound discretion, to offer to pay, and to pay, rewards to any person or persons who furnish information leading to the arrest and conviction of any person who turns in a false fire alarm, or who wilfully injures or damages any property or facility owned, operated, or maintained by the city or city-county, or who commits within the central service district any criminal act in violation of the laws of the State of North Carolina.

(b) Funding. Any available public funds may be used for the purposes herein specified, it being the legislative determination and declaration that the offering and payment of such reward for this purpose is in promotion of the public safety and general welfare and is a necessary governmental function.

[City charter, § 49]

Sections 5-8 through 5-10. Reserved.

Article 2. Public Enterprises

Part 1. Water and Sewer

Sec. 5-11. Water system; rates and charges. The Durham commission shall provide for the collection of all rents, forfeitures, or emoluments arising from the operation of the system of waterworks of the city. The commission shall cause accurate accounts to be kept of all receipts and expenditures of money, from or on account of the operation of the city's waterworks, separate and apart from the other receipts and expenditures of the city-county.

The commission shall regulate the distribution and use of water for all places and all purposes, where the same may be required, and from time to time shall fix a price for the use thereof and the time of payment, and it shall erect such a number of public hydrants in such places as it shall see fit, and shall direct in what manner and for what purpose the same shall be used, and it shall also erect any and all such other hydrants as may be necessary; provided, that the commission shall have the power to make ordinances, rules, and regulations governing the erection, installation, and use of hydrants on private property, and to fix the rate of charges therefor; and it is hereby expressly given the right and power to make rules and regulations governing the use of all hydrants heretofore erected on any and all private property as it may deem best for the proper management of the waterworks system and the proper fire protection of the city-county.

The commission shall have full power and authority to require payment in advance for the use or rent of water furnished by the city-county in or upon any building, place, or premises, and in case prompt payment shall not be made, the commission may shut off the water from such building, place or premises after five (5) days' notice, and shall not be compelled again to supply the premises, building or place with water until the arrears thereon shall be fully paid.

The commission, and all persons acting under its authority, shall have the right to use the ground or soil, in, or upon, or under any road, railroad, highway, lane, or alley for the purpose of enlarging or improving or maintaining the plant or system of waterworks owned by the city or the city-county, upon the condition that it shall not permanently injure any such property, and that the same shall be restored to its original condition, or damages done thereto shall be repaired by the commission.

[City charter, §§ 31, 30]

Sec. 5-12. Water system regulations. The Durham commission shall have power to make rules and regulations with respect to the introduction of water into or upon any premises, and from time to time to regulate the use thereof, in such manner as shall seem to it necessary and proper, and the commission and all engineers, superintendents or inspectors in its service, are hereby authorized and empowered to enter, after demand made and refusal, at all reasonable hours, any dwelling or other place where such water is taken and used where unnecessary waste of water thereof is known or suspected, to examine and inquire into the cause thereof, and if any person refuses to permit such examination, or opposes or obstructs such officer in the performance of such duties, he, she, or they so offending shall forfeit and pay the sum of ten dollars (\$10.00), to be recovered before the general court of justice in an action by the commission, and the supply of water may also be cut off until the required examination is made and the required alterations and repairs are made.

If any person or persons shall maliciously or willfully divert the water or any portion thereof from the city's or city-county's waterworks, or shall corrupt or render the same impure, or shall destroy or injure any canal, aqueduct, pipe, or other property, used or acquired for distributing the water, such person shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars (\$500.00), or shall be imprisoned not exceeding one year, at the discretion of the court.

The commission shall have the power to adopt such rules and regulations as may be just and proper, regulating the use of water by householders, persons, firms, and corporations, and in order to conserve the water supply of the city or city-county in case of any drought may require reasonable curtailment in the use of water by the adoption of reasonable ordinances, rules, and regulations; and all persons, firms, and corporations in the city-county are required to observe the ordinances, rules and regulations adopted by the city-county, and any person, firm or corporation who shall fail, neglect, or refuse to observe any of the ordinances, rules and regulations of the commission shall be subject to and pay a penalty of twenty-five dollars (\$25.00) for each offense, to be recovered before the general court of justice.

[City charter, § 32]

Sec. 5-13. Water and sewer fees and charges to premises with broken or leaking plumbing fixtures. Under the circumstances specified in this section, the portion of any unpaid rates, fees, or charges imposed by the city-county for the use of or the services furnished by either of the public enterprises defined in G.S. 160A-311(2) or (3) which the city-county determines to be the result of broken or leaking plumbing fixtures, pipes, or facilities owned by the real property owner and located on the real property using or served by the public enterprise shall become a lien on the real property,

and may be collected in any manner following notice and opportunity for appeal as provided herein, in a foreclosure action using the same procedure by which delinquent personal or real property taxes may be collected. Any such lien shall be inferior to all prior and subsequent liens for federal, state, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

- (1) This section only applies where the public enterprise customer is not an owner of the real property using or served by the public enterprise.
 - (2) No lien shall arise unless the city-county, following discovery by the city-county of the break or leak, sends written notice to the owner of the property, either by personal service or by registered or certified mail return receipt requested, with a copy by regular mail to the public enterprise customer. Such notice shall inform the owner of the break or leak, and that a lien against the real property will arise unless the owner repairs the break or leak and provides written evidence thereof to the city-county within thirty (30) days from the date of receipt of the notice. Only the portion of the unpaid rates, fees, or charges that accrues or is imposed after the expiration of this thirty-day period shall become a lien on the real property as provided in this section. The lien shall include only that portion of the rates, fees, or charges that is attributable to the use of or services furnished by the public enterprise both after the expiration of this thirty-day period and as the result of the break or leak.
 - (3) If the owner believes the city-county's determination that there is a break or leak to be in error, the owner may appeal to the city-county manager or designee within fifteen (15) days from the date of receipt of the notice. Following a decision by the city-county manager or designee, the owner may appeal such decision to the commission under guidelines and procedures to be developed by the city-county. The city-county manager or designee shall provide the owner with a copy of such guidelines and procedures along with or prior to the decision by the city-county manager or designee. The decision of the commission may be delivered to the owner either by personal service or by registered or certified mail return receipt requested. The decision by the commission shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within fifteen (15) days after the decision of the commission. During the period of such appeal and review, the thirty-day period referred to in section 34(b) for repair of the break or leak shall be stayed.
 - (4) For purposes of this section, "owner" means the person or persons shown on the county tax listing as the owner of the property.
- [City charter, § 34]

Sections 5-14 through 5-20. Reserved.

Part 2. Stormwater Enterprise

Sec. 5-21. Repairs to stormwater system located on private property. (a) The city-county is authorized to use funds collected from stormwater fees to participate in the

cost of repairs, improvements, and maintenance to the stormwater system located on private property within the city-county, and to enact ordinances that allocate the private and public share of the cost of such activities. Upon written request by the property owner, the city-county is also authorized to allow the private share of the cost, with interest at a rate to be fixed by the Durham commission but not to exceed nine percent (9%) per annum, to be paid over a period of time to be fixed by the commission but not to exceed 10 years. The unpaid portion owed to the city-county by the property owner shall become a lien on the real property, and may be collected in the same manner and using the same procedures by which the city-county collects delinquent personal or real property taxes. Any such lien shall be inferior to all prior and subsequent liens for federal, state, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

(b) The authority granted by this section is in addition to and not in derogation of any other authority granted to the city-county by this charter or any other law.

[City charter, § 35; County local act: SL 1998-60]

Sections 5-22 through 5-25. Reserved.

Part 3. Solid Waste Collection and Disposal

Sec. 5-26. Charges for stationary containers. (a) In addition to the authority set out in G.S. 160A-314, where housing units within the central service district qualify under city-county ordinances for roll out cart solid waste collection service and the housing units instead choose to be served by stationary containers in accordance with city-county ordinances, the city-county may provide stationary container collection service without charging fees for such service other than the fees applicable to roll out cart service.

(b) Nothing in this section shall be construed to impair the authority of the city-county to charge customers who do not qualify for service under subsection (a) of this section the fees established by city-county ordinances for stationary container collection service.

[City charter, § 38]

Sections 5-27 through 5-30. Reserved.

Part 4. Parking

Sec. 5-31. Parking rates for downtown area residents. The city-county may establish a schedule of rents, rates, fees, and charges for use of off-street parking facilities and systems that provides for such use at no charge or at reduced rates by customers residing in housing units located in the downtown area of the city-county. The Durham commission shall define the “downtown area of the city-county” for purposes of this section. Eligibility under this section may be based on the number of housing units, the number of customers residing in the housing units, or such other method or system of classification as may be determined by the commission.

It is the intent of this section to provide a means to encourage the rejuvenation and revitalization of the downtown area of the city-county and thereby promote sound urban development and the general welfare of the city-county, which are hereby declared to be lawful public purposes of the city-county.

[City local act: SL 1991(92), c. 925]

Sections 5-32 through 5-40. Reserved.

Article 3. Community and Economic Development

Sec. 5-41. Urban development projects. (a) Definition. The term “urban development project” means a capital project comprising one or more buildings or other improvements in which part of the project is privately owned and part is publicly owned. By way of illustration but not limitation, such a project might include a publicly owned parking structure, a publicly owned convention center and a privately owned hotel and/or office building.

(b) Authorization. The city-county may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of an urban development project or of specific facilities within such a project, including the making of loans and grants from any moneys lawfully available therefor.

The city-county may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract may specify the following:

- (1) The property interests of both the city-county and the developer or developers in the project.
- (2) The responsibilities of the city-county and the developer or developers for construction of the project.
- (3) The responsibilities of the city-county and the developer or developers with respect to financing the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) Property acquisition. An urban development project may be constructed on property acquired by the developer or developers, on property acquired by the city-county, or on property acquired jointly by the city-county and the developer or developers.

(d) Property disposition. The city-county may lease or convey interests in urban development project property or other property owned by it, including air rights over public facilities.

(e) Construction of the project. The contract between the city-county and the developer or developers may provide that the developer or developers shall be responsible for: (i) construction of the entire urban development project, (ii) reconstruction and/or repair of the urban development project or any part thereof subsequent to construction of said project, (iii) construction of any addition to the urban development project, (iv) renovation of the urban development project or any part thereof, and/or (v) purchase of apparatus, supplies, materials, or equipment for the urban development project (whether during the initial equipping of the said project or

subsequent thereto). If so, the contract shall include such provisions as the Durham commission deems sufficient to assure that the public facility or facilities included in the project or added thereto are constructed, reconstructed, repaired and/or renovated, and the apparatus, supplies, materials and equipment purchased at a reasonable price and the provisions of Article 8 of Chapter 143 and Article 3 of Chapter 44A of the General Statutes shall not apply to such urban development project.

(f) Operation. The city-county may contract for the operation of any public facility or facilities included in an urban development project by any person, partnership, firm, or corporation, public or private.

(g) Financing. To assist in the financing of its share of an urban development project, the city-county may apply for, accept and expend funds from the federal or state government or from any other lawful source.

(h) Authority is supplemental. The authority granted by this section is in addition to and not in derogation of any other authority granted to the city-county by law. The city-county may exercise any authority granted to it by any other section of this charter or by local act or general law in furtherance of an urban development project. By way of illustration but not limitation, the city-county may exercise the following authority in furtherance of an urban development project:

- (1) The authority granted by section 6-56 of this charter with respect to the public or private sale, lease, rent, exchange or other conveyance of property.
- (2) The authority granted by G.S. 160A-20.1 with respect to contracts with, and appropriation of money to, persons, associations or corporations for the accomplishment of public purposes.
- (3) The authority granted by section 5-82 of this charter with respect to the installation and rental of storerooms, restaurants, observation decks, heliports and other facilities in and upon certain specified public facilities.

[City charter, § 108.1; county local acts: SL 1985(86), c. 908; and SL 1987, c.

789]

Sec. 5-42. Financing programs in inner city. (a) Definitions. The following definitions apply in this section:

- (1) *Inner city.* The central business district, surrounding downtown area of the city, and adjacent or nearby inner city areas, all as may be defined and amended from time to time by the Durham commission.
- (2) *Commercial use.* Retail, commercial, industrial, or other nonresidential use. For buildings and improvements in mixed use, any portion of the buildings or improvements not being used for residential purposes is considered to be in commercial use.

(b) Authorization. Subject to the limitations provided in this subsection, the city-county may engage in programs of assistance and financing, including the making of loans, for acquisition, rehabilitation, repair, construction, reconditioning, furnishing, and equipping of real property, buildings, and improvements in commercial use in all or any part of the inner city and for design, administrative, legal, and other costs and expenses related or incidental to the foregoing. Each program shall include either the making of loans or grants jointly with other public or private parties or the participation in or purchase of loans under terms and conditions prescribed by the city-county. The city-

county shall not be obligated for more than fifty (50) percent of the total amount of assistance or financing provided under each program. For each loan program, the city-county shall engage a public or private lender to perform origination and servicing of the loans under terms and conditions prescribed by the city-county.

(c) Findings and declaration of policy. It is hereby determined and declared as a matter of legislative finding and policy that the authority hereby conferred will assist in avoiding the growth of conditions of deterioration and blight in the inner city, have a significant effect on the revitalization and rejuvenation of the inner city, promote economic development of the inner city, create employment opportunities, increase the taxable value of property in the inner city, and enhance the general welfare and public use and enjoyment of the inner city, which are hereby determined and declared to be public purposes for which public money may be spent.

[City charter, § 108.3]

Sec. 5-43. Community development expenditures. Within the central service district and any extraterritorial area assigned to the city pursuant to G.S. 160A-360, the city-county may, as part of a community development program:

- (1) Undertake programs of assistance and financing of rehabilitation and construction of private buildings principally for the benefit of low and moderate income persons.
- (2) Undertake economic development programs that include making grants or loans, and subsidizing interest payments on, and guaranteeing, loans for businesses serving the needs of persons of low and moderate income.

[City local act: SL 1987, c. 206]

Sec. 5-44. Incubator facilities. The Durham commission may establish one or more incubator facilities within the central service district. The term “incubator facility” has the same meaning as stated in G.S. 143B-471.4 as it read in 1987. The commission may purchase and/or lease as lessee any real and/or personal property for incubator facility purposes and may lease or sublease any such property or any other real or personal property owned by the city or city-county to any corporation that is eligible to manage and maintain incubator facilities under the provisions of G.S. 143B-471.4 as it read in 1987.

The commission may make grants and/or loans to any such corporation from funds lawfully available for such purpose subject to such rules, regulations, restrictions and conditions as the [board] shall deem to be in the public interest.

[City charter, § 108.2]

Sections 5-45 through 5-50. Reserved.

Article 4. Boards and Commissions **Part 1. Public Transportation Authority**

Sec. 5-51. Public transportation authority. In establishing a Public Transportation Authority pursuant to the North Carolina Public Transportation Authority Act, Article 25, of Chapter 160A of the General Statutes, the Durham commission may:

- (1) Except as provided by subdivision (2) of this section, require that a majority vote of all of the members of the authority shall be required to constitute action of the authority;
- (2) Require a super majority vote of all the members of the authority in order to take certain actions prescribed by the commission, including, but not limited to, hiring and firing personnel and changing bus routes;
- (3) Provide that no member of the authority shall be excused from voting except on matters involving consideration of the member's own official conduct, or where the member's financial interests are involved, and that in all other cases, a failure to vote by a member who is physically present at an authority meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote; and
- (4) Appoint and provide compensation for alternate members to serve on the authority in the absence of any regular member and to prescribe the terms of such alternate members. Each alternate member, so appointed, while attending any meeting of the authority and serving in the absence of any regular member, shall have and exercise all the powers and duties of a regular member.

[City charter, § 109.1]

Sections 5-52 through 5-54. Reserved.

Part 2. Memorial Stadium Authority

Sec. 5-55. Authority authorized. The Durham commission may appoint an authority composed of five (5) members who shall be known as the Memorial Stadium Authority and who shall have the powers herein conferred and shall have the control of the management of the operation of the stadium.

Said authority shall operate said stadium in a proper, efficient, economical, and businesslike manner to the end that the properties and facilities may effectively serve the public needs for which it was erected at the least cost and expense to the city-county.

The members of the authority serve staggered five-year terms. In case any vacancies shall be created on said authority, the commission shall appoint a member to fill the unexpired term.

The members of the authority shall elect annually from their body a chairman, a vice chairman, and a secretary and otherwise provide for the efficient management of its affairs; provided, however, the treasurer of the authority shall be the city-county finance director.

All funds of the authority shall be kept by its treasurer in a separate bank account or accounts from other funds of the city-county and shall be paid out only in accordance with procedures established by said authority.

The net proceeds from the operation of the stadium properties and facilities shall be used to apply on the payment of any indebtedness incurred by the county or the city-county in connection with the stadium and shall not be used for any other purpose until said indebtedness has been retired, except as may be otherwise approved by the commission for other purposes of the authority.

The authority shall appoint a manager for said stadium properties whose salary shall be approved by the commission. Such manager shall, in addition to other duties imposed upon him or her by the authority be responsible for the collection of rents or fees for the use of the properties and facilities of the stadium. The authority shall appoint such other personnel as it deems advisable.

The authority shall have full and complete control of said stadium properties and facilities; shall make such reasonable rules and regulations as it deems necessary for the proper operation and maintenance of said properties and shall establish and collect, rents, fees and charges for the use of said properties and facilities which said charges may include charges for concessions and for parking automobiles.

[County local act: SL 1957, c. 734, § 1]

Sec. 5-56. City-county appropriations. Should the net income from the fees, charges, and rents prove to be insufficient in any one year for the proper maintenance and operation of said stadium and facilities the Durham commission may appropriate funds for the purpose of maintaining and operating said properties.

[County local act: SL 1957, c. 734, § 2]

Sections 5-57 through 5-60. Reserved.

Part 3. Boxing and Wrestling Commission

Sec. 5-61. Commission authorized. The Durham commission may appoint a boxing and wrestling commission to consist of three citizens of the city-county, who shall serve for a period not to exceed the term of office of the commission.

[County local acts: PubLoc 1927, c. 265, as amended by SL 1953, c. 800]

Sec. 5-62. Boxing and wrestling permitted. It shall be lawful to engage in, manage, or promote in the city-county boxing exhibitions which do not exceed twelve rounds in length, and any wrestling matches. The boxing and wrestling commission shall have full power and authority to make such rules and regulations as in its discretion may be necessary for the proper regulation of such boxing exhibitions or wrestling matches, and shall have power to approve or stop a match at any time, even after consent has been given for the holding of such boxing exhibition or wrestling match.

[County local act: PubLoc 1927, c. 265, § 2]

Sec. 5-63. Unauthorized exhibitions and matches prohibited. Any person or persons guilty of engagement in, promoting, aiding, or abetting such sparring matches without first having the written consent of such boxing and wrestling commission, and any person or persons violating the rules or regulations of such commission, or refusing to obey orders of said commission controlling a sparring or boxing match, shall be guilty of a misdemeanor, and shall be fined not more than five hundred (\$500.00) dollars or imprisoned not more than six (6) months, in the discretion of the court.

[County local act: PubLoc 1927, c. 265, § 3]

Sec. 5-64. Fees. The boxing and wrestling commission shall have power to levy and collect for each such boxing or wrestling exhibition or match a fee not to exceed five per cent of the gross receipts for such exhibition or match, less taxes. Such fees when collected shall be deposited with the city-county finance director and disbursed for recreational, charitable, or such other public purposes as appropriated by the Durham commission.

[County local act: SL 1953, c. 800]

Sec. 5-65. Compensation and clerical assistance. The Durham commission may in its discretion pay to the members of said boxing and wrestling commission such amounts as the Durham commission deems just and proper for the services rendered by said members of the boxing and wrestling commission, and may likewise authorize the boxing and wrestling commission in its discretion to appoint a clerk to assist it in enforcing its rules and regulations, and may pay to such clerk such amount as may be approved by the Durham commission.

[County local act: SL 1953, c. 800]

Sections 5-66 through 5-80. Reserved.

Article 5. Miscellaneous Services and Facilities

Sec. 5-81. Operation of a theater and moving picture theater. The Durham commission is authorized to purchase and install such equipment, apparatus, machines, furniture, and any and all other fixtures and things found necessary to properly equip, provide, operate, and conduct a theater, or moving picture theater or both, in the academy of music; to conduct and operate such a theater, or moving picture theater, or both, in such building; to lease, rent, or otherwise contract for the operation of such a theater or moving picture theater, or both, in such building; to make all such rules and regulations in relation to the operation of such a theater, or moving picture theater, or both, in such building, as may be necessary and proper; to appropriate money or transfer funds from appropriations already made, or use funds not otherwise appropriated, for the purpose of carrying out any or all of the powers hereby conferred.

[City charter, § 105]

Sec. 5-82. Certain facilities upon water tanks and off-street parking structures. The Durham commission is fully authorized and empowered to provide for the construction and installation of storerooms, restaurants, observation decks, heliports and other facilities in its discretion, in and upon off-street parking structures and facilities and in and upon structures and tanks for the storage of water, and it is further authorized and empowered to rent or lease such storerooms, restaurants, observation towers, offices, and other facilities which may be constructed and installed upon, over or around such off-street parking structures and facilities and such water towers and tanks, upon such terms and conditions as the commission may from time to time prescribe. The revenue to be derived from such rentals or leases of these facilities shall be used for such public purpose or purposes as the commission may determine.

[City charter, § 112]

Sec. 5-83. Aid to charitable institutions. The Durham commission is authorized to appropriate annually reasonable sums in aid of public libraries, public hospitals and other charitable institutions.

[City charter, § 111]

Sec. 5-84. Community action and manpower programs. In exercising the authority granted the city-county in G.S. 160A-492 to undertake and support community action and manpower programs, the following definitions of terms shall apply:

(1) *Community action program:* A community based and operated program that includes or is designed to include a range of services and activities having a measurable and potentially major impact on the causes of poverty in the community; such a program includes the planning of responses to causes of poverty, coordinating existing public and private responses, initiating and supporting new projects to combat poverty, and encouraging participation by members of the community in development of programs and projects affecting their interests.

(2) *Manpower development program:* A program of occupational training for the economically disadvantaged, unemployed, and underemployed and may include, by way of illustration but not limitation, efforts to acquaint eligible persons with the availability of training; assessment of individual needs, potentialities, and interests; counseling and provision of training, including on-the-job training; allowances for training and for transportation, subsistence, and other expenses while training; supportive services and development of information on the labor market and its activities.

[City charter, § 114]

Sec. 5-85. Drainage. The city-county may provide for drainage projects within the central service district. The city-county may provide for drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this section is in addition to any authority contained in Chapter 156 of the General Statutes.

[City charter, § 114.1]

Sec. 5-86. Bikeways. The city-county may construct, designate, and otherwise support bikeways throughout the area of the city-county.

[County local act: SL 1998-89]

Sec. 5-87. Sidewalks. The city-county may construct or contract for construction of sidewalks throughout the area of the city-county.

[County local act: SL 1995(96), c. 641]

Chapter 6. Taxation and Finance

Article 1. Property Taxation

Sec. 6-1. Board of equalization and review. (a) Special board. The Durham commission may appoint a special board of equalization and review for Durham county, as provided in G.S. 105-322(a). The board shall consist of not less than five nor more than nine members. Should a special board of equalization and review not be appointed, the commission shall comprise the board of equalization and review and shall have the powers and duties provided in G.S. 105-322.

Members of the board of equalization and review of Durham county shall receive compensation, take oaths, hold meetings, take minutes, and provide notice of meetings and adjournments as provided in G.S. 105-322(b), (c), (d), (e), and (f), except as modified by this section.

(b) Use of panels. The board of equalization and review possesses the powers and duties enumerated in G.S. 105-322. In addition, the board has the following powers and authority:

- (1) Revaluation year panels. In any revaluation year, the chair of the board of equalization and review may divide the board into a maximum of three separate panels with a minimum of three board members for each panel. The assignment of board members to any particular panel may be interchanged during the year.
- (2) Minutes of panel meetings. If the chair exercises the right to divide the board into panels, the city-county assessor shall designate one or more deputies to be present at panel meetings at which the assessor cannot be present for the purpose of recording accurate minutes as provided in G.S. 105-322(d).
- (3) Panel quorum, decisions, and appeals. At meetings of separate panels, a majority of the members of each panel constitutes a quorum and a decision by the panel is considered a decision of the board. Appeals from decisions of a panel may be made, as an appeal from the board, directly to the Property Tax Commission, except that in any case where the three-member panel votes 2-1, the taxpayer has an automatic right of appeal to the board of equalization and review sitting en banc, and thereafter, if necessary, to the Property Tax Commission.

(c) Time for meeting. Notwithstanding the provisions of G.S. 105-322(e), the board of equalization and review may sit until December 1 (rather than July 1).

[County local acts: SL 1991(92), c. 871; SL 1989, c. 541]

Sec. 6-2. Acceptance of deeds in lieu of payment. (a) Authority to accept deeds. When the taxes or any special assessments upon any real property within the city-county are past due and unpaid, and the owner or owners thereof offer to convey such real property to the city-county, the Durham commission is authorized to accept the deed for such real property in payment of the taxes and special assessments due the city-county, the county, or the city, and to pay the necessary expense of procuring and recording such deed.

(b) Effect on liens. The acceptance of such deed by the commission shall not interfere with the lien for taxes or assessments due any other taxing unit, and shall not interfere with any other valid recorded lien on such real property at the time of the execution of such deed. Any real property so conveyed to the city-county may be resold by the city-county at any time to such person or persons and for such prices as the commission may approve.

(c) Effect on Machinery Act. This section amends G.S. 105-357(a) of the Machinery Act.

[City charter, § 45; County local act: SL 1985(86), c. 910]

Section 6-3 through 6-10. Reserved.

Article 2. Other Taxes

Sec. 6-11. Occupancy tax. (a) Authorization and scope. The Durham commission may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within Durham county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Levy of additional tax. In addition to any tax levied pursuant to subsection (a) of this section, the commission may levy a room occupancy tax of two percent (2%) of the same gross receipts taxable under subsection (a). The commission may not levy a tax under this subsection unless it also levies the tax authorized by subsection (a).

(c) Collection. Every operator of a business subject to any tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city-county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city-county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(d) Administration. The city-county shall administer any tax levied under this section. A tax levied under this section is due and payable to the city-county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city-county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city-county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(e) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. The commission may, for good cause shown, compromise or forgive the penalties imposed by this subsection.

(f) Use and distribution of tax revenue. The city-county shall place fifty-seven and one-half percent (57½ %) of the revenue collected from the three percent (3%) tax levied pursuant to subsection (a) of this section in its county general fund and shall place the remaining forty-two and one-half percent (42½ %) in the city general fund.

The city-county shall, on a monthly basis, remit the net proceeds of the two percent (2%) tax levied pursuant to subsection (b) of this section to the Durham Convention & Visitors Bureau, an agency originally established by interlocal cooperation agreement between the county of Durham and the city of Durham. The Bureau may use the funds remitted to it under this paragraph only to promote travel and tourism in Durham county. If the Bureau is dissolved, the city-county may use the net proceeds of the tax levied pursuant to subsection (b) of this section only to promote travel and tourism in Durham county. As used in this paragraph, "net proceeds" means gross proceeds less the cost to the city-county of administering and collecting the tax, as determined by the city-county finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the commission. Repeal of a tax under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

[County local acts: S.L. 1985(86), c. 969; S.L. 1991, c. 665]

Sections 6-12 through 6-20. Reserved.

Article 3. Special Assessments

Sec. 6-21. Assessments for water, sewer, street, sidewalks, grass plot, lighting, and waterfront improvements. (a) Purpose. It is the purpose of this section to provide a method whereby one or more local improvements of the kind specified in subsection (d)

of this section and the assessments therefor may be made on or in one or more streets in a single proceeding by the city-county.

(b) Complete procedure. This section is intended to prescribe the complete procedure for the making of those local improvements referred to in subsection (d) and for assessing and collecting such portion of the cost thereof as is hereinafter provided; but the method hereby provided is not intended to be exclusive, and the city-county may proceed with respect to such local improvements either as prescribed by this section or as is now or may hereafter be prescribed by the special or general law.

(c) Definitions. In this section certain words and phrases will be used with the following meaning, unless some other meaning is plainly intended:

- (1) A *local improvement* is an improvement defined by this section and made under the provisions hereof.
- (2) A *street* is a public way embracing a street, boulevard, avenue, lane, alley, parkway, court, and terrace, but not embracing sidewalks.
- (3) A *sidewalk* is a path for pedestrians along a street.
- (4) A *storm sewer* is a conduit above or below ground for the passage of storm water, and may embrace a pumping station and outlet where deemed necessary; and may also embrace the building or culverts over or the enclosing of streams where necessary or advisable to carry off storm water.
- (5) A *sanitary sewer* is a conduit for the passage of sewage, and may embrace a pumping station and outlet where deemed necessary.
- (6) A *water main* is a pipe for the passage of water for public hydrants and private and public use and consumption.
- (7) A *lateral* is a pipe connecting a storm or sanitary sewer or water main with the line of adjacent property or the curb line, as the commission may prescribe, being either a sewer lateral or a water lateral, but does not include a building connection, that is a pipe extending from a lateral at the property line or a curb line to the house or plumbing fixtures on the property to be served.
- (8) The word *sewer* includes both sanitary and storm sewers unless a contrary intention is shown.

(d) Authorized improvements. Improvements authorized to be made under the provisions of this section are divided into nine (9) classes, as follows:

- (1) *Water main improvements*, which include the laying or construction of water mains, the relaying where necessary of parts of paved streets and sidewalks torn up or damaged incident to the laying or construction of such mains, and in any case where the improvement is made upon petition and the petition so requests or in any case where the improvement is made without petition and the commission so directs, the laying of water laterals.
- (2) *Storm sewer improvements*, which include the laying or construction of storm sewers, the relaying where necessary of parts of paved streets and sidewalks torn up or damaged incident to the laying or construction of such sewers, and in any case where the improvement is made upon petition and the petition so requests, or in any case where the improvement is made without petition and the commission so directs, the laying of storm sewer laterals.
- (3) *Sanitary sewer improvements*, which include the laying or construction of sanitary sewers, the relaying where necessary of parts of streets and sidewalks

torn up or damaged incident to the laying or construction of such sewers, and in any case where the improvement is made upon petition and the petition so requests, or in any case where the improvement is made without petition and the commission so directs, the laying of sanitary sewer laterals, the construction or reconstruction of pumping stations and force mains or the construction or reconstruction of sanitary sewer outfalls.

- (4) *Street paving improvements*, which include the grading, regrading, paving, repaving, macadamizing, and remacadamizing of streets, with necessary drainage, sewer inlets, manholes, and catchbasins and the construction or reconstruction of retaining walls made necessary by any change of grade incident to such improvement, and in any case where the improvement is made upon petition if the petition so requests, or in any case where the improvement is made without petition if the commission so directs, it may include the construction or reconstruction of curbs, gutters, and drains.
- (5) *Sidewalk improvements*, which include the grading, regrading, construction, and reconstruction of paved or otherwise improved sidewalks, the construction or reconstruction of retaining walls made necessary by and incident to such improvement, and in any case where the improvement is made upon petition, if the petition so requests, or in any case where the improvement is made without petition if the commission so directs, it may include the construction or reconstruction of curbs, gutters, and drains.
- (6) *Grass plot improvements*, which include the grading and planting of grass plots in a street or along one or both sides of a street.
- (7) *Lighting improvements*, which include the construction of street lighting systems, consisting of ornamental lights or of lights of greater strength, or lights placed at more frequent intervals, or both, than is ordinarily provided by the city-county making the improvement for streets of such character at public expense.
- (8) *Waterfront improvements*, which embrace the construction of boardwalks, bulkheads, seawalls, and other retaining walls along a bay, river, canal, or lake, with necessary fills and dredging, and may embrace the acquisition by purchase, condemnation, or otherwise of land, rights, and easements therefor.
- (9) *Opening, clearing, grading, drainage, and otherwise improving streets, avenues and alleys* dedicated for public use by a recorded map or plat.

(e) Need for petition. The power of the city-county to make the local improvements embraced in this section shall be exercised only upon petition as set out in subsection (g) of this section, except in those cases covered by subsection (h) of this section, in which cases such power may be exercised without petition. The provisions of this section shall not be construed to limit authority granted elsewhere in this charter or by general or special law to make special assessments for local improvements without the filing of a petition as provided in this section.

(f) Projects included within petition. Any petition to the commission for the making of the local improvements authorized by this section may embrace any one or more of the classes of local improvements named in subsection (d), and may embrace improvements to be made on or in more than one street; provided, any improvement to be

made on or in more than one street shall be practically uniform in cost and kind throughout the improvement.

(g) Petition requirements. The petition for any one or more of such local improvements shall designate by a general description the improvement or improvements proposed, and shall request that the same be made in conformity with the provisions of this section and that such proportion of the cost of each of such improvements as may be specified in the petition be specially assessed against the property abutting on the street or streets or part thereof in which or on which such improvements are proposed to be made. The petition shall be signed by at least a majority in number of the owners, which majority must own at least a majority of all the lineal feet of frontage, of the lands abutting upon the street or streets or part of a street or streets proposed to be improved, excluding street intersections, and for the purpose of the petition, all the owners of undivided interests in any land shall be deemed and treated as one person and such land shall be sufficiently signed for when the petition is signed by the owner or owners of a majority in amount of such undivided interests; provided, that for the purpose of this subsection the word "owners" shall be considered to mean the owners of any life estate, of an estate by entirety, or of the estate of inheritance, and shall not include mortgagees, trustees of a naked trust, trustees under deeds of trust to secure the payment of money, lienholders or persons having the inchoate rights of a surviving spouse. Upon the filing of such petition with the Durham commission, the city-county clerk, or other person designated by the commission, shall investigate the sufficiency of the petition, and if it is found to be sufficient, he or she shall certify the same to the commission.

(h) Petition unnecessary. Whenever in the judgment of the commission any street or part of a street is unsafe and dangerous, or whenever the paving or repaving of any street or part thereof is necessary in order to connect streets already paved, or whenever the paving of any street is necessary in order to connect any paved portion of any city-county streets with a paved highway maintained by the State outside the corporate limits of the city, or whenever the paving of any street or part thereof is necessary to provide a paved approach to any railroad underpass or overpass or other bridge, or whenever any paved street or part thereof has been widened, if in such case, in the opinion of the Durham commission, public interest requires that the improvements be made, and if, in the opinion of the commission, the abutting property will be benefited by the improvement to the extent of the part of the cost thereof to be assessed against such abutting property, the commission may without petition of the property owners order the making of such improvement. Whenever any such improvement is ordered made by authority of this subsection, the ordering of the paving of any street or part thereof may include the necessary water main and sewer improvements and the necessary water and sewer laterals, and it may, but need not, include the construction of sidewalks on one or both sides of the street.

(i) Preliminary assessment resolution. Upon the finding by the Durham commission that the petition for a local improvement or improvements is sufficient, or when it is proposed to make without petition any improvement or improvements authorized to be made without petition by subsection (h) of this section, the commission shall adopt a resolution which shall contain substantially the following:

- (1) That a sufficient petition has been filed for the making of the improvement or improvements; or, if it is proposed to make the improvement or improvements without petition, a statement of the reasons proposed for the making thereof;
- (2) A brief description of the proposed improvement or improvements;
- (3) The proportion of the cost of the improvement or improvements to be specially assessed and the terms of payment;
- (4) A notice of the time and place, when and where a public hearing will be held on the proposed improvement or improvements. (The time fixed for such public hearing shall be such as to allow of notice being given thereof not less than ten (10) days prior thereto.);
- (5) A notice that all objections to the legality of the making of the proposed improvement or improvements shall be made in writing, signed in person or by attorney, and filed with the clerk of the city-county at or before the time of the hearing and that any such objections not so made will be waived.

At least ten (10) days prior to the date fixed for the hearing, the commission shall cause a notice to be published at least one time in a newspaper of general circulation in the city-county. The notice shall contain the information described in paragraphs (1) through (5) of this subsection (i).

(j) Objections to project. At the time for the public hearing, or at some subsequent time to which such hearing shall be adjourned, the commission shall consider such objections to the legality of the making of the improvement or improvements as have been made in compliance with paragraph (5) of the preceding subsection, together with such objections as may be made to the policy or expediency of the making of the improvement or improvements; and the commission shall thereafter determine whether it will order the making of the improvement or improvements. Any objection against the legality of the making of the improvement or improvements not made in writing, signed in person or by attorney, and filed with the clerk of the city-county at or before the time or adjourned time of such hearing shall be considered as waived; and if any such objection shall be made and shall not be sustained by the commission, the adoption of the resolution ordering the making of the improvement or improvements, as provided in the next following subsection, shall be the final adjudication of the issues presented, unless within ten (10) days after the adoption of such resolution proper steps shall be taken in a court of competent jurisdiction to secure relief.

(k) Assessment resolution. After such public hearing, if the Durham commission determines to make the improvement or improvements proposed, the commission shall adopt a resolution which shall contain:

- (1) If the improvement or improvements are to be made by virtue of a petition, a finding by the commission as to the sufficiency of the petition. (The finding of the commission as to the sufficiency of the petition shall be final and conclusive.) If the improvement or improvements are to be made without petition by virtue of the authority contained in subsection (h) of this section, a finding by the commission of such facts as are required by the subsection in order to authorize the commission to order the improvement or improvements made without petition;

- (2) A general description of the improvement or improvements to be made and the designation of the street or streets or parts thereof where the work is to be done;
- (3) If the improvement directed to be made is the paving of a street or part thereof wherein a street railway or railroad company has tracks, a direction that the company pave that part of the street occupied by its tracks, such part to include the space between the tracks, the rails of the tracks, and eighteen (18) inches in width outside such tracks, with such material and in such manner as the commission may prescribe, and that unless such paving shall be completed on or before a day specified in the resolution, the commission will cause the same to be done; provided, however, that where any such company shall occupy such street or streets under a franchise or contract which otherwise provides, such franchise or contract shall not be affected by this section, except in so far as may be consistent with the provisions of such franchise or contract;
- (4) If the improvement directed to be made includes the construction of water mains or sewers, and in order to provide such mains or sewers in the street or streets to be improved it is necessary to extend the same beyond the limits of such street or streets, the resolution shall contain a provision for the necessary extension of such mains or sewers and a further provision that the cost of such extension shall eventually be assessed against the lots or parcels of land abutting on the street or streets in which such extensions are made but that such assessment shall not be made until such time as the commission shall thereafter determine;
- (5) If the improvement directed to be made is the paving of a street or part thereof, or the construction of sidewalks, the resolution may, but need not, contain a direction that the owner of each lot abutting on the part of the street to be improved, connect his lot by means of laterals with water mains, gas or sewer pipes, or any one or more thereof, located in the street adjacent to his premises in accordance with the requirements of the city-county governing the laying of such laterals, and that unless such owners cause such laterals to be laid on or before a date specified in the resolution, such date to be not less than thirty (30) days after the date of the resolution, the commission will cause the same to be laid;
- (6) A designation of the proportion of the cost of the improvement or improvements to be assessed against abutting property, and of the number of equal annual installments in which assessments may be paid. The resolution after its passage shall be published at least once in some newspaper published in the city-county, or, if there be no such newspaper, the resolution shall be posted in three (3) public places in the city-county for at least five (5) days.
- (7) In lieu of publishing the resolution in the manner prescribed by paragraph (6) of this subsection (k), the commission may publish, or cause to be published, a notice containing the information specified in paragraph (2) and the first sentence of paragraph (6) of this subsection. If the commission, in its discretion, chooses to publish the notice prescribed by this paragraph in lieu of publishing the resolution prescribed in said subparagraph (6) then such notice shall be published at least once in some newspaper published in the city-

county, or, if there be no such newspaper, the notice shall be posted in three public places in the city-county for at least five (5) days. Two (2) or more notices may be consolidated into a single notice.

(l) Project details. The Durham commission shall have power to determine the character and type of construction and of material to be used and to determine any other details of plan or construction necessary to be determined in making any of the improvements authorized by this section and to determine whether any work to be done by the city-county shall be done by contract or by forces of the city-county. The commission shall have power also subject to the provisions of subsection (k), paragraph (5) of this section to determine the number of water, sewer and gas laterals that shall be laid to any lot on any street to be improved. If the work or any part thereof is to be done by contract, the city-county may let all of the work in one contract, or it may divide the same into several contracts, and may let the contracts separately. In any case where part of a street is required to be paved by a street railway or railroad company as provided in the next preceding subsection, the city-county may, in the discretion of the commission, contract with the street railway or railroad company for the paving, or work incidental thereto, or both, and the cost of the paving or work incidental thereto, or both, as fixed by the contract shall constitute a lien on the franchises and other property of such street railway or railroad company.

(m) Determining costs. Upon the completion of the improvement or improvements to be made by the resolution, the commission shall ascertain the total cost thereof. In addition to other items of cost, there shall be included in such total cost the cost of all necessary legal services, the amount of damages paid or to be paid for injury to property by reason of any change of grade or drainage, including court costs and other expenses incidental to the determination of such damages, and the cost of retaining walls, sidewalks, or fences built or altered in lieu of cash payment for such property damage, including the cost of moving or altering any building. In determining the cost of any street lighting improvement, the commission shall ascertain the excess of cost of construction of the system of lighting over and above the cost of construction of such system of lighting as the city-county provides at public expense for streets of the same kind, and such excess shall be considered the cost thereof. In determining the cost of any of the improvements authorized by this section, the commission shall include therein the interest paid on the cost of the improvement during the period of construction. The determination of the commission as to the total cost of any improvement shall be conclusive.

(n) Preliminary assessment. Having determined such total cost, the Durham commission shall thereupon make a preliminary assessment as hereinafter set out in this section. Such preliminary assessment shall, however, be advisory only, and shall be subject to the action of the commission thereon as hereinafter set out in subsection (q) of this section. The preliminary assessment shall be made on the basis hereinafter set out in this subsection for the classes of improvements indicated; provided, that if the petition, or the resolution, in those cases where the improvement was ordered made without petition, specified that there should be specially assessed against the abutting property a smaller proportion of the cost of any improvement than is hereinafter specified in this section, then there shall be assessed against the abutting property only such proportion of the cost of the improvement as was specified in the petition or in the resolution.

(1) *Street paving.* The total cost of any street paving improvement, exclusive of so much of the cost as is incurred at street intersections and the share of street railways or railroads, shall be specially assessed against the lots and parcels of land abutting directly on the street paved, according to the extent of their respective frontages thereon, by an equal rate per foot of such frontage. The cost of that part of the paving required to be borne by a street railway or railroad, which paving is done by the city-county after default by the street railway or railroad in making the same as hereinbefore provided in this section, or which is done by the city-county by contract with the railway or railroad as provided in subsection (l) of this section, shall be assessed against the street railway or railroad, and the assessment shall be a lien on all of the franchises and property of the street railway or railroad company, and may be collected by sale of such property and franchises as is provided in subsection (x) of this section; provided, further, that in case of a corner lot, used as a single lot, the commission may provide by ordinance for the city-county to bear a part of the cost of paving in accordance with the following formula, the amounts or distances therein shown being maximum amounts or distances which may be reduced by the ordinance:

- (i) In the event that neither of the streets abutting a corner lot, used as a single lot, has ever been paved, such lot shall be exempt from assessment for the paving improvement alongside of such lot to the extent of twenty (20) per cent of the first one hundred fifty (150) feet thereof or thirty (30) feet, whichever is less. Thereafter, upon the paving of the intersecting street on which such lot abuts, such lot shall be exempt from assessment for the paving of the street to the extent of fifty (50) per cent of the frontage on such street or thirty (30) feet, whichever is less.
- (ii) In the event that the street alongside of a corner lot, used as a single lot, is paved and the intersecting street is to be paved, such lot shall be exempt from assessment for the paving of the intersecting street to the extent of fifty (50) per cent of the frontage thereon or thirty (30) feet, whichever is less.
- (iii) In the event a street in front of a corner lot, used as a single lot, has been paved and the street alongside of such lot is to be paved, the lot shall be exempt from assessment for the paving improvement alongside of such lot to the extent of forty (40) per cent of the frontage on such street or sixty (60) feet, whichever is less.

The exemptions provided in this subsection shall apply only in areas zoned for residential use or for apartments, and such portion of the cost of construction as would otherwise be assessed against such corner lot shall be borne by the city-county.

(2) *Sidewalks.* The total cost of constructing or reconstructing sidewalks shall be assessed against the lots and parcels of land abutting on that side of the street upon which the improvement is made, according to their respective frontages thereon by an equal rate per foot of such frontage, the lots within a block being deemed to abut upon a sidewalk although the latter extends beyond the lots to

the curb line of an intersecting street; provided, further, that in case of a corner lot, used as a single lot, the commission may provide by ordinance for the city-county to bear a part of the cost of sidewalk improvements in accordance with the following formula, the amounts or distances therein shown being maximum amounts or distances which may be reduced by the ordinance:

- (i) In the event that neither of the streets abutting a corner lot, used as a single lot, has sidewalks, such lot shall be exempt from assessment for the sidewalk improvement alongside of such lot to the extent of twenty (20) per cent of the first one hundred fifty (150) feet thereof or thirty (30) feet, whichever is less. Thereafter, upon the construction of sidewalks on the intersecting street, on which such lot abuts, such lot shall be exempt from assessment for the sidewalk improvement on the street to the extent of fifty (50) per cent of the frontage on such street or thirty (30) feet, whichever is less.
- (ii) In the event that the street alongside of a corner lot, used as a single lot, has sidewalks and sidewalks are constructed on the intersecting street, such lot shall be exempt from assessment for the sidewalks on the intersecting street to the extent of fifty (50) per cent of the frontage thereon or thirty (30) feet, whichever is less.
- (iii) In the event a street in front of a corner lot, used as a single lot, has sidewalks and sidewalks are to be constructed on the intersecting street, the lot shall be exempt from assessment for the sidewalk improvement alongside of such lot to the extent of forty (40) per cent of the frontage thereon or sixty (60) feet, whichever is less.

The exemptions herein provided shall apply only in areas zoned for residential use or for apartments, and such portion of the cost of construction as would otherwise be assessed against such corner lot shall be borne by the city-county.

- (3) *Water mains and sewers.* In the case of water mains and storm and sanitary sewers, the cost of not exceeding an eight (8) inch water or sanitary sewer main and of not exceeding a thirty (30) inch storm sewer main and of such portion of the mains as lie within the limits of the street or streets, or parts thereof, to be improved as provided in the petition or resolution ordering the same, shall be assessed against the abutting property. Such cost shall be assessed against the lots and parcels of land abutting on the street or streets, or parts thereof according to their respective frontages thereon (i.e., the entire frontage benefited by the water or sanitary sewer project) by an equal rate per foot of such frontage; provided, that in case of a corner lot, used as a single lot, no assessment shall be made against the long side of the lot abutting on the intersecting streets for any part of the frontage of such long side of the lot except that portion in excess of two hundred (200) feet if the lot is in a residential section of the city-county, or in excess of one hundred (100) feet if the lot is in a business section of the city-county, and in such case the portion of the cost as would otherwise be assessed against the lot shall be borne by the city-county; provided further, that if a water or sanitary sewer main in excess of eight (8) inches in size or a storm sewer main in excess of thirty (30) inches in size is laid in the portion of the street or streets, then the cost of the water or

sanitary sewer main in excess of the cost of an eight (8) inch main and the cost of the storm sewer main in excess of a thirty (30) inch main shall be borne by the city-county, provided further, that if the resolution ordered the construction of any septic tank or disposal plant, no part of the cost of the same shall be specially assessed; provided further, that if the resolution ordered the construction of any pumping station, force main, or sanitary sewer outfall, the costs thereof may be assessed against the lots and parcels of land abutting on the street or streets, or parts thereof, according to their respective frontages thereon (i.e., the entire frontage benefited by such pumping station, force main, or sanitary sewer outfall) by an equal rate per front foot of such frontage; provided, however, in the case of a corner lot, used as a single lot, where there is a sewer already laid on the intersecting street on which the lot abuts and by which the lot is or can be served, no assessment shall be made against the lot for the costs of any pumping station, force main, or sanitary sewer outfall incident to the second sewer for any part of the frontage of the lot except that portion in excess of two hundred (200) feet if the lot is in a residential section, or in excess of one hundred (100) feet if the lot is in a business section, and in such case the portion of the cost as would otherwise be assessed against the lot shall be borne by the city-county. Nothing contained herein shall be construed to limit the right of the city-county to contract with any property owner or owners for the construction of any pumping station, outfall, septic tank, or disposal plant or for the construction of water mains or storm or sanitary sewers and for the assessment of the cost thereof according to the terms of such contract.

- (4) *Water and sewer laterals.* The entire cost of each water and sewer lateral required to be laid by the owner of the property for or in connection with which such lateral is laid, but laid by the city-county after default by the property owner in making the same as hereinbefore provided, shall be specially charged against the particular lot or parcel of land for or in connection with which it was made.
- (5) *Water mains and sewers and laterals; flat rate assessment.* In lieu of assessing each water and sanitary sewer improvement project on the basis of the cost of that particular project, the commission shall have authority to establish flat rates per frontage foot for the assessment of property abutting water and sewer improvement projects, based on the average cost of constructing eight (8) inch water mains and eight (8) inch sanitary sewer mains in the city-county, and shall also have authority to establish flat rates for the assessment of property abutting the installation of water and sanitary sewer laterals, based on the average cost of installing such laterals in the city-county. The commission may then assess property abutting water and sanitary sewer improvement projects on the basis of the flat rates so established, subject to the right of any nonpetitioning property owner to have the assessment against his property adjusted as provided by law upon a showing that his property has not been benefited to the extent of the assessment.
- (6) *Grass plots.* The entire cost of grading or otherwise improving, or of planting, the grass plots in any street or part thereof, shall be assessed against the lots

and parcels of land abutting on the street or part thereof wherein or whereon such improvements are made by an equal rate per front foot of such frontage; provided, that this subsection shall be construed to mean that when a grass plot in any street is graded or planted or otherwise improved, the cost thereof shall be assessed against all of the property abutting on the street within the block where such grass plot is located.

- (7) *Lighting improvements.* The cost of any lighting improvement, such cost being determined as provided in subsection (m) of this section, shall be specially assessed against the lots and parcels of land abutting directly on the street or streets, or part thereof, where such improvement is made, according to their respective frontage thereon by an equal rate per foot of such frontage.
- (8) *Waterfront improvements.* The cost of any waterfront improvement shall be specially assessed against the lots and parcels of land abutting on the improvement according to their respective frontages thereon by an equal rate per foot of such frontage.

(o) Preliminary assessment roll. For the purpose of assessment, the commission shall cause to be prepared a preliminary assessment roll, on which shall be entered a brief description of each lot or parcel of land assessed, the amount assessed against each such lot as determined under the provisions of the next preceding subsection, and the name or names of the owner or owners of each such lot, as far as the same can be ascertained; provided, that a general plan map of the improvement or improvements on which is shown the frontage and location of such lot on the street improved, together with the amount assessed against each such lot and the name or names of the owner or owners thereof, as far as the same can be ascertained, shall be a sufficient assessment roll. If the resolution directed the making of more than one improvement, a single preliminary assessment roll for all of the improvements authorized by such resolution shall be sufficient, but the cost of each improvement to each lot affected shall be shown separately.

The commission may choose not to levy assessments against property owned by the city, county, or city-county, in which case, the amount assessable against such property shall be omitted from the preliminary assessment roll and shall not be assessed against the remaining property owners. The commission shall count property owned by the city, county, or city-county for the purpose of determining the sufficiency of a petition submitted pursuant to subsection (g) of this section notwithstanding the decision of the commission not to levy an assessment against such property.

(p) Notice of opportunity to object. After such preliminary assessment roll has been completed, the commission shall cause it to be filed in the office of the city-county clerk for inspection by parties interested, and shall cause to be published one time, in some newspaper published in the city-county, or if there be no such newspaper the commission shall cause to be posted in three (3) public places in the city-county, a notice of the completion of the assessment roll, setting forth a description in general terms of the local improvement or improvements, and stating the time fixed for the meeting of the commission for the hearing of objections to the special assessments, such meeting to be not earlier than ten (10) days after the first publication or from the date of posting of such notice. Any number of assessment rolls may be included in one notice. The commission shall publish in the notice the amount of each assessment.

(q) Objections; confirmation of roll. At the time appointed for that purpose or at some other time to which it may adjourn, the Durham commission shall hear the objections to the preliminary assessment roll of all persons interested, who may appear and offer proof in relation thereto. Then or thereafter, the commission shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on the roll, either by confirming the prima facie assessment against any or all lots or parcels described therein, or by canceling, increasing, or reducing the same according to the special benefits which the commission decides each of the lots or parcels has received or will receive on account of such improvement, except that assessments against railroads made because of contract or franchise obligations to pay a portion of cost shall be in accordance with such obligations. If any property which may be chargeable under this section shall have been omitted from the preliminary roll or if the prima facie assessment has not been made against it, the commission may place on the roll an apportionment to such property. The commission may thereupon confirm the roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits, except as hereinabove provided in the case of franchise obligations of railroads. Whenever the commission shall confirm an assessment for a local improvement, the city-county clerk shall enter on the minutes and on the assessment roll, the date, hour, and minute of such confirmation, and from the time of such confirmation the assessments embraced in the assessment roll shall be a lien on the property against which the same are assessed of the same nature and to the same extent as county, city, and city-county taxes and superior to all other liens and encumbrances. After the assessment roll is confirmed a copy of the same shall be delivered to the collector of revenue of the city-county.

(r) Appeals. If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of such assessment, he or she shall within fifteen (15) days after the confirmation of the assessment roll file a written request with the city-county clerk for reconsideration of said assessment by the Durham commission. If the commission has not previously heard the requesting person on the matter, it shall reconsider the assessment and affirm or modify its action. If it has previously heard the requesting person on the matter, the commission may affirm its previous action without further consideration, or it may, in its discretion, again consider the matter and affirm or modify its previous action. If the requesting person still is dissatisfied with the commission action, he or she shall within twenty (20) days after such further action serve on the city-county clerk a written notice that he or she is taking an appeal to the Superior Court of Durham county and a statement of facts upon which he or she bases his appeal. The appeal shall be tried in the Superior Court of Durham county as other actions at law. The remedy herein provided for any person dissatisfied with the amount of the assessment against any property of which he or she is the owner or in which he or she is interested shall be exclusive.

(s) Corrections. If it shall be made to appear to the commission after confirmation of any assessment roll that any error has been made therein, then the commission shall cause to be published one time in some newspaper published in the city-county, or if there be no such newspaper the commission shall cause to be posted at three (3) public places in the city-county, a notice referring to the assessment roll in which such error was made, naming the owner or owners of the lot or parcel of land with

respect to which such error was made, if the same can be ascertained, and naming the time and place fixed for the meeting of the commission for the correction of the error, such meeting not to be earlier than ten (10) days from the publication or from the date of the posting of the notice. At the time fixed in the notice or at some subsequent time to which the commission may adjourn, the commission, after giving the owner or owners of the property affected and other persons interested therein an opportunity to be heard, may proceed to correct the error, and the assessment then made shall have the same force and effect as if it had originally been properly made.

(t) Reassessment. The Durham commission shall have the power, when in its judgment there is any irregularity, omission, error, or lack of jurisdiction in any of the proceedings relating thereto, to set aside the whole of the local assessment made by it, and thereupon to make a reassessment. In such case there shall be included, as a part of the cost of the public improvement involved, all interest paid or accrued on notes or certificates of indebtedness, or bonds issued by the city or the city-county to pay the expenses of such improvement. The proceeding shall, as far as practicable, be in all respects as in the case of original assessments, and the reassessment shall have the same force as if it had originally been properly made.

(u) Notice of assessment. After the expiration of twenty (20) days from the confirmation of the assessment roll, the collector of revenue, or such other officer of the city-county as the commission may direct so to do, shall cause to be published one time in such newspaper published in the city-county, or if there be no such newspaper, shall cause to be posted at three (3) public places in the city-county, a notice that any assessment contained in the assessment roll, naming and describing it, may be paid at any time before the expiration of thirty (30) days from the date of publication or posting of the notice, without interest from the date of confirmation of the assessment roll, but that if the assessment is not paid in full within this time, all installments thereof shall bear interest at a rate fixed by the commission of not more than nine (9) per cent per annum from the date of confirmation of the assessment roll.

(v) Payment. The property owner or street railway or railroad hereinbefore mentioned in this section shall have an option and privilege of paying for the improvements hereinbefore provided in cash as provided in the preceding subsection or in not less than twelve (12) equal monthly installments nor more than ten (10) equal annual installments as may have been determined by the original resolution ordering the improvement or improvements. Nothing in this subsection shall preclude the payment of assessments in advance of the maturity or installment schedule affixed by the commission. If paid in installments, such installments shall bear interest at a rate fixed by the commission of not more than nine (9) per cent per annum from the date of the confirmation of the assessment roll. If any assessment is not paid in cash, the first installment thereof with interest thereon shall become due and payable thirty (30) days after the publication or posting of the notice required by the preceding subsection and one subsequent installment and interest thereon shall be due and payable on the same day of the same month in each successive year until the assessment is paid in full; provided, however, that if the commission shall so direct, such installments shall become due and payable on the same date when property taxes of the county, city, and city-county are due and payable. If any installment with interest thereon is not paid when due, it shall be subject to the same penalties as are now prescribed by law for unpaid taxes, in addition to

the interest herein provided for. The whole assessment may be paid at any time by the payment of the full amount due with accrued interest.

(w) Extended payment. Notwithstanding subsection (v) of this section, the commission may allow payment of assessments over an extended period of time, not to exceed twenty (20) years, and at a reduced interest rate where the property owner demonstrates special financial hardship. In case of an assessment for water or sewer improvements, the special payment provisions shall apply until the earlier of (i) when the owner makes application for connection to receive water or sewer service; or (ii) such time as a fee interest in the property is transferred or conveyed, whether voluntarily or involuntarily, and whether during the lifetime of the owner or by devise or descent. In case of an assessment for street paving, sidewalks, or other improvements, the special payment provisions shall apply until such time as a fee interest in the property is transferred or conveyed, whether voluntarily or involuntarily, and whether during the lifetime of the owner or by devise or descent. At the time of application for connection or the time of transfer or conveyance, as applicable, the unpaid balance of the assessment shall become immediately due and payable in full. For purposes of this subsection, a lease, mortgage, or deed of trust shall not be considered as a transfer or conveyance of a fee interest in the property. In no event may the due date of the unpaid balance of the assessment extend beyond the lifetime of the owner.

As a prerequisite to exercising the authority granted by this subsection, the Durham commission shall define what constitutes a special financial hardship, and may amend this definition from time to time.

The authority granted by this subsection shall be exercised only upon written application of the owner of property subject to the assessment. The application must be filed with the city-county clerk no later than fifteen (15) days after confirmation of the assessment roll. The application shall be on a form approved by the commission. The application shall contain such information and documentation pertaining to special financial hardship, and such other information, as the commission may require.

The commission may delegate authority to the city-county manager or designee of the city-county manager to approve or deny any application submitted pursuant to this section. If any such application shall be approved by the city-county, the city-county clerk shall mark upon the confirmed assessment roll such words as shall indicate such approval by the city-county, the special payment provisions, and the date and time of the approval.

(x) Enforcement of assessments. In case of the failure of any property owner or street railway or railroad company to pay any installment when the same shall become due and payable, then and in that event all of the installments remaining unpaid shall immediately become due and payable, and the property and franchises may be sold by the city-county under the same rules, regulations, rights of redemption, and savings as are prescribed by law for the sale of land for unpaid taxes. Collection of such assessments with interest and penalties may also be made by the city-county by proceeding to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state, and it shall be lawful to join in any bill for foreclosure any one or more lots or parcels of land, by whomsoever owned, if assessed for an improvement ordered by the same resolution. After default in the payment of any installment, the payment of the installment, together with interest and penalties due thereon, before the lot or parcel of

land, against which the same is a lien, is sold or the lien is foreclosed as hereinbefore provided, shall bar the right of the city-county to sell the land or to foreclose the lien thereon by reason of the default.

(y) Water or sewer extensions. If the resolution ordering the making of any improvement or improvements included a provision for any necessary extension of a water or sewer or sewers, as provided in subsection (k), paragraph (4) of this section, at such time after the completion of the extension or extensions as, in the judgment of the commission, circumstances justify the assessment of the cost thereof, the commission shall cause a preliminary assessment to be made as provided in subsection (n), paragraph (3) of this section, and the procedure thereafter to be followed with respect to such assessment and the force and effect thereof shall be as already prescribed in this section.

(z) Special lighting system maintenance. After any lighting improvement is made as provided in this section, the city-county is hereby authorized, as long as the lighting system shall be maintained, to make an annual assessment against the lands assessed with the original cost of the improvement sufficient to cover the excess of actual cost of maintenance and operation of the lighting system over and above the cost of maintenance and operation of such system of lighting as the city-county provides at public expense for streets of the same character as that whereon the lighting improvement is made. To that end, the commission shall cause to be prepared a preliminary assessment which shall, as far as practicable, conform to the requirements of subsection (n), paragraph (7) of this section; and the procedure thereafter to be followed with respect to such assessment and the force and effect thereof shall be as already prescribed in this section.

(aa) Apportionment among subdivisions. When any special assessment has been made against any property for any improvement authorized by this section, and it is desirable that the assessment be apportioned among subdivisions of the property, the Durham commission shall have authority, upon petition of the owner of the property, to apportion the assessment fairly among the subdivisions. Thereafter, each of the subdivisions shall be relieved of any part of such original assessment except the part thereof apportioned to the subdivision and the part of the original assessment apportioned to any such subdivision shall be of the same force and effect as the original assessment. The provisions of this subsection shall not be construed to limit authority granted elsewhere in this charter or by general or special law to apportion assessments among subdivisions of property without requiring a petition from or the consent of the owners of such property.

(bb) Change of ownership. No change of ownership of any property or interest therein after the passage of a resolution ordering the making of any improvement authorized by this section shall in any manner affect subsequent proceedings, and such improvement may be completed and assessments made therefor as if there had been no change in such ownership.

(cc) Exemptions. No lands in the city-county shall be exempt from special assessments as provided in this section except lands belonging to the United States; and the Durham commission and the officers, trustees, or boards of all incorporated or unincorporated bodies in whom is vested the right to hold and dispose of real property shall have the right by authority duly given to sign the petition for any local improvement authorized by this section; provided, however, that assessments against land owned by

the State of North Carolina are controlled by the provisions of G.S. 160A-221; provided further that, except as provided by this section, assessments against railroads are controlled by the provisions of G.S. 160A-222.

(dd) Proceedings *in rem*. All proceedings for special assessment under the provisions of this section shall be regarded as proceedings *in rem*, and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission.

[City charter, § 77]

Sec. 6-22. Assessments for local improvements without petition. (a) When petition unnecessary. Supplemental to and independent of the powers and authority heretofore or hereafter granted the city-county by the General Assembly, the Durham commission is authorized and empowered without the necessity of having filed by the owners of abutting property, to construct and install or contract for the construction and installation of paving, repaving, macadamizing, and remacadamizing of any of the public streets, sidewalks, and alleys, and the construction, reconstruction, and altering of curbs, gutters, and drains in any of the public streets and alleys, and the construction and installation of sanitary sewers, water mains, and sanitary sewer and water laterals in any of such public streets and alleys, and specially assess the entire cost of such construction and installation, except the part thereof as is incurred at street intersections, against the property abutting upon the street or alley or streets or alleys which are so improved.

The commission is further authorized and empowered without the necessity of having a petition filed with it to open, clear, grade, construct drainage, and otherwise improve streets, avenues and alleys which have been dedicated to public use by making and recording in the office of the register of deeds a map or plat designating such streets, avenues, or alleys thereon, and to specially assess the entire cost of such opening, clearing, grading, construction of drainage, and other improvements to such streets, avenues, or alleys against the property abutting upon such streets, avenues or alleys so opened and improved.

The commission may specially assess less than the total cost against the abutting property if it should determine by resolution that it would be inequitable to specially assess the entire cost thereof; and in determining whether it would be inequitable, the commission is authorized to take into consideration the location, width, use, and general importance of such street or alley as it relates to the public welfare, safety, health, and convenience.

(b) Resolution. When it is proposed to make without petition any improvement or improvements described in subsection (a) hereof, the commission shall adopt a resolution which shall contain substantially the following:

- (1) That this proceeding is taken under and will be governed by the provisions of this charter (stating the number of the chapter and section);
- (2) A statement of the reasons proposed for the making thereof;
- (3) A brief description of the proposed improvement or improvements;
- (4) The proportion of the cost of the improvement or improvements to be specially assessed and the terms of payment;
- (5) A notice of the time and place when and where a public hearing will be held on the proposed improvement or improvements. The time fixed for the public

hearing shall be such as to allow of notice being given thereof not less than ten (10) days prior thereto;

- (6) A notice that all objections to the legality of the making of the proposed improvement or improvements shall be made in writing, signed in person or by attorney, and filed with the city-county clerk at or before the time of such hearing, and that any such objections not so made will be waived.

At least ten (10) days prior to the date fixed for the hearing, the commission shall cause a notice to be published at least one time in a newspaper of general circulation in the city-county. The notice shall contain the information described in paragraphs (1) through (6) of this subsection (b).

(c) Procedure. In the event the commission elects to proceed under this section to make local improvements and specially assess the cost thereof against abutting property without the filing of a petition therefor, as is authorized by this section, and does adopt the resolution provided for in subsection (b), then and in such event, the procedure applicable to such proceedings from that point to the final completion of the improvement, the final confirmation of the assessment roll, and the remedies available, shall be as particularly set forth and provided in subsections (j) through (dd) of section 6-21 of this charter.

(d) Reference to section. When electing to make local improvements and specially assess the cost thereof upon abutting property, without petition therefor, as authorized by this section, the commission shall specially state in the resolution adopted as provided in subsection (b) hereof that it is proceeding under and by virtue of the provisions of this section of the city-county charter.

[City charter, § 78]

Sec. 6-23. Apportionment of assessments among lots in subdivisions. (a) Apportionment authorized. In any case where one or more special assessments shall have been made against any property for any local improvement or improvements authorized by general or special law, and the property shall thereafter be subdivided or about to be subdivided and it is, therefore, desirable that the assessment or assessments be apportioned among the subdivision of such property, the Durham commission may, without requiring any petition or consent from the property owners or other persons affected thereby, apportion the assessment or assessments, or the total thereof, fairly among such subdivisions, as same are benefited by the improvement and release such subdivisions, if any, as in the opinion of the commission are not benefited by the improvement. Upon the making of such a reapportionment and reallocation, each of the subdivisions shall be relieved of any part of the original assessment or assessments except the part thereof apportioned to a specific lot, parcel, or subdivision, and the part of the original assessment or assessments apportioned to any such lot, parcel, or subdivision shall be of the same force and effect as to such lot, parcel, or subdivision to the extent of the amount and interest thereon apportioned to the lot, parcel, or subdivision as the original assessment or assessments were prior to the making of such reapportionment. The making of such an apportionment by the commission shall be by resolution, which resolution shall set forth the manner and extent of the reapportionment with sufficient clarity to enable the office of the city-county collector of revenue to correctly and accurately reflect such reapportionment upon the records of the assessment account or

accounts in his or her office. Such reapportionment or reassessment may include past due installments of principal, interest, and penalty, if any, as well as assessments not then due, and the remaining installments shall fall due.

(b) Procedure. When it is proposed to make a reapportionment of such assessments as authorized by this section, the commission shall adopt a preliminary resolution which shall contain substantially the following:

- (1) A brief description or statement of the location of the property affected;
- (2) The total principal amount of the assessments involved in the proposed reapportionment, together with a brief statement showing the date of confirmation and the kind and character of the assessments;
- (3) A notice of the time and place when and where a public hearing will be held on the question of making a reapportionment or reassessment of the assessments, and the extent thereof. (The time fixed for the public hearing shall be such as to allow of notice being given thereof not less than two (2) weeks prior thereto).

The resolution shall be published once a week for two (2) successive weeks in some newspaper published in the city-county, the first publication to be at least two (2) weeks prior to the public hearing. At the time for the public hearing, or at some subsequent time to which the hearing, shall be adjourned, the commission shall consider all objections which may be made to the making of such reapportionment, and shall thereafter determine whether it will make the reapportionment and the manner and extent to which the reapportionment of assessments will be made. The final decision of the commission shall be in the form of a resolution making the apportionment, which resolution shall set forth all of the facts and pertinent provisions mentioned and required by subsection (a) of this section.

[City charter, § 79]

Sec. 6-24. Special assessment authority outside the corporate limits of the city-county. (a) Supplemental to and independent of any other power and authority possessed by the city or the city-county, the Durham commission shall have the power and authority, in the extension, installation, construction, operation, and maintenance of water and sewerage facilities outside of the corporate boundaries of the city-county to create water and/or sewer benefit assessment districts and to specially assess the cost of such water or sewer installations or construction against the property in such benefit assessment districts on the basis of the front foot rule, the benefits derived or to be derived by the property in such assessment districts, or some other equitable method promulgated and established by the commission in the exercise of its sound legislative discretion.

(b) The commission may specially assess all or part of the costs of constructing, reconstructing, extending, building, or improving water supply and distribution systems or sewage collection and disposal systems, or any part thereof, outside the corporate limits of the city-county against property benefited therefrom. Special assessments levied pursuant to this section shall be levied and collected in the same way and under the same authority and procedures as special assessments levied and collected by the city-county upon property within the city-county. No special assessment shall be levied under the authority of this section until a petition which meets the requirements set forth in section

6-21, subsection (g) of this charter has been submitted to the city by the owners of the property affected.

[City charter, §§ 80, 81]

Sec. 6-25. Lien affixed for water and sewer service. (a) Authority. In addition to any other powers and authority heretofore granted by general law, local act or this charter, the Durham commission is hereby authorized and empowered to provide water service or sewer service or both such services to property within or without the city-county, abutting existing city-county water or sewer mains or the right-of-way thereof and affix a lien to the property for the cost of providing this service.

(b) Petition. The authority granted by this section shall be exercised only upon petition by the owner or owners of such abutting property. Such petition shall be upon a form approved by the commission and shall contain:

- (1) A description of the service or services requested; and
- (2) A description of the property to be served; and
- (3) The anticipated cost of furnishing such services; and
- (4) The term of payment by such property owner for the costs incurred by the city-county in furnishing such service, including but not limited to, the number of installments in which payment shall be made and the interest rate to be applied to any unpaid balance; and
- (5) Such other information as may be required by the commission.

(c) The commission may approve or deny any such petition submitted. If any such petition shall be approved by the commission, the city-county clerk shall mark upon the face of such petition such words as shall indicate such approval by the commission, and the date and time of the approval.

(d) From and after approval of any petition submitted pursuant to this section, a lien in favor of the city-county shall exist upon the property described in such petition for the amount stated in such petition as the anticipated cost of furnishing such service. Such lien shall be inferior to all prior and subsequent federal, state, and county tax liens of record but superior to all others. This lien may be collected by foreclosure in the same manner as provided by law for the foreclosure of liens for special assessments. Any foreclosure proceeding instituted pursuant to this section shall be deemed a proceeding *in rem* and no mistake or omission as to the name of any owner or person interested in any lot or parcel of land affected thereby shall be regarded a substantial mistake or omission. No change of ownership shall affect any lien created pursuant to this section.

(e) Payment of the anticipated costs of providing service shall be as prescribed by the terms of the petition approved by the commission. If any installment payment due and payable under the terms of the approved petition shall be unpaid for a period of thirty (30) days or more, then all subsequent installment payments shall become due and payable and proceedings as set forth in subsection (d) herein may be instituted.

(f) If the commission shall determine that the actual costs of furnishing the services provided for in any approved petition shall have exceeded the amount originally stated in such petition as the anticipated costs of providing such services, the commission may, by resolution, amend the approved petition to set forth the correct cost. The commission's determination of such actual cost shall be deemed conclusive. Upon amendment as provided by this section, the petition shall be deemed effective as if

originally submitted with the amended cost set forth therein. The commission may provide for payment of any such increased amended cost, by increasing the amounts of any unpaid installments due under the original approved petition. A copy of any resolution enacted pursuant to this subsection shall be mailed or personally delivered to the owner or owners of such property at their last known address.

(g) Any petition approved by the commission and any amendment thereof shall be filed in the office of the city-county clerk. The city-county clerk shall forward a copy of any such petition or amendment to the collector of revenue. The collector of revenue shall maintain a record of such approved petitions and amendments thereof and such records shall be available to public view during regular business hours.

(h) If the actual cost of providing the services requested in any approved petition shall be less than the costs set forth in such petition as anticipated costs, the commission may order such excess deposited in the water and sewer fund of the city-county for the use of the city-county or may order such excess paid to the owner or owners of the property set forth in such petition as their respective interests may appear; provided, however, any anticipated cost set forth in the approved petition which shall have been determined under any schedule of charges approved by the commission shall, for the purpose of this section, be deemed the actual cost of providing such service.

(i) The commission may delegate authority to the city-county manager or designee of the city-county manager to approve or deny any petition submitted pursuant to this section, and to take any other actions which the commission is authorized to take pursuant to this section, all without the necessity of further action by the commission.

[City charter, § 82]

Sections 6-26 through 6-30. Reserved.

Article 4. Budgeting and Financial Administration

Sec. 6-31. Annual budget ordinance. The Durham commission shall adopt a single annual budget ordinance for the operations of the city-county, the county, and the city. The budget ordinance and the city-county's accounting system shall include a county general fund and a city general fund, as well as other funds established by the city-county.

[Charter commission decision]

Sec. 6-32. Allocation of state-shared revenues. The Durham commission may, in its discretion, allocate between the city-county, the county, and the city moneys coming to the city-county pursuant to:

- (1) G.S. 105-113.82 (state beer and wine tax);
- (2) Articles 39, 40, and 42 of Chapter 105 of the General Statutes (local government sales and use taxes);
- (3) G.S. 105-275.1 (reimbursement for manufacturers' inventories);
- (4) G.S. 105-275.2 (reimbursement for intangible personal property);
- (5) G.S. 105-277.001 (reimbursement for retailers' and wholesalers' inventories);
- (6) G.S. 105-277.1A (reimbursement for homestead exemption).

[Charter commission decision]

Sec. 6--33. Collection of liens and charges. When any lien or charge for repairs or improvements of the sidewalks, gutters or streets of the city or city-county, or for the inspection, removal, or destruction of buildings, or for the suppression and removal of nuisances, or other lien or charge of whatever nature or kind, authorized by this charter, shall be due and unpaid to the city-county, the collector of revenue shall proceed to collect the same by the same process and in the same manner as he or she is authorized to collect taxes due upon the property subject to such lien or charge by applicable state and local laws.

[City charter, § 43]

Sec. 6-34. City-county investments. Notwithstanding anything to the contrary in the Local Government Budget and Fiscal Control Act, especially G.S. 159-30:

(a) The city-county may contract with any person, association, or corporation to invest, supervise, and manage the investment of idle funds of the city, county, or city-county in one or more of the types of securities or other investments authorized in G.S. 159-30 and to purchase, sell, and exchange such securities or other investments on behalf of the city, county, or city-county.

(b) The city-county, or any governing body, agency, person, or other corporation that contracts with the city-county for the investment, care, or administration of monies held by the city-county in its or the county's Community Health Trust Fund, may invest and reinvest monies constituting the Fund in one or more of the types of securities or other investments, and subject to the same restrictions, as authorized by State law for the State Treasurer in G.S. 147-69.2. The Durham commission may enact limitations on investment and reinvestment of Fund assets. This subsection applies only to monies constituting the Community Health Trust Fund.

[City and county local acts: SL 1994, c. 616, 666; SL 1999-101]

Sec. 6-35. City indebtedness existing immediately before the effective date of the charter. If the Durham commission levies property taxes to pay principal or interest on any indebtedness of the city of Durham existing immediately before the effective date of this charter, it shall do so only upon property located within the boundaries of the central service district established or expanded pursuant to Chapter 160D of the General Statutes. If, however, the Durham commission does not establish a central service district, then it may levy property taxes throughout the city of Durham in order to pay principal or interest on such indebtedness of the city of Durham.

[Charter commission decision]

Sections 6-36 through 6-40. Reserved.

Article 5. Purchasing and Contracting

Sec. 6-41. Minority or women's business enterprise requirements. The Durham commission may establish, agree to, and/or comply with minimum minority and/or women's business enterprise participation requirements in projects financed by public funds, to ensure equal employment opportunities and/or to redress past

discrimination, by including such minimum requirements in the specifications for contracts to perform all or part of such projects, and awarding bids pursuant to G.S. 143-129 and G.S. 143-131, if applicable, to the lowest responsible bidder or bidder meeting these and other specifications.

[City charter, § 84.1; County local act: SL 1987, c. 418]

Sec. 6-42. Contracts for additional facility capacity. When any person, firm, or corporation proposes to construct and dedicate to public use any street, sidewalk, water system, sewage collection and disposal system, or storm sewer and drainage system, or any part of any of the foregoing facilities, the city-county may contract with, and appropriate money to, any such person, firm, or corporation for the purpose of constructing a facility of a greater length, width, capacity, or quality than that which is proposed to be constructed. The city-county may establish policies to provide for the reimbursement of any person, firm, or corporation for the construction of such greater length, width, capacity, or quality of such facility. The provisions of Article 8 of Chapter 143 of the North Carolina General Statutes shall not apply to a contract or reimbursement made pursuant to this section. The authority granted by this section is in addition to and not in derogation of any other authority granted to the city-county by this charter or any other law.

[City charter, § 84.2]

Sec. 6-43. Acquisition of real property with improvements by seller or lessor. The city-county may enter into contracts for the purchase or lease of buildings or other structures located within the central service district for the city-county or city in which the seller or lessor shall be responsible for carrying out or providing for: (i) reconstruction, repair, or renovation of the property; (ii) construction of any additions or improvements to the property; and (iii) purchase of apparatus, supplies, materials, or equipment for the property. Such contracts shall include such provisions as the Durham commission deems sufficient to assure that the work is performed and items purchased at a reasonable price. The provisions of Article 8 of Chapter 143 of the General Statutes and Article 3 of Chapter 44A of the General Statutes shall not apply to such contracts. The authority granted by this section is in addition to, and not in derogation of, any other authority granted to the city-county by this charter or any other law.

[City charter, § 84.3]

Sec. 6-44. Purchase of parts for specialized equipment. The city-county may purchase apparatus, supplies, materials, or equipment necessary to properly maintain and keep in repair specialized equipment of the city-county or city and may make contracts for the repair of such equipment after obtaining informal bids, provided, however, when there is only one known manufacturer or supplier of such equipment or only one known party who can repair such equipment, then a single informal bid from such supplier, manufacturer, or party is sufficient. This authority may be exercised without regard to the maximum limits or the requirement for advertising for bids as set forth in G.S. 143-129 and 143-131. It shall be the duty of the purchasing agent or other authorized employee or department to keep a record of all such informal bids submitted, and such record shall be subject to public inspection.

[City charter, § 85]

Sec. 6-45. Contracts to be in writing. All contracts made by or on behalf of the city-county shall be in writing. A contract made in violation of this section is void and unenforceable unless it is expressly ratified by the Durham commission.

[Charter commission decision, based on G.S. 160A-16]

Sections 6-46 through 6-50. Reserved.

Article 6. Acquisition and Disposition of Property

Sec. 6-51. Power of eminent domain. In addition to any other authority for the condemnation of property which is given to the city-county by general or special law, the city-county shall be authorized to purchase or acquire by condemnation any land, including the dwelling, yard, or garden of any person, as may be necessary for the opening, extension, widening, or improvement of the streets or alleys, or for the purpose of acquiring land for parks or public buildings, or for any other public purpose that the city is authorized by law to engage in.

[City charter, § 74]

Sec. 6-52. Notice of intent to condemn under G.S. 40A-40. (a) Owner's responsibility. If the city-county has given notice pursuant to G.S. 40A-40 of its intent to condemn property for a purpose available to cities under G.S. 40A-3(b), an owner who receives a notice of the city-county's intent to institute an action shall disclose the notice to any subsequent purchaser if the transfer of the property is made between the receipt of the notice and the filing of the complaint. An owner who fails to disclose the notice shall be guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100.00). Any contract for purchase for sale between the owner and any subsequent purchaser shall be voidable if any owner fails to make the disclosure required by this section prior to transfer of the property.

(b) Notice of section required. This section does not apply unless the city-county gives notice of the provisions of this section to an owner at the same time the city-county gives notice to the owner pursuant to G.S. 40A-40 of its intent to institute an action to condemn property.

(c) No further notice of intent to condemn. Where the city-county has complied with the applicable provisions of this section and ownership of the property changes before the complaint is filed, the city-county is not required to provide notice pursuant to G.S. 40A-40 to the new owners as a prerequisite to filing the complaint.

[City local act: SL 1993, c. 476]

Sec. 6-53. Acquisition of property by eminent domain for affordable housing. (a) Authority. In order to provide housing for persons of low and moderate income, the city-county shall have the power of eminent domain to acquire property within the central service district on which is located a dwelling which the Durham commission or housing appeals board has ordered to be either vacated and closed or removed or demolished.

(b) Recording order. The city-county shall not institute an action to acquire property pursuant to this section until at least thirty (30) days after the date of recording, in the office of the register of deeds, of the order by the commission or housing appeals board which ordered that the dwelling be either vacated and closed or removed or demolished.

(c) Program required. Before exercising the authority granted to it by this section, the commission shall authorize a program to use condemned property for housing for persons of low and moderate income. The program shall: (i) include or identify sources of financing adequate to demolish or rehabilitate the dwellings acquired pursuant to this section; (ii) designate the geographical areas in which the program will be conducted; and (iii) describe other activities being conducted by or on behalf of the city-county within those areas to address housing needs of persons of low and moderate income.

(d) Procedure. The provisions of Chapter 40A of the General Statutes shall apply to the exercise of the power of eminent domain authorized by this section. Vesting of title to the property taken under this section and right to possession thereto shall occur pursuant to the provisions of G.S. 40A-42(b).

(e) Housing code not affected. The initiation of an action to acquire property by eminent domain shall not prevent the city-county from exercising the powers granted to it by Part 6 of Article 19 of Chapter 160A of the General Statutes, as amended by this charter and local act, with respect to the property that is the subject of the eminent domain action.

(f) Disposition of property. Limitations or prohibitions, in any provision of general law, on the use or disposition of property acquired by eminent domain, including but not limited to G.S. 160A-279 and G.S. 160A-457, shall not apply to property acquired pursuant to this section. Buildings acquired pursuant to this section may be deemed to be private buildings for purposes of any program of assistance and financing of rehabilitation and construction undertaken by the city-county principally for the benefit of low and moderate-income persons.

(g) Authority supplemental. The authority contained in this section is in addition to and not in limitation of any other authority granted by this charter or any other law.
[City charter, § 74.1]

Sec. 6-54. Modifications to the Uniform Relocation Act. (a) When making an additional payment to a displaced person pursuant to G.S. 133-9 for a project within the central service district, the city-county shall include the following additional element, in addition to those set out in G.S. 133-9(a)(1), (2), and (3):

The amount, if any, which will compensate the displaced person for the value of a mortgage credit certificate for a federal income tax credit. This paragraph applies only to a certificate which has been issued by the North Carolina Housing Finance Agency and which will expire because of the city-county's acquisition of the dwelling.

(b) Notwithstanding anything in G.S. Chapter 133, Article 2, to the contrary, the city-county may make payments to a displaced person, as defined in G.S. 133-7, within the central service district in excess of the limitations set forth in G.S. Chapter 133,

Article 2, to the extent such payments are authorized under 42 U.S.C. §4601 *et. seq.*, implementing regulations thereunder, or other applicable federal statutes or regulations.
[City local acts: SL 1993, c. 304; SL 1989, c. 513]

Sec. 6-55. Presumption of title in the city and city-county. In the absence of any contracts with the city-county or city in relation to the lands used or occupied by the city-county or the city for the purpose of streets, sidewalks, alleys, or other public works of the city-county or city, signed by the owner thereof or his agent, it shall be presumed that such land has been granted to the city-county or to the city by the owner or owners thereof, and the city-county or city, respectively, shall have good right and title thereto, and shall have, hold, and enjoy the same. Unless the owner or owners of such land, or those claiming under them shall make claim or demand for compensation within two (2) years next after such land was taken, he, or they, shall be forever barred from recovering the land, or having any compensation therefor; provided, nothing herein contained shall affect the rights of infants until two (2) years after the removal of their disabilities.

[City charter, § 118]

Sec. 6-56. Public or private sale of property. The Durham commission may, upon the affirmative vote of at least five (5) members of the commission, publicly or privately sell, lease, rent, exchange, or otherwise convey, or cause to be publicly or privately sold, leased, rented, exchanged, or otherwise conveyed, any property, real or personal, or any interest in such property, belonging to the city or the city-county.

[City charter, § 86]

Sec. 6-57. Sale of Property subject to restrictions. (a) Authority. The Durham commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property belonging to the city or city-county to any purchaser subject to such covenants, conditions, and restrictions as the commission may deem to be in the public interest. Such sale, exchange, or other transfer may be made pursuant to either (i) section 6-56 of this charter, (ii) Article 12 of Chapter 160A of the North Carolina General Statutes, (iii) G.S. 160A-514 or (iv) any other applicable provision of law, and the consideration received by the city or city-county, if any, for such sale, exchange, or transfer may reflect the restricted use of the property resulting from such covenants, conditions, and restrictions. The city-county may invite bids or written proposals (including detailed development plans and site plans) for the purchase of any such property or property interest (whether by sale, exchange, or other transfer) pursuant to such specifications as may be approved by the city-county. A sale, exchange, or other transfer of real property (or interest therein) pursuant to this section may be made contingent upon any necessary rezoning of such property.

(b) Power supplemental. The authority contained in this section is in addition to and not in limitation of any other authority granted by this charter or any other law.

[City charter, § 86.1]

Sec. 6-58. Disposition of property by city-county manager. The Durham commission may authorize the city-county manager to dispose of the following property without the necessity of approval by the commission of each such disposition:

- (1) Wrecked or damaged property;
- (2) Water or sewer easements, or similar interests in real property, as part of an exchange for other water or sewer easements or similar interests in property; and
- (3) Water or sewer easements, or similar interests in real property when such easement or similar interests in real property is no longer needed by the city-county or the city.

The provisions of Article 12 of Chapter 160A of the North Carolina General Statutes shall not apply to the disposition of property pursuant to this section.

[City charter, § 86.2]

Sec. 6-59. Sale of personal property under \$10,000. The Durham commission may adopt regulations pursuant to G.S. 160A-266(c) for disposing of personal property belonging to the city, the county, or the city-county valued at less than ten thousand dollars (\$10,000) for any one item or group of items.

[City and county local act: SL 1993(94), c. 627]

Chapter 7. Annexation and Related Powers of the City of Durham

Sec. 7-1. Annexation of areas lying within the corporate boundaries of the city. In addition to areas prescribed by G.S. 160A-48, the Durham commission may annex to the city of Durham any area, or part thereof, that is surrounded by the corporate boundaries of the city. The procedure prescribed by Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes shall be applicable to any such annexation. The property tax liability of any such annexed area shall be determined in the manner prescribed by Part 5 of Article 4A of Chapter 160A of the North Carolina General Statutes.

[City charter, § 2.1]

Sec. 7-2. Annexation of areas adjacent or contiguous to certain described territory in Durham County. For the purpose of determining whether an area which the city-county proposes to annex to the city of Durham qualifies for annexation pursuant to G.S. 160A-31, G.S. 160A-48, or G.S. 160A-58.1, the boundary of the territory described in Section 2 of Chapter 435, Session Laws of 1985, to the extent that said territory lies within Durham county, shall be considered a part of the municipal boundary of the city when, through annexation of intervening land, the boundary of said territory (described in Section 2 of Chapter 435, Session Laws of 1985, as amended) coincides with the municipal boundary of the city for a distance of at least five thousand three hundred (5,300) feet.

[City charter, § 2.2]

Sec. 7-3. Effective date of annexation ordinances. (a) Voluntary annexations. The provisions of G.S. 160A-31(d), 160A-58.2, and 160A-58.7 notwithstanding, the Durham commission may make annexation ordinances of the city of Durham adopted pursuant to Parts 1 or 4 of Article 4A of Chapter 160A of the General Statutes effective on any specified date within three (3) years from the date of passage of the annexation ordinance.

(b) Involuntary annexations. The provisions of G.S. 160A-49(e)(4) notwithstanding, the commission may fix the effective date of annexation ordinances of the city of Durham adopted pursuant to Part 3 of Article 4A of Chapter 160A of the General Statutes for any date not less than forty (40) days nor more than three (3) years from the date of passage of the ordinances.

(c) Changing the effective date. An annexation ordinance of the city of Durham adopted pursuant to Article 4A of Chapter 160A of the General Statutes or this charter may be amended by ordinance at any time prior to the effective date of such ordinance to change the effective date of the ordinance to any other date permitted by general law or this charter. Such ordinance amending the ordinance may be adopted at any regular or special meeting of the commission and requires five (5) affirmative votes for passage. If the ordinance is to delay the effective date, no notice, public hearing, or other procedural requirement of Article 4A of Chapter 160A of the General Statutes, other than G.S. 160A-29, 160A-51, and 160A-58.8 as applicable, applies to the adoption of such an ordinance. If the ordinance is to advance the effective date, notice of the proposed

ordinance shall be given and a public hearing on the proposed ordinance shall be held under the same procedure required for the original annexation, but:

- (1) With only the requirement of information in the notice and at the hearing as to the area to be affected and the adopted effective date and proposed new effective date; and
- (2) No other procedural requirement of Article 4A of Chapter 160A of the General Statutes, except for G.S. 160A-29, 160A-51, and 160A-58.8 as applicable, applies to the adoption of such an ordinance amendment.

(d) Repealing annexation ordinances. Any annexation ordinance of the city of Durham adopted pursuant to Article 4A of Chapter 160A of the General Statutes or this charter may be repealed by ordinance at any time prior to the effective date of the ordinance.

[City charter, § 2.3]

Sec. 7-4. Annexation petition signatures. A petition for annexation of property to the city of Durham submitted pursuant to G.S. 160A-31 need not be signed by any owner of real property that is wholly exempt from property taxation under the constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

[City charter, § 2.4]

Sec. 7-5. Petition annexation appeals. Any judicial action contesting the validity of an annexation by the city of Durham pursuant to Part 1 or 4 of Article 4A of Chapter 160A of the General Statutes shall be filed within thirty (30) days after the adoption of the annexation ordinance.

[City charter, § 2.6]

Sec. 7-6. Services upon involuntary annexation. The city-county may not annex property to the city of Durham pursuant to Part 3 of Article 4A of Chapter 160A of the General Statutes unless the annexation report includes plans for providing all major municipal services, as defined in G.S. 160A-47, to the annexation area.

[Charter commission decision]

Sec. 7-7. Expenditure of bond funds for planning in anticipation of annexation. On and after the approval by the voters of the city or the city-county who vote thereon for ordinances authorizing the issuance of bonds for the purpose of raising revenues to defray the costs and expenses of the construction of water and sewer lines, water and sewer treatment disposal facilities, outfalls, fire stations, and any other capital facilities, and the acquisition of sites, lands and rights-of-way, the Durham commission shall have full power and authority, in its discretion, to expend from such funds amounts which may be necessary to acquire sites and rights-of-way for such facilities outside and beyond the then corporate limits of the city-county within the area proposed to be annexed by the city, and for engineering and planning, even though an annexation ordinance has not been adopted and the proposed area to be annexed has not actually been annexed. The authority granted by this section is supplementary of authority granted by general law and this charter and not in derogation thereof.

[City charter, § 88]

Sec. 7-8. Enactment of ordinances prior to effective date of annexation. The Durham commission and the planning and zoning commission of the city-county are hereby authorized and empowered, after the passage of an annexation ordinance and prior to the date upon which the territory described therein is actually annexed to the city and city-county, to initiate, hold hearings upon, adopt resolutions providing for public hearings, and conduct public hearings upon such resolutions, petitions, proposals, and ordinances, and the commission is further empowered to enact zoning ordinances, for the determination of zone boundaries and allocation of the area into zoning classifications and districts, and the application of zoning regulations and restrictions, to be applicable to the territory described in the annexation ordinances to be annexed. But no such establishment of zone boundaries or any zoning regulations or restrictions in such annexed territory described in the annexation ordinances shall be effective until the effective date upon which the area is actually annexed to the city and city-county as provided in the annexation ordinances, but at that time such zoning regulations and restrictions and boundaries shall simultaneously become effective with such annexation.

This section does not limit the authority of the city-county to exercise the city's extraterritorial jurisdiction pursuant to Article 19 of Chapter 160A of the North Carolina General Statutes.

[City charter, § 89]

Sec. 7-9. Zoning notice upon annexation. In lieu of complying with G.S. 160A-384, when property annexed by the city is proposed to be zoned to the same zone classification the property held when under county zoning, the city-county shall either give individual mailed notice to the property owner under G.S. 160A-384(a) or shall publish notice under G.S. 160A-364.

[City charter, § 94(b)]

Chapter 8. Miscellaneous

Article 1. Continuing Elected Officers

Sec. 8-1. Sheriff and register of deeds of Durham county. The voters of Durham county continue to elect the sheriff of Durham county and the register of deeds of Durham county, in the manner provided by the general law of the state.

[Drafter's provision]

Sections 8-2 through 8-10. Reserved.

Article 2. Other Cities and Towns

Sec. 8-11. Continuation of existing municipal powers. This charter does not abridge the authority of any city or town, other than the city of Durham, that extends into the area of the city-county, to enjoy and be subject to: (1) all the powers, duties, rights, privileges, functions, and immunities that incorporated municipalities enjoy and are subject to under the constitution and general laws of the State of North Carolina at or after the effective date of this charter; and (2) all the powers, duties, rights, privileges, functions, and immunities that any such city or town enjoys and is subject to under its charter or other local acts of the General Assembly at or after the effective date of this charter.

[Drafter's provision]

Sec. 8-12. Services to citizens of cities and towns. The citizens of any city or town who reside in Durham county are citizens of the city-county and are entitled to those services, facilities, and functions that are provided or maintained by the city-county for Durham county, as opposed to the city of Durham or the central service district.

[Drafter's provision]

Chapter 9. Changes in the Form of Government

Sec. 9-1. Voters may modify form of government. The voters of the city-county may amend this charter to modify the form and structure of the government of the city-county, with respect to any matter specified in G.S. 160A-101.

[Charter commission decision]

Sec. 9-2. Procedure for modifying form of government. The Durham commission or the voters may initiate an amendment of the charter to modify the form and structure of the government of the city-county pursuant to G.S. Chapter 160A, Article 5, Part 4, as modified by this section.

- (1) The commission may initiate an amendment to the charter but it shall submit any such amendment to the voters of the city-county, and no amendment initiated by the commission may become effective unless approved by the voters.
- (2) The voters of the city-county may initiate an amendment to the charter pursuant to G.S. 160A-104, except that the initiative petition shall bear the signatures of at least 5,000 voters or three percent (3 %) of the registered voters in the city-county, whichever is greater. No amendment initiated by petition may become effective unless approved by the voters in a referendum called and held pursuant to G.S. 160A-104.

[Charter commission decision]

Chapter 10. Electoral Districts

Sec. 10-1. Original electoral districts. The initial electoral districts are defined as follows:

District 1: All of that area of Durham county included in Voter Precincts 13, 14, 15, 18, 19, 20, 22, 23, 31, 33, 42, 47, and 52 as the same were defined on April 1, 1990 for the 1990 decennial census, and that portion of the city-county located in Wake county.

District 2: All of that area of Durham county included in Voter Precincts 3, 5, 7, 8, 9, 10, 11, 12, 17, 34, 41, 48, and 49 as the same were defined on April 1, 1990 for the 1990 decennial census.

District 3: All of that area of Durham county included in Voter Precincts 1, 2, 4, 6, 16, 27, 35, 36, 38, 39, 40, 43, 50, and 51 as the same were defined on April 1, 1990 for the 1990 decennial census, and that portion of the city-county located in Orange county.

District 4: All of that area of Durham county included in Voter Precincts 21, 24, 25, 26, 28, 29, 30, 32, 37, 44, 45, and 46 as the same were defined on April 1, 1990 for the 1990 decennial census.

[Charter commission decision]

Sec. 10-2. Changing electoral district boundaries. The Durham commission may revise the boundaries of electoral districts from time to time. When electoral district boundaries have been established in conformity with the federal Constitution, the commission is not required to revise the boundaries again until a new federal census of population has been taken or territory is annexed to the city-county, whichever event first occurs. In establishing electoral district boundaries, the commission may use data derived from the most recent federal census and shall not be required to use any other population estimates.

[Drafter's provision, based on G.S. 160A-23(b).]

Sec. 10-3. Map or description. The city-county shall maintain a current map or description of electoral district boundaries pursuant to G.S. 160A-23(a). Once the Durham commission revises the boundaries of the electoral districts as they are set forth in this charter, the commission may provide that section 10-1 shall be deleted from any future printings of the city-county charter.

[Drafter's provision]