

**THE BOARD OF COUNTY COMMISSIONERS  
DURHAM, NORTH CAROLINA**

Monday, December 13, 1999

7:15 P.M. Regular Session

**MINUTES**

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners William V. Bell, Joe W. Bowser, and Becky M. Heron

Absent: None

Presider: Chairman Black

**Opening of Regular Session**

Chairman Black called the Regular Session to order with the Pledge of Allegiance.

**Agenda Adjustments**

Chairman Black said County Manager David F. Thompson will update the Commissioners on the Lakehurst tax situation after the discussion of a merger charter commission.

Chairman Black said Mr. Curtis Gatewood, representing the NAACP, will make a presentation after adoption of the minutes.

**Minutes**

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to approve the October 25, 1999 Regular Session and the November 1, 1999 Worksession Minutes of the Board as submitted; approve the November 22, 1999 Regular Session Minutes of the Board as corrected.

The motion carried unanimously.

**Presentation—Mr. Curtis Gatewood**

Mr. Curtis Gatewood, representing the NAACP, presented Commissioner Bell with a picture collection and letters from the 25<sup>th</sup> Freedom Fund Banquet that was held November 25, 1999. Commissioner Bell was the honoree of the occasion.

Commissioner Bell thanked the NAACP for the honor.

**Resolution Honoring the Durham Housing Authority's 50<sup>th</sup> Anniversary**

A resolution was prepared honoring the 50<sup>th</sup> Anniversary of the Durham Housing Authority. The Durham Housing Authority was created in 1949 and is one of the largest public housing agencies in the state of North Carolina. Mr. James R. Tabron has served as Executive Director of the authority for many years.

County Manager's Recommendation: Approve the resolution honoring the 50<sup>th</sup> Anniversary of the Durham Housing Authority and present a copy to Mr. James R. Tabron.

Chairman Black read the resolution into the record:

RESOLUTION

WHEREAS, The Housing Authority of the City of Durham was created in 1949 to address the housing needs of persons with limited income and financial resources; and

WHEREAS, Durham Housing Authority is one of the largest housing agencies in the state of North Carolina; and

WHEREAS, over the years, several program initiatives have been developed including:

- The Ruffin/Edwards Academic Development Scholarship program which awards scholarships to deserving public housing youth who would otherwise be unable to attend college;
- The Career Opportunities Program which addresses unemployment problems by assisting unemployed/under-employed residents in furthering their education; and

WHEREAS, James Tabron has served as Executive Director for 19 years; and

WHEREAS, through his visionary leadership, the Durham Housing Authority has implemented a very successful Grantmanship Program which has resulted in over \$39 million in grants for physical improvements, new construction, and a variety of human service programs to benefit residents; and

WHEREAS, Durham Housing Authority has been designated a high performer by the Department of Housing and Urban Development (HUD) for the past five years:

NOW, THEREFORE BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do hereby congratulate

“Durham Housing Authority”

on the occasion of its 50<sup>th</sup> Anniversary, and for providing exemplary service and making significant contributions to the quality of life in this community. We further urge all residents of Durham County to join in saluting this outstanding agency for achieving this unique milestone.

This the 13<sup>th</sup> day of December, 1999.

/s/ Five Commissioners  
Durham County Commissioners

The resolution would be sent to Mr. Tabron.

**Resolution Honoring Duke University's 75<sup>th</sup> Anniversary**

A resolution honoring the 75<sup>th</sup> Anniversary of Duke University was presented. Duke University was established 75 years ago this month. In honor of his father, Washington Duke, James Duke provided an unprecedented \$40 million to establish The Duke Endowment, the principal beneficiary being Duke University. James Duke's vision of a university with an outstanding liberal arts base, built on the foundation of Trinity College, led to what today is recognized as one of the finest research universities in the world with undergraduate, graduate, and professional programs in business, divinity, engineering, environment, law, medicine, nursing, and public policy, all of which have served, and continue to serve the people of Durham County.

County Manager's Recommendation: Approve the resolution honoring the 75<sup>th</sup> Anniversary of Duke University and present a copy to President Koehane.

Mr. John Burness and former Deputy County Manager Michael Palmer were present to represent Duke University.

Chairman Black read the resolution into the record:

RESOLUTION

WHEREAS, Washington Duke and his sons, Benjamin Newton Duke and James Buchanan Duke, were a Durham family who built a worldwide financial empire in

the manufacture of tobacco and who developed the production of electricity in the Carolinas; and

WHEREAS, Washington Duke and fellow Durham industrialist Julian S. Carr were responsible in 1892 for bringing Trinity College from Randolph County to Durham, and Benjamin N. Duke provided financial support and leadership that were reflected in Trinity College's growing national reputation and Durham's visibility; and

WHEREAS, 75 years ago this month, in honor of his father Washington Duke, James Duke provided an unprecedented \$40 million to establish The Duke Endowment, the principal beneficiary of which is Duke University; and

WHEREAS, James Duke wanted to honor his father and wrote his indenture that transformed Trinity College into Duke University specifying,

“I have selected Duke University as one of the principal objects of this trust because I recognize that education, when conducted along sane and practical, as opposed to dogmatic and theoretical lines, is, next to religion, the greatest civilizing influence . . . I advise that the courses at this institution be arranged, first with special reference to the training of preachers, teachers, lawyers, and physicians, because these are most in the public eye, and by precept and example can do most to uplift mankind; and second to instruction in chemistry, economics, and history, especially the lives of the great of the earth, because I believe that such subjects will most help to develop our resources, increase our wisdom, and promote human happiness;” and

WHEREAS, James Buchanan Duke's vision of a university with an outstanding liberal arts base, built on the foundation of Trinity College, led to what today is recognized as one of the finest research universities in the world with undergraduate, graduate, and professional programs in business, divinity, engineering, environment, law, medicine, nursing, and public policy, all of which have served, and continue to serve the people of Durham County; and

WHEREAS, Duke University Hospital is now part of a comprehensive health system that serves Durham County and, indeed, people from across the nation and around the globe, with a quality and breadth of health care and research that rivals the best in the world; and

WHEREAS, Duke University has grown to be the largest employer in Durham County with an annual economic impact on Durham County of more than \$2.4 billion; and

WHEREAS, Duke University's commitment to provide programs of high quality in education, health care, the arts and culture, and service in partnerships with its host community are among the greatest assets of Durham County:

NOW, THEREFORE, BE IT RESOLVED, that we, the members of the Durham County Board of Commissioners, do hereby congratulate Duke University on the occasion of its 75<sup>th</sup> Anniversary. We call upon all Durham citizens to recognize the unique role this institution of higher learning has played in providing leadership, education, service, and health care to the citizens of Durham County and to the people of the world.

This the 13<sup>th</sup> day of December, 1999.

/s/ Five Commissioners  
Durham County Commissioners

Mr. Burness received the resolution from Chairman Black. He made remarks of thanks for the resolution and invited the Commissioners to upcoming events in recognition of the 75<sup>th</sup> Anniversary.

#### **Resolution Regarding Gun Safety**

Durham County Commission Vice-Chairman Ellen Reckhow, who also serves as a member of the Board of Health, invited Dr. Elaine Hart-Brothers, Chair of the Board of Health, to share information about the "Resolution Regarding Gun Safety." The resolution was approved on November 23, 1999.

County Manager's Recommendation: Consideration of resolution and provision of direction to staff.

Vice-Chairman Reckhow introduced Dr. Hart-Brothers to read the resolution regarding gun safety.

Vice-Chairman Reckhow recognized Dr. Hart-Brothers' 9½ years of service on the Public Health Board. For a number of these years, she served as chair and vice chair of the board.

The resolution follows:

COUNTY OF DURHAM  
BOARD OF HEALTH

Whereas, the Durham County Board of Health upholds the mission to preserve, protect, and enhance the general health and environment of the community; and

Whereas, the Durham County Health Department's general goals include goals to "promote healthy and safe lifestyles" and "identify and reduce health risks in the community;" and

Whereas, injury prevention is an area of study within the discipline of public health, and many groups of physicians and public health professionals nationwide have publicly recognized that accidental deaths and injuries attributed to guns in the home are a serious but preventable public health problem; and

NOW, THEREFORE, BE IT RESOLVED that

- The Durham County Board of Health concludes that the Durham County Health Department must promote citizen education toward firearm safety; and
- The Durham County Board of Health recommends that the Durham County Health Department public health education programs promote the responsibility of families to create a gun-safe environment; and
- The Durham County Board of Health recommends that age-appropriate literature emphasizing gun safety for youth be distributed to parents by Durham County Health Department health educators that are present in the public health setting; and
- The Durham County Board of Health encourages the participation of other governmental agencies and Durham County advocacy groups that can make a critical contribution to specific gun safety intervention and prevention strategies; and
- The Durham County Health Department will educate Durham County citizens through Health Department programs about the importance of taking measures to ensure that youth will never be able to gain unauthorized or unsupervised access to weapons from their homes.

/s/ Elaine Hart-Brothers

MD, M.P.H., Chairperson

Adopted by Board of Health

November 23, 1999

Dr. Hart-Brothers made remarks about public health and gun safety.

Vice-Chairman Reckhow said the Public Health Board is following up on this resolution with the Sheriff's Department. A brochure will be prepared for everyone requesting a gun permit. Gunlocks will be given to gun owners. The Durham Police Department will also participate in the gun safety program.

Chairman Black applauded Vice-Chairman Reckhow, Public Health Director Brian Letourneau, the Public Health Board, and staff for this initiative.

Vice-Chairman Reckhow also distributed a brochure prepared by the Health Department entitled, Getting to Know Your Septic Tank.

**Consent Agenda**

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve the following consent agenda items:

- \* (a) FY 1999-2000 Budget Ordinance Amendment No. 00CPA000007-- Museum of Life and Science (approve capital budget amendment to establish the pay-as-you-go project in the amount of \$150,000);
- \* (b) FY 1999-2000 Budget Ordinance Amendment No. 00BCC000018-- Social Services (approve the budget amendment in the amount of \$105,084 to recognize additional state dollars for the Crisis Intervention Program and the Adult Day Care Program); and
- (c) Authorize staff to proceed with the design for Phase 1 of the Wastewater Treatment Improvements under an existing contract with McKim & Creed. This project addresses two major issues, flooding and permit compliance, related to the County's Wastewater Treatment Plant.

Vice-Chairman Reckhow suggested that before the contract is signed (agenda item 7[c]), City and County Managers, appropriate staff, Patrick Davis (Triangle J Council of Governments), and the consultant meet to discuss this issue as it relates to the City and County working together on wastewater treatment.

The motion carried unanimously and included Vice-Chairman Reckhow's suggestion.

\*Documents related to these items follow:

Consent Agenda 7(a). FY 1999-2000 Budget Ordinance Amendment No. 00CPA000007 --Museum of Life and Science (approve capital budget amendment to establish the pay-as-you-go project in the amount of \$150,000).

The Capital Projects Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 1999-2000 Capital Projects Budget Ordinance  
Amendment No. 00CPA000007

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 1999-00 Capital Projects Budget Ordinance is hereby amended to reflect budget adjustments for the Museum of Life and Science pay-as-you-go project.

PAYG FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
Museum of Life & Science	\$ -0-	\$150,000		\$150,000

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 13<sup>th</sup> day of December, 1999.

(Capital Projects Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

Consent Agenda 7(b). FY 1999-2000 Budget Ordinance Amendment No. 00BCC000018 --Social Services (approve the budget amendment in the amount of \$105,084 to recognize additional state dollars for the Crisis Intervention Program and the Adult Day Care Program).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
 FY 1999-2000 Budget Ordinance  
 Amendment No. 00BCC000018

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 1999-2000 Budget Ordinance is hereby amended to reflect budget adjustments for Social Services.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Revenues</u>				
Intergovernmental	\$172,766,556	\$105,084		\$172,871,640
<u>Expenditures</u>				
Human Services	\$205,803,874	\$105,084		\$205,908,958

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 13<sup>th</sup> day of December, 1999.



(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Issue Report and Set Public Hearing for Biogen**

Biogen Inc. and the Research Triangle Foundation requested that the Board of Commissioners set a public hearing to consider expanding Research Triangle Park to include property currently owned by Biogen Inc. The property lies in both Wake and Durham Counties. The two parties are requesting this action by both Durham and Wake County Boards of Commissioners.

To consider the expansion of Research Triangle Park, the Board of Commissioners is required to issue a report for public inspection. Notice of the public hearing is required, and a notice of the public hearing must be sent to Biogen. Following the public hearing which is proposed for January 10, 2000, the Board of Commissioners would then consider whether to adopt a resolution expanding the Park.

Resource Person(s): Charles Case, attorney for Biogen; Hal Price, Biogen; and Rob Teer, Consultant to Biogen.

County Manager's Recommendation: Set the public hearing for January 24, 2000 to allow sufficient time to give the proper notifications, and adopt the report so the Board can consider whether to grant the request to expand the Research Triangle Park following the public hearing.

Mr. Harold Price, General Manager, Biogen Inc., presented the Commissioners factual information about the company. He explained the purpose of the request to consider expanding Research Triangle Park. The company owns approximately 27.6 acres in Durham County and 57.05 acres in Wake County. Biogen Inc. wants to expand the Park in order to get all of their property into one service district.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to set a public hearing on January 24, 2000 regarding Biogen's request to consider expanding Research Triangle Park to include property currently owned by Biogen Inc.

The motion carried unanimously.

**Public Hearing on the Proposed Solid Waste Management Ordinance**

At the Board of County Commissioners August 4, 1999 Worksession and a September 27, 1999 Regular Session, City, County, and State representatives provided the Board a two-part informational solid waste management update. The purpose of this informational update was to advise the BOCC on the status of Durham County solid

waste management operations and to identify the need for a more comprehensive Solid Waste Management Ordinance for better enforcement of solid waste concerns in Durham County.

On November 8, 1999, the BOCC set a public hearing for Monday, December 13, 1999, to receive public comment from interested parties on the proposed Solid Waste Management Ordinance as recommended by the Solid Waste Advisory Committee.

On Monday, November 29, 1999, a Notice of Public Hearing was advertised in the Durham Herald-Sun and copies were mailed to waste handlers in Durham County.

Staff was present to answer questions for the Board and to document comments received from interested parties.

Resource Person(s): Michael Turner, Director of General Services  
Marcnelous Powell, Waste Reduction Supervisor

County Manager's Recommendation: Receive comment from interested parties on the proposed Solid Waste Management Ordinance, give directions on any ordinance changes, and adopt the ordinance subject to the inclusion of any changes.

Mr. Turner presented the Commissioners an overview of the agenda item.

The Commissioners asked questions and made comments about the proposed Solid Waste Management Ordinance to which Mr. Turner responded.

Chairman Black opened the public hearing that was properly advertised.

As no one signed to speak at this public hearing, Chairman Black closed the public hearing and referred the item back to the Commissioners.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to adopt the Solid Waste Management Ordinance.

The motion carried unanimously.

The Solid Waste management Ordinance follows:

#### ORDINANCE AMENDING THE SOLID WASTE ORDINANCE

WHEREAS, source separation of recyclables is being required by the City of Durham; and

WHEREAS, in order to protect the health, safety, and welfare of the citizens of the County of Durham, it is necessary to amend existing regulations and enact new regulations concerning the recycling, collection, and disposal of solid waste; and

WHEREAS, the Board of Commissioners has the statutory authority as indicated below to enact these regulations, as well as the authority given the Board of Commissioners under common law:

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOTH ORDAIN:

1) That sections 20-1 through 20-7 and sections 20-9 through 20-17 of the Durham County Code of Ordinances are hereby amended to read as follows:

**Sec. 20-1. Authority & Responsibility.**

Durham County has adopted the following rules and regulations for solid waste, recycling, collection and disposal for the general health and welfare of the citizens of Durham County and shall govern the management, storage, collection, transportation, disposal, and recycling of the solid waste throughout Durham County. Unless otherwise indicated, this ordinance pertains to all solid waste activity in unincorporated Durham County.

**Sec. 20-2. Purpose and Statutory Authority.**

The purpose of this ordinance is to regulate the storage, collection, and disposal of solid waste in Durham County. This ordinance is adopted pursuant to the authority contained in North Carolina General Statutes §§ 153A-121, 153A-132.1, 153A-136, 153A-274ff, 153A-292, and 153A-293. Unless otherwise indicated, the ordinance applies to both publicly owned and privately owned solid waste management facilities located in unincorporated Durham County.

**Sec. 20-3. Definitions.**

The following definitions apply in the interpretation and enforcement of this ordinance:

**A. Beneficial Fill:** Fill material consisting only of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock, and gravel to be used in accordance with Section 10 of this ordinance.

**B. Board:** Durham County Board of Commissioners.

**C. Bulky Waste:** Large items of solid waste such as furniture, large auto parts, trees, branches, stumps, and other oversize waste whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.

**D. Collection:** The act of removing solid waste (or materials that have been separated for the purpose of recycling) to a transfer station, processing facility, or disposal facility.

**E. Commercial Solid Waste:** All types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial waste.

**F. Construction and Demolition Waste:** Solid waste resulting solely from construction, remodeling, repair, or demolition operations on buildings, or other structures, but does not include inert debris, land-clearing debris, yard debris or used asphalt mixed with dirt, sand gravel, rock, concrete or similar nonhazardous material.

**G. Department:** North Carolina Department of Environment and Natural Resources.

**H. Director of General Services:** Designated County Official to manage, supervise, and enforce the Ordinance for the Management of Solid Waste in Durham County.

**I. Garbage:** All putrescible waste, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

**J. Hazardous Waste:** Solid waste, or a combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated stored, transported, disposed of or otherwise managed.

**K. Industrial Solid Waste:** Solid waste generated by industrial processes and manufacturing, but excluding hazardous waste.

**L. Inert Debris:** Solid waste that consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

**M. Institutional Solid Waste:** Solid waste generated by educational, health care, correctional, and institutional facilities, but excluding hazardous waste.

**N. Land-clearing Debris:** Solid waste that is generated solely from land-clearing activities.

**O. Litter:** Litter means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

**P. Medical Waste:** Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste, radioactive waste, household waste, or those substances excluded from the definition of "solid waste" in this ordinance.

**Q. Old Corrugated Cardboard:** A flat two-dimensional paperboard with a corrugated paperboard center.

**R. Pathological Waste:** Human tissues, organs and body parts, and the carcasses and body parts of any animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in vivo testing of pharmaceuticals, or that died with a known or suspected disease transmissible to humans.

**S. Person:** Any individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

**T. Putrescible:** Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen waste, offal, and animal carcasses.

**U. Processing:** Any technique designed to change the physical, chemical or biological character or composition of any solid waste so as to render it safe for transport, amenable to recovery, storage or recycling, safe for disposal; or reduced in volume or concentration.

**V. Radioactive Waste:** Waste containing any material, whether solid, liquid, or gas, that emits ionizing radiation spontaneously.

**W. Recycling:** The process by which solid waste or recovered materials are collected, separated, or processed, and reused or returned to use in the form of raw material or products.

**X. Refuse:** All nonputrescible waste.

**Y. Regulated Medical Waste:** Blood and body fluids in individual containers in volumes greater than 20 ml., microbiological waste, and pathological waste that has not been treated pursuant to the Durham City Code, Durham County Code, or rules promulgated by the Department.

**Z. Residential Convenience Center:** Center for temporary disposal of residential waste and recyclable materials prior to the transportation to a transfer station to be processed for final disposal.

**AA. Resource Recovery:** The process of retaining material or energy resources from discarded solid waste that no longer has any useful life in its present form and preparing the solid waste for recycling.

**BB. Salvageable Materials:** Any materials deposited as refuse but retaining enough of the original qualities to be considered useful.

**CC. Scavenging:** Collecting or removing refuse from the solid waste receptacles located at the Residential Convenience or Recycling Centers.

**DD. Scrap Tire:** A tire that is no longer suitable for its original, intended purposes because of wear, damage, or defect.

**EE. Septage:** Solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a septic tank system, campers, trailers, portal toilets etc.

**FF. Sharps:** Needles, syringes, and scalpel blades.

**GG. Sludge:** Any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other waste having similar characteristics and effects.

**HH. Solid Waste:** Any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either

discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including material resulting from industrial, institutional, commercial, residential, agricultural operations, and from community activities. The term does not include:

1. Fecal waste from fowls and animals other than humans:
2. Solid or dissolved materials in:
  - a. Domestic sewage and sludges generated by treatment thereto in sanitary sewage collection, treatment, and disposal systems that are designed to discharge effluents to the surface water;
  - b. Irrigation return flows; and
  - c. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under NCG.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purpose of this definition;
3. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purpose of this definition;
4. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011);
5. Mining refuse covered by the North Carolina Mining Commission (as defined under NC G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purpose of this definition.
6. Recovered materials.

**II. Solid Waste Collector:** Any person who collects or transports solid waste.

**JJ. Solid Waste Disposal Site:** A location at which solid waste is disposed of by incineration, sanitary landfill, or other approved methods.

**KK. Solid Waste Management Facility:** Any publicly owned or privately owned solid waste management facility permitted by the Department that receives solid waste for processing, treatment, or disposal.

**LL. Solid Waste Receptacle:** Container used for the temporary storage of solid waste while awaiting collection such as dumpsters, rollout carts and other containers in various sizes.

**MM. Source Separation:** Setting aside recycling materials at their point of generation by the generator.

**NN. Tire:** A continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle as defined in NC G.S. 130A-309.53 (7).

**OO. Transfer Station (Facility):** A permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

**PP. Used Oil:** Any oil that has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose.

**QQ. White Goods:** Inoperative and discarded refrigerators, ranges, water heaters, heaters, freezers, and other similar domestic and commercial large appliances.

**RR. Yard Trimmings (Yard Trash):** Solid waste consisting solely of vegetative matter resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative matter.

#### **Sec. 20-4. Storage and Disposal.**

**A.** No owner, occupant, tenant, or lessee of any property may deposit, store, or permit to accumulate any solid waste on his property that is not stored or disposed of in a manner prescribed by this ordinance.

**B.** The owner, occupant, tenant, or lessee of any property shall remove or cause to be removed all solid waste from his property at least once every other week (14-day period).

**C.** Garbage shall be stored only in a container that is durable, rust resistant, nonabsorbent, watertight, and easily cleaned, with a close-fitting, fly-tight cover in place, with adequate handles or bails to facilitate handling. Solid waste receptacles, such as dumpsters, rollout carts, and other containers in various sizes may also be used for storage provided they meet the requirements of this subsection. The number of containers



shall be adequate to store one week's accumulation of garbage. Each container shall be kept clean so that no odor or other nuisance condition exists.

**D.** Refuse shall be stored in a manner that will resist harborage to rodents and vermin and will not create a fire hazard. Regulated refuse under this subsection includes, but is not limited to, lumber, boxes, barrels, bottles, cans, tires, paper, cardboard, rags, old furniture and other bulky waste, and white goods. Useful materials, such as firewood and building materials, may be stored on the premises, provided they are stored in a safe manner at a reasonable height above ground.

**E.** No owner, occupant, tenant, or lessee of a building or dwelling, other than a licensed junk dealer, may place or leave, or cause to be placed or left, outside the building or dwelling any bulky waste for longer than 72 hours.

**F.** No owner, occupant, tenant, or lessee of any building or dwelling may leave outside the building or dwelling in a place accessible to children, any abandoned or unattended icebox, refrigerator, or other receptacle that has a airtight door without first removing the door.

**G.** Solid waste should be disposed of in one of the following ways:

1. In a landfill approved by the Department;
2. In a transfer station, approved by the Department, to be processed for final disposal;
3. In an incinerator that has all required local, state, and federal control permits; or
4. By any other method, including recycling and resource recovery, that has been approved by the Department.

**H.** In addition to the methods listed in subsection G., above, noncommercial garbage and refuse may be disposed of at Residential Convenience Centers.

**I.** No person may discard, dispose, leave, or dump any solid waste on or along any street or highway or on public or private property unless such solid waste is placed in a receptacle or at a location designated for the deposit of solid waste.

**J.** Construction and demolition waste must be disposed of at a transfer station or other disposal sites approved and permitted by the Department.

**K.** Regulated medical, hazardous and radioactive waste must be disposed of according to written procedures approved by the Department.

**L.** All sharps shall be placed in a sealed, puncture-proof container prior to disposal. Medical waste sharps must be sent to a processing facility approved by the Department or to a NC Landfill. Households are exempt if sharps are disposed of in a puncture proof plastic container.

**M.** The owner, person or organization in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way and including but not limited to: restaurants, shopping centers, fast food outlets, convenience stores, hotels, motels, industrial establishments, apartment buildings, housing projects, construction sites, loading and unloading docks, gas stations, trailer parks, hospitals and clinics shall at all times keep the premises clean of all litter thrown or left on said premises and shall take measures, including, if necessary, immediate cleanup of the premises to prevent litter from drifting or blowing to adjoining premises.

**N.** No person, firm, organization, private corporation, governing body or agents or employees thereof shall place or deposit in or upon any motor vehicles, any handbill, circular, pamphlet or poster except in a manner intended to prevent its removal except by the recipient thereof.

**O.** Open burning of solid waste is prohibited, other than on-site-generated land-clearing debris. On-site-generated land-clearing debris that is to be burned must be managed in accordance with the Department's Air Quality Rules regarding open burning.

**Sec. 20-5. Solid Waste Receptacles.**

**A.** Solid waste receptacles are maintained at both publicly owned and privately owned facilities located throughout the County. Solid waste may be deposited in the receptacles only in accordance with the provisions of this ordinance.

**B.** The following waste may not be deposited in the solid waste receptacles:

1. Asbestos;
2. Burning or smoldering materials, or any other materials that would create a fire hazard;
3. Hazardous waste;
4. Lead-acid batteries;
5. Liquid waste;
6. Radioactive waste;

7. Regulated medical waste;
8. Tires;
9. Newspaper;
10. Cardboard;
11. Glass;
12. Plastic bottles;
13. Magazines;
14. Telephone books;
15. Aluminum and tin cans; or
16. any items banned by the Department.

**C.** All solid waste intended for disposal in a solid waste receptacle shall be deposited inside the receptacle. No solid waste may be left outside the receptacle.

**D.** No person may remove any item from a solid waste receptacle, climb on or into the receptacle, or damage the receptacle.

**Sec. 20-6. Source Separation and Recycling.**

**A.** Each person who owns, leases, or manages a residence, residential unit, or place of business, industry, commerce, or other place providing goods or services, or institution, church, or school shall make a good-faith effort to remove recyclable materials from the solid waste generated as required in subsection B and make them available for recycling. Notwithstanding the following, nothing in this ordinance is intended to prevent any person from donating or selling recyclable materials to any person.

**B.** All recyclable materials and any other materials banned from disposal shall be separated from other solid waste and made available for recycling. Recyclable material shall consist of the following items:

1. Glass jars and bottles;
2. Steel and aluminum cans;

3. Plastic milk jugs and soda bottles;
4. Corrugated cardboard (OCC);
5. Telephone books; and
6. Newspaper.

**C. Ownership of recyclable materials:**

1. After recyclable material has been placed in a designated container at a collection center designated by the County of Durham or its authorized agent, or has been placed at curbside in designated containers for collection, the recyclable material shall become the property of the County of Durham or its authorized agent.
2. No person, other than a county employee or the County's authorized agent, may remove recyclable material from a designated container that has been placed at a designated recycling convenience center.

**Sec. 20-7. Licensing of Solid Waste Collectors.**

**A.** No person may engage in business as a solid waste collector except under a license issued by the County pursuant to this ordinance.

**B.** Applications for licenses to engage in the business of solid waste collection shall be filed with the Director of General Services. The applicant shall furnish the following information:

1. Name and address of the applicant and whether a sole proprietorship, corporation, or partnership with disclosure of the ownership interests;
2. A list of the equipment possessed, available, or to be obtained by the applicant, including motor vehicle license tag numbers;
3. Number of employees the applicant expects to use in the business;
4. Experience of the applicant in solid waste collection;
5. Balance sheet or equivalent financial statement as of the close of the applicant's last business year, showing the net worth of the business;
6. Schedule of fees the applicant expects to charge;

7. Evidence of liability insurance coverage; and

8. Name and location of the facility where collected waste is to be disposed of.

**C.** Before issuing a license pursuant to this section, the Director of General Services or his designee shall inspect or cause to be inspected all facilities and equipment the applicant plans to use in the solid waste collection business.

**D.** The Director of General Services may issue the applicant a license only when he finds that the applicant's facilities, equipment, and proposed operating methods are in compliance with this ordinance and applicable rules of the Department and that the applicant will perform solid waste collection in a efficient and sanitary manner.

**E.** If the Director of General Services denies an applicant a license, the applicant may request a hearing before the County Manager or his designee. The County Manager or his designee shall keep summery minutes of the hearing and within ten working days after the hearing shall give the applicant a written notice of his decision either granting the license or affirming the denial of the license. The applicant may appeal the County Manager's or his designee's decision to the Board of County Commissioners by giving written notice of appeal to the Clerk to the Board of Commissioners within five working days of the receipt of the County Manager's or his designee's decision. The hearing before the Board of Commissioners shall be de novo, and the appellant shall have the right to be represented by counsel. After a hearing on the appeal, the Board shall either affirm the denial or direct the issuance of the license.

**F.** A license shall be valid for a period of one year from the date of issuance.

**G.** A licensee shall submit a quarterly report to the Director of General Services containing the following information:

1. Number of customers added or deleted;
2. Changes in routes;
3. New and replacement equipment;
4. Any other information requested by the Director of General Services and pertinent to the solid waste collection business.

**H.** Vehicles and containers used for the collection and transportation of solid waste shall be covered, leakproof, durable, and easily cleaned. They shall be cleaned as often as necessary to prevent a nuisance and insect breeding and shall be maintained in good repair. Vehicles shall display in numbers at least three (3) inches high the county

license number of the licensee and the license sticker issued by the Director of General Services.

**I.** Vehicles and containers used for the collection and transportation of the solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill, and shall be covered to prevent the blowing of material. If spillage or leakage should occur, the material shall be recovered immediately by the licensee and returned to the vehicle or container, and the area properly cleaned.

**J.** When the Director of General Services finds that a licensee has violated this ordinance or the conditions of the license, the Director of General Services shall give the licensee written notice of the violation and inform him that if another violation occurs within thirty days, or in the case of a continuing violation, if it is not corrected within ten days, the license will be revoked. If another violation occurs within the thirty-day period, or, if the continuing violation is not corrected within in ten days, the Director of General Services shall give the licensee written notice that the license is revoked. Upon receipt of the notice of revocation, the licensee shall stop collecting, transporting, or disposing of solid waste. The Director of General Services may reinstate a revoked license after the revocation has been in effect for thirty days if the Director of General Services finds that the conditions causing the violation have been corrected. A licensee whose license has been revoked may appeal the revocation to the County Manager by giving written notice of appeal to the County Manager within ten working days of receiving notice of revocation from the Director of General Services. The notice of appeal shall stay the revocation during the pendency of the appeal. After a hearing on the appeal, the County Manager or his designee shall either affirm the revocation or direct the Director of General Services to reinstate the license. The applicant may appeal the County Manager's or his designee's decision to the Board of County Commissioners by giving written notice of appeal to the Clerk to the Board of Commissioners within five working days of the receipt of the County Manager's or his designee's decision. The hearing before the Board of Commissioners shall be de novo, and the appellant shall have the right to be represented by counsel. After a hearing on the appeal, the Board shall either affirm the revocation of the license or direct the reissuance of the license.

**K.** No license issued pursuant to this chapter shall be assignable.

**L.** The Board of County Commissioners may adopt a fee for the issuance of a license pursuant to this section.

#### **Sec. 20-9. Land Clearing and Inert Debris Landfill.**

Any land clearing and/or inert debris landfill operating in Durham County must comply with the applicable provisions of the Durham City-County Zoning Ordinance. Any person constructing or intending to construct a land clearing and/or inert debris landfill shall give written notice to the County Manager of the intent to file a permit

application with the Department or other State agency at least ten days prior to the filing of the application for a land clearing and/or inert debris landfill.

**Sec. 20-10. Beneficial Fill.**

**A.** A permit is not required for beneficial fill (as defined in 15A NCAC 13B Section .0562) activity that meets all of the following conditions:

1. The fill material consist only of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock, and gravel;
2. The fill activity involves no excavation; and
3. The purpose of the fill activity is to improve land use potential or other approved beneficial reuses.

**B.** The fill activity is not exempt from, and must comply with, all other applicable laws, ordinances, rules, and regulations. Fill activity shall not contravene groundwater standards.

**Sec. 20-11. Durham County Residential Convenience Centers.**

**A.** Residential convenience centers are maintained at numerous locations throughout the county for the convenience of county residents, and nonresident property owners, on land owned or leased by the County.

**B.** All Solid Wastes brought to the residential convenience centers shall be deposited in the solid waste receptacles located at the residential convenience centers only in accordance with the provisions of this ordinance.

**C.** The following waste may not be deposited in solid waste receptacles located at the residential convenience centers:

1. asbestos;
2. barrels;
3. burning or smoldering materials, or any other materials that would create a fire hazard;
4. commercial waste;
5. concrete;
6. construction waste;

7. pathological waste;
8. hazardous wastes;
9. herbicides;
10. industrial waste;
11. institutional waste;
12. land-clearing debris;
13. liquid wastes;
14. out-of-county wastes;
15. pesticides;
16. radioactive waste;
17. medical wastes;
18. scrap tires;
19. sharps not properly contained;
20. sludge; or
21. any material designated by the Department.

**D.** The following materials may be deposited in designated containers for the purpose of recycling at the residential convenience centers:

1. aluminum and tin cans;
2. antifreeze;
3. cardboard (OCC);
4. glass;
5. newspaper;



6. lead acid batteries;
7. pesticide containers;
8. plastic jugs;
9. used oil;
10. white goods;
11. yard waste; and
12. any material designated by the Department and approved by Durham County.

**E.** No person shall loiter and/or congregate on any of the residential convenience centers property and no vehicles shall be left unattended on said property.

**F.** Residential containers shall not be used by licensed solid waste collectors as a means of disposal for solid waste collected from commercial, institutional, industrial, or residential customers.

**G.** No person shall remove any contents from the solid waste receptacles located at the residential container sites.

**H.** Maximum allowable speed for vehicles at the Durham County residential convenience centers is 3 mph.

**Sec. 20-12. Residential Backyard Composting.**

Backyard composting is considered a means of waste reduction in the residential community. Every person engaged in backyard composting in unincorporated areas of Durham County shall comply with all rules and regulations concerning proper composting procedures.

**Proper Composting Procedures:**

1. Composting activity shall not occur within 25 feet of any structure used as a dwelling that is located on adjacent property. If composting is being done on a property on which more than one dwelling exists, the composting shall not create any conditions that inhibits the reasonable use of the property.

2. Composting activity shall not create any conditions that are conducive to the existence and breeding of rodents and insects or otherwise creates a condition that is injurious to the health of the community.
3. Composting activity shall not create any condition in which the material being composted may be blown from the property on which the composting is taking place.
4. Materials being composted which may be attractive to animals such as dogs, cats, skunks, opossums, raccoons, or other wild animals shall be protected in such a manner so as to prevent access to the composting materials by such animals.
5. Materials being composted shall not include human body wastes, fecal waste from dogs, cats and other household pets, and meat or dairy waste products.

**Sec. 20-13. Outside Storage of Used Tires.**

A person shall not dispose of any used tire(s) on any property other than a permitted scrap tire collection site as provided by NCGS § 130A-309.57 unless placed on property for purposes of removal by the City, County, or State.

**Sec. 20-14. Waterways and Shorelines.**

Waterways and shorelines, thereof, shall be maintained free of solid waste by the owners of the property, which abuts waterways and shorelines.

**Sec. 20-15. Enforcement.**

**A. General Services Director.** The General Services Director or his designee shall have the authority to enforce those sections of this chapter, as the County Manager shall designate.

**B. Right of Entry onto Premises.** Whenever it is necessary to make an inspection in the course of an investigation required by this chapter, the General Services Director or designee are hereby empowered to enter upon property upon which there is reasonable cause to believe a violation exists at any reasonable time to inspect the same, but only if the consent of the person in possession of the premises is freely given or a search or inspections warrant is obtained as hereafter provided;

1. If such property is occupied, the General Services Director or designee, shall first present credentials to the occupant and request entry, explaining the reasons therefor.
2. If such property is unoccupied, the General Services Director or designee, officer shall first make a reasonable effort to locate the person having charge or control of the property, present proper credentials and request entry, explaining the reasons therefor.
3. If such entry is refused or cannot be obtained because the person having charge or control of the property cannot be found after due diligence, the General Services Director or designee shall obtain an administrative search warrant to conduct a search or inspection of the property.

**Sec. 20-16. Civil Penalties.**

**A.** General Services Director or his designee shall have authority to issue notices of violation and/or notice of civil penalties to any person if there is reasonable cause to believe that the person has violated any of the provisions of this chapter.

**B.** Whenever a violation of this chapter results from a continuing condition rather than a discreet event, a written notice of violation shall be sent by certified mail to the last known address of the responsible person, specifying the nature of the violation and what must be done to correct it, requiring the responsible person to correct the violation within fifteen (15) calendar days after delivery of the notice, and informing the responsible person of the possible consequences of failure to comply.

**C.** If compliance has not occurred within the period specified above, or if a violation of this ordinance is a single, discreet event, a notice of civil penalties shall be issued and either delivered in person to the violator or sent by registered or certified mail. The notice of civil penalty shall direct that the notice of civil penalty shall be paid to the county within ten (10) days of the date of issuance and shall inform the violator that if this amount is not paid within the allotted time, a civil action will be initiated to collect the penalty.

**D.** Such violation shall have been corrected by the time payment of the civil penalty is due.

**E.** If the violator fails to pay the civil penalty by the due date, the County Manager or General Services Director shall have the authority to file a civil complaint for the unpaid civil penalty, to be recovered by the County in the nature of a debt and/or to have a criminal summons issued against the violator.

**F.** Amounts of civil penalties.

1. Scavenging at the Convenience and Recycling Centers:

First Offense	\$25.00
Second Offense	\$50.00
Subsequent Offenses	\$100.00

2. Dumping prohibited materials or quantities of materials in or around the solid waste receptacles, placing recyclables in inappropriate containers, or garbage in recycling containers:

First Offense	\$100.00
Second Offense	\$200.00
Subsequent Offenses	\$300.00

**G.** Request Receipts. The Director of General Services has the authority to request receipts from the violator to ensure proper disposal of the waste at a permitted disposal site.

**Sec. 20-17. Appeal Procedure and Hearing.**

**A.** A request for appeal or review hearing from the assessment of a civil penalty must be made in writing and must be sent to the Director of General Services within ten (10) days upon receipt of any notices which is the subject of the appeal or review. Upon receipt of the request for hearing the Director of General Services shall cease any further enforcement activities. A hearing shall be held by the committee established to hear such appeals or reviews within thirty (30) days of receipt of the request.

**B.** All testimony offered in a hearing held pursuant to this ordinance shall be given under oath and recorded. The hearing shall be open to the public. The person requesting the hearing may be represented by an attorney. The Director of General Services shall have the burden of proving that this chapter has been violated and the proposed sanction is in compliance with this Ordinance. The person requesting the hearing will then be given the opportunity to clear up any conflicts or inconsistencies created by the evidence or statement. The review board established to hear such appeals and reviews may ask questions at any time during the hearing and may request further evidence from either party. During the conduct of the public hearing, the county attorney will serve as staff to the review board and will publish the findings of the board and will make notices and distributions as appropriate. If the decision is against the person requesting the hearing the Director of General Services shall implement the sanction(s) approved by the review board. If the decision is against the Director of General Services, he shall cease his efforts to implement the proposed sanction(s). Any decision rendered by the review board only applies to the violation(s) and sanction(s) in question and does not prevent the Director of General Services from enforcing a subsequent violation of the

same provision or any other provision of this ordinance. Appeals must be made as appropriate within ten (10) days of the written decision. In the absence of an appeal, the decision of the review board will be final.

2) All ordinances or portion of ordinances in conflict herein are hereby repealed. Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration should not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

3) That sections 20-31 through 20-37 of the Durham County Code of Ordinances are hereby repealed.

4) Section 20-7 of this ordinance entitled "Licensing of Solid Waste Collectors" shall be effective on July 1, 2000. All of the rest and remainder of this ordinance shall be effective on ratification.

This the 13<sup>th</sup> day of December, 1999.

(Solid Waste Management Ordinance recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Public Hearing to Consider the Adoption of an Ordinance Which Amends the Zoning Ordinance Regarding the Districts and Standards for Adult Establishments**

It is the recommendation of the Durham County Attorney that it would be prudent for the Board of County Commissioners to readopt the zoning ordinance's current regulations concerning adult establishments. The City Council conducted a readoption of these standards on April 19, 1999. The purpose of this readoption is to assure all concerned parties that the standards of the zoning ordinance were established to address the potential secondary impacts associated with an over concentration of adult establishments. Adoption of this ordinance will clarify that these standards were developed in response to the secondary impacts of the use. Adoption of the ordinance is recommended. The Zoning Committee endorsed the proposal at an August public hearing and suggested additional separation standards of 2,000 feet for consideration. The proposal has added separations of 1,000 feet.

Resource Person(s): County Attorney Chuck Kitchen, Assistant County Attorney Lowell Siler, and Dennis Doty were at the meeting to present the agenda item.

County Manager's Recommendation: Conduct the public hearing and adopt the adult establishment zoning standards to address the secondary impacts of adult establishments.

Mr. Doty answered the Commissioners' questions.

County Attorney Chuck Kitchen also responded to the Commissioners' questions and comments.

Chairman Black opened the public hearing that was properly advertised.

Mike Shiflett, 111 Oakland Avenue, representing the Interneighborhood Council and Partners Against Crime District II, said he was hoping more people would come out in support of the City/County Planning Department. At the April 19, 1999 City Council meeting, the Interneighborhood Council and the Partners Against Crime District II supported the City's proposal to readopt the standards based on documented secondary impacts to our community. The standards were adopted. I want to revoice the support with more precise verbiage to stand up against the court case. I support narrowing its requirements to at least 1,000 feet separation to a place of worship, private or public school, daycare center, park, and library. I would like to see no more adult establishments.

As no one else asked to speak at the public hearing, Chairman Black closed the hearing and referred the item to the Commissioners for consideration.

Mr. Doty spoke about the backup material that was attached to the agenda action form.

Vice-Chairman Reckhow moved that no building or structure associated with the use shall be closer than 1,000 feet to a property line of a residential use, or closer than 50 feet to a property line of an adjacent non-residential zone or use. The facility shall not be permitted within 1,000 feet of the property line of a pre-existing place of worship, daycare facility, public or private school, park, or library.

Commissioner Heron seconded the motion with understanding that staff will look at it.

Commissioner Bowser wanted to amend the motion to read no closer than 1,500 feet of a pre-existing place of worship, daycare facility, public or private school.

Commissioner Bowser said if Vice-Chairman Reckhow and Commissioner Heron cannot accept the amendment, I will have to vote against the motion.

After considerable discussion, Vice-Chairman Reckhow and Commissioner Heron said they would accept the amendment. If, after additional study, staff proposes a different recommendation or if the regulation is difficult to administer, staff can bring it back for reconsideration. For the interim, we will support the more stringent regulation.

The amended motion follows:

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, that adult establishments shall be subject to the following additional requirements:

1. No property associated with the use shall be closer than 1,000 feet to a property line of a residential zone. No building or structure associated with the use shall be closer than 50 feet to a property line of an adjacent non-residential zone or use.
2. No property associated with the use shall be permitted within 1,500 feet of a pre-existing place of worship, day care facility, public or private school, park or library.
3. The minimum straight line distance between the property lines of two adult establishments shall be 2,000 feet.
4. Measurements shall be made from the property line of the proposed adult establishment to the property line or zoning district line as noted above, and from the property line of any separate parking lots used for the adult establishment.

The motion carried unanimously.

AN ORDINANCE TO READOPT THE STANDARDS OF THE  
DURHAM ZONING ORDINANCE  
REGARDING THE DISTRICTS WHICH ALLOW ADULT ESTABLISHMENTS  
AND THE STANDARDS FOR SPECIAL USE PERMITS, AND  
SUPPLEMENTARY REQUIREMENTS FOR ADULT ESTABLISHMENTS

WHEREAS, the Durham Zoning Ordinance contains restrictions regarding the location of adult establishments; and

WHEREAS, these restrictions were adopted in order to control the secondary impacts of such establishments; and

WHEREAS, these restrictions were adopted as part of comprehensive zoning changes that established standards for a wide variety of uses, not limited to adult establishments, because of the effects of those uses; and

WHEREAS, it is desirable at this time for the Durham Board of County Commissioners to reconsider the existing restrictions on adult establishments and clarify

that the purpose that such restrictions serve is to control the secondary effects of adult establishments; and

WHEREAS, adult establishments cause numerous secondary impacts, including but not limited to the lowering of real estate values in the vicinity of such establishments and increases in crime surrounding such establishments; and

WHEREAS, in order to preserve the quality of urban life in Durham it is necessary to limit the location of adult establishments to certain zones, require special use permits in some of those zones, and separate adult uses from each other so as to lessen the negative secondary impacts of such establishments and the secondary impacts that would occur if adult establishments were concentrated; and

WHEREAS, the restrictions contained in the existing ordinance regarding adult establishments allow such establishments real and reasonable opportunities to locate in various parts of the city which are accessible via major roadways to the public:

NOW, THEREFORE, BE IT ORDAINED THAT:

#### SECTION 1

That the term "Adult Establishments" be readopted into Subsection 4E.5.3 (Permitted Uses in the Industrial 3 District), Subsection 4E.4.4 (Major Uses in the Industrial 2 District), and Subsection 4D.5.3 (Minor Uses in the Commercial Trade District) of the Durham Zoning Ordinance.

Subsection 4D.5.3 (Minor Uses in the Commercial Trade District) of the Durham Zoning Ordinance.

#### SECTION 2

That the following requirements be readopted into Section 7 (Supplementary Requirements) of the Durham Zoning Ordinance:

Adult Establishments:

When allowed, adult establishments shall be subject to the following additional requirements:

5. No property associated with the use shall be closer than 1,000 feet to a property line of a residential zone. No building or structure associated with the use shall be closer than 50 feet to a property line of an adjacent non-residential zone or use.



6. No property associated with the use shall be permitted within 1,500 feet of a pre-existing place of worship, day care facility, public or private school, park or library.
7. The minimum straight line distance between the property lines of two adult establishments shall be 2,000 feet.
8. Measurements shall be made from the property line of the proposed adult establishment to the property line or zoning district line as noted above, and from the property line of any separate parking lots used for the adult establishment.

### SECTION 3

The zoning ordinance may be renumbered to accommodate this change.

### SECTION 4

This ordinance shall be effective upon adoption.

### **Public Hearing—Angier Development, L.L.C. (Rezoning Case P99-48)**

Angier Development, L.L.C. presented to the Board of County Commissioners a request to rezone 8.04 acres at 3846 Angier Avenue (Tax Map 643-2-6). Request: R-20 (Residential 20 District) to PDR-4 (Planned Density Residential--4 units/acre). The 2020 Plan supports Suburban Neighborhood uses. The Future Land Use Map in the Southeast Durham Plan indicates Low Density Residential (less than 4 units per acre). Staff recommends approval. The Zoning Committee of the Durham Planning Commission conducted a public hearing on October 12, 1999, and voted 6-1 to recommend approval.

The public hearing for this request was advertised on November 26 and December 3, 1999, in the Durham Herald-Sun.

Resource Person(s): Dwight Yarborough, Senior Planner

Mr. Yarborough presented the Commissioners an overview of the rezoning case.

The Commissioners asked questions and made comments about the rezoning request to which Mr. Yarborough responded.

Ms. Dawn Heric, employee of John R. McAdams Company Inc., representing Angier Development L.L.C., responded to questions from the Commissioners.

Commissioner Bowser said since this is a small project, he will support it.

Chairman Black opened the public hearing which was properly advertised.

Mr. Matt Gould and Ms. Heric, both representing Angier Development, L.L.C., were present to answer questions.

As no one else asked to speak at the public hearing, Chairman Black closed the hearing and referred the item to the Commissioners for consideration.

The Commissioners asked additional questions to which Mr. Gould and Ms. Heric responded.

Commissioner Bell expressed concerns about how the County is beginning developed relative to traffic and road capacity. A traffic count should be taken on roads and streets. It is the cumulative effect that developments are having that I am concerned about.

Commissioner Bell asked Norman Standerfer, City-County Planning Director, to respond to the concerns about traffic. The Commissioners and staff need to step-up to these critical issues in the community.

Vice-Chairman Reckhow wanted to have a cumulative impact study done on roads as we do with school memberships.

Chairman Black suggested the Commissioners discuss the traffic concerns in a worksession.

Vice-Chairman Reckhow moved, seconded by  
Commissioner Bowser, to approve the rezoning request.

The motion carried with a 4 to 1 vote with Commissioner  
Bell voting no.

(Legal description recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

### **Budget Amendment to Recognize Additional Work First Revenues**

The Department of Social Services requested approval of a budget amendment in the amount of \$1,559,813. This figure represents additional Work First funding to Durham County based on the recently received State Funding Authorization. Approximately half of this dollar amount (\$776,307) represents 100 percent Federal carry-forward funding from the previous fiscal year. It is not known whether this funding will be available to the Department beyond the current fiscal year. The remaining funds are part of ongoing federal Work First funding that was not incorporated in the Department's approved

FY 2K budget request.

The funding will be utilized in two distinct ways that support both of the Department's primary goals--promotion of family self-sufficiency and protection of vulnerable adults and children.

First, with respect to the goal of family self-sufficiency, the Department will utilize \$819,770 to support a variety of services to families working toward a goal of self-sufficiency. Two major activities to which the Department will give attention are:

- Emergency Assistance to families that face a major short-term financial crisis in utilities, heat/cooling, and rent within the first year of their leaving Work First. These efforts will focus on job retention so that these families do not have to return to welfare.
- Assisting TANF families with problems by securing safe and affordable housing. DSS will collaborate with the Durham Housing Authority, the Affordable Housing Coalition, and other community-based housing groups to provide through a state grant housing services to TANF families. This assistance will focus on enabling these families to secure affordable housing and pursue self-sufficiency.

Second, with respect to the goal of protection of vulnerable children and adults, the Department will utilize \$740,043 to augment its Child Welfare programs with the following objectives:

- Retain CPS staff to ensure the protection of children and to maintain state standards;
- Provide supportive and intensive services to children and families to prevent unnecessary out-of-home placements; and
- Begin to address the issue of children at risk as it pertains to court-ordered funds for children placed in high-cost residential treatment settings (average \$150 day), and children in DSS custody who are placed in the 3 low-management group homes in Durham County but require a high management residential treatment setting.

The funding will be used to provide 10 additional provisional staff positions (\$210,000), purchase upgraded computer software and hardware for Child Protective Services staff (\$130,000), and purchase an array of Family Support Services.

Resource Person(s): Gail Perry, Assistant DSS Director for Protection of Vulnerable Adults and Children, and Gael Hallenbeck, Assistant DSS Director for Program Support Services, were available as resource persons for this request.

County Manager's Recommendation: Approve the Budget Amendment to recognize Work First Revenues in the amount of \$1,559,813.

Daniel C. Hudgins, Social Services Director, made the presentation to the Commissioners.

The Commissioners asked questions and made comments about the agenda item to which Ms. Perry, Deputy County Manager Carolyn Titus, and Assistant Social Services Director Arnold Dennis responded.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to approve the item to recognize Work First Revenues in the amount of \$1,559,813 under Budget Ordinance Amendment No. 00BCC000019.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 1999-2000 Budget Ordinance  
Amendment No. 00BCC000019

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 1999-2000 Budget Ordinance is hereby amended to reflect budget adjustments for Social Services.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Revenues</u>				
Intergovernmental	\$172,871,640	\$1,559,813		\$174,431,453
<u>Expenditures</u>				
Human Services	\$205,908,958	\$1,559,813		\$207,468,771

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 13<sup>th</sup> day of December, 1999.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Contract With NC Department of Social Services for Family and Community Resource Development**

The Cooperative Extension Service requested Board approval of the contract between the NC Department of Social Services and the Durham County Cooperative Extension Service for Family and Community Resource Development (FCRD). The Board was

also requested to approve the amendment of the Cooperative Extension budget to reflect the addition of \$77,500.00 in intergovernmental revenue and the expenditure of this amount in the delivery of services noted in the contract. The contract provides for the development and staffing of a family resource center in North East Central Durham. The Cooperative Extension Service will administer the Center with input from a community-based advisory council. The program will allow for the development of family strengthening programs that integrate the services of other county human service departments, schools, and community agencies. The program is designed to compliment existing efforts in the community and based on the McKnight model for capacity and asset development in neighborhoods and communities. This model has been validated nationally in urban communities and NC DSS and NC Cooperative Extension will work with Durham County's Extension Center to develop this model locally. It is the goal of this program to build community capacity, allowing for the family resource center to become independent of Cooperative Extension in the future.

This is the first year in which Durham County has provided administration and program development to this FCRD program; however, other NC County Extension Centers provide leadership to similar FCRD programs.

Approval of this contract will increase the current budget for Cooperative Extension by \$77,500. No local funds will be required to implement this initiative. One and one-half provisional positions, dependent upon contract continuation, will be created in this project. The existing Community Outreach staff of Cooperative Extension will provide support to the startup of this initiative.

Resource Person(s): Cheryl Lloyd, County Cooperative Extension Director

County Manager's Recommendation: Authorize the County Manager to enter into a contract with the NC Department of Social Services for Family and Community Resource Development and approve budget amendment No. 00BCC000020 (FCRD grant revenue) increasing Cooperative Extension's budget by \$77,500.

The Commissioners asked Ms. Lloyd several questions about the agenda item.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the item.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 1999-2000 Budget Ordinance  
Amendment No. 00BCC000020

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 1999-2000 Budget Ordinance is hereby amended to reflect budget adjustments for the Cooperative Extension Service.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Economic/Phys.Devlp.	\$ 3,927,563	\$77,500		\$ 4,005,063
<u>Revenues</u>				
Intergovernmental	\$174,431,453	\$77,500		\$174,508,953

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 13<sup>th</sup> day of December, 1999.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Noise Ordinance**

The current Durham County Noise Ordinance does not comply with the applicable case law in North Carolina. State v. Garren, a 1994 North Carolina Court of Appeals case, is the leading case on noise enforcement in North Carolina. The proposed ordinance complies with the State v. Garren decision.

The proposed ordinance is more concise than the current ordinance. Special emphasis will have to be placed on training law enforcement personnel on how to investigate and prepare cases prior to enforcing violations in court.

Lowell Siler, Deputy County Attorney, reviewed the State v. Garren decision and the proposed ordinance with the Board of Commissioners.

Resource Person(s): Lowell L. Siler, Deputy County Attorney

County Manager's Recommendation:

Mr. Siler will incorporate the Board's guidance/input from the worksession and submit a final version to the Board for its approval at a future session.

County Attorney Chuck Kitchen responded to questions from the Commissioners.

Commissioner Heron moved, seconded by Commissioner Bowser, to approve the item.

The motion carried unanimously.

The Noise Ordinance follows:

#### DURHAM COUNTY NOISE ORDINANCE

WHEREAS, G.S. § 153A-133 authorizes counties to adopt ordinances regulating, restricting, or prohibiting the production or emission of noises or amplified speech, music or other sounds that tend to annoy, disturb, or frighten its citizens; and

WHEREAS, excessive sound and vibration and inadequately controlled noise are serious hazards to the public health, safety, and welfare, and a source of annoyance to the populace; and

WHEREAS, a substantial body of science and technology exists by which excessive or unreasonable noise and sound may be abated or eliminated; and

WHEREAS, it is the policy of the County of Durham to protect the health, safety, and welfare of its citizens and to promote an environment free from sound and noise disruptive of peace and good order; and

WHEREAS, it is the purpose of this Ordinance to establish an effective means of regulating and controlling sound and noise within the County of Durham to the ends that (1) the health, safety, and welfare of the population are promoted and maintained through peace and good order; and (2) the rights of individuals are not unreasonably restricted:

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF DURHAM COUNTY DOTH ORDAIN:

1. That sections 14-26 and 14-27 of the Durham County Code of Ordinances is hereby amended to read as follows:

#### Section 14-26. Offenses Against Public Peace and Order

- (a) Subject to the provisions of this section, it shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud and disturbing noise in the County. For purposes of this section, the following definitions shall apply:

- (1) Unreasonably loud: Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or eminent interference with peace or good order.
- (2) Disturbing: Noise which is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the area.

In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered: Time of day; proximity to residential structures; whether the noise is recurrent; intermittent, or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; the character and zoning (if applicable) of the area; whether the noise is related to the normal operation of a business or other labor activity; whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

**Section 14-27.** Farming operations shall be exempt from the operation of this ordinance.

Sections 14-28 and 14-29 of the Durham County Code of Ordinances are hereby repealed.

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

This ordinance shall become effective upon adoption.

\* \* \* \*

This is to certify that the foregoing is a true copy as taken from and compared with the minutes of the regular session of the Board of Commissioners for the County of Durham held on December 13, 1999.

This 14<sup>th</sup> day of December , 1999.

/s/ Garry E. Umstead  
Clerk to the Board of Durham  
County Commissioners

(Seal)



(Noise Ordinance Recorded in Ordinance Book \_\_\_\_, page \_\_\_\_.)

**Discussion of Merger Charter Commission**

County Attorney Chuck Kitchen gave a report regarding the statutes governing the creation of a merger charter commission. He also explained the powers for such a commission.

County Manager's Recommendation: Receive the report for informational purposes only.

The Commissioners asked questions and made comments to which the attorney responded.

Commissioner Bell said he would be opposed to establishing a charter commission that gives the commission the authority to call the referendum. I would want the City Council and County Commissioners to have the authority to call the referendum.

Chairman Black announced that the Steering Committee has a meeting scheduled for Monday, January 3, 2000 at 4:00 p.m. at City Hall. The chairman of the Steering Committee called the meeting in order to receive the report from the consultant.

The Steering Committee will adjourn after its work is completed.

The Durham City Council has scheduled a special meeting for Monday, January 3, 2000, for the following purposes:

1. To consider taking an action to establish a charter commission.
2. To consider authorizing a "cost benefit analysis" about merger and whether such an analysis should precede or occur simultaneously with the work of the charter commission.
3. Other matters which may come before Council.

Vice-Chairman Reckhow requested the County Commissioners advertise a special meeting after the Steering Committee meeting so the Commissioners may take action if they so choose.

Commissioner Bowser questioned the need for the Commissioners to have an action meeting after the Merger Steering Committee meeting.

County Manager David F. Thompson said, for clarification purposes, that the City Council and County Commissioners would meet in joint session even though they may not both take action. The meeting will be held in the City Council Chambers.

Chairman Black said the Merger Steering Committee and the joint meeting would be advertised.

**Little River Pay-As-You-Go Project**

Board action was needed to establish the Little River pay-as-you-go project. Funds will be used for acquisition related expenses. Pay-as-you-go funds exist to pay for this project.

Resource Person(s): David Thompson, County Manager

County Manager's Recommendation: I recommend the Board of County Commissioners approve capital budget amendment 00CPA000008 to establish the Little River pay-as-you-go project.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to approve the capital budget amendment 00CPA000008 to establish the Little River pay-as-you-go project in the amount of \$75,000.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 1999-2000 Capital Projects Budget Ordinance  
Amendment No. 00CPA000008

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 1999-00 Capital Projects Budget Ordinance is hereby amended to reflect budget adjustments for the Little River pay-as-you-go project.

PAY-AS-YOU-GO FUND

	<u>Current</u> <u>Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised</u> <u>Budget</u>
Little River	\$ -0-	\$75,000		\$75,000

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 13<sup>th</sup> day of December, 1999.

(Capital Projects Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Lakehurst City Taxes**

County Manager David F. Thompson updated the Commissioners on the Lakehurst City tax situation. He spoke to a joint responsibility between the City and County. A complete report will be given to the Commissioners and the public will be given to the Commissioners and public two weeks before the January regular sessions.

**Cancellation of the December 27, 1999 Board of County Commissioners Regular Session**

As per the Chairman of the Board, the County Commissioners discussed the cancellation of the December 27, 1999 Regular Session.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to cancel the December 27, 1999 Board of County Commissioners Regular Session.

The motion carried unanimously.

**Adjournment**

Chairman Black adjourned the meeting at approximately 10:15 p.m.

Respectfully submitted,

Garry E. Umstead, CMC  
Clerk to the Board